



## CONTENTS

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SECTION ONE: INTRODUCTION .....	1
<b>Executive Summary</b> .....	<b>1</b>
<b>The Notification</b> .....	<b>1</b>
<b>The Undertakings Involved</b> .....	<b>2</b>
<b>The Proposed Transaction</b> .....	<b>4</b>
<b>Rationale for the Notified Transaction</b> .....	<b>5</b>
<b>The Procedure</b> .....	<b>5</b>
SECTION TWO: Background – Newspaper Readership and Advertising .....	9
<b>Introduction</b> .....	<b>9</b>
<b>Newspaper Industry: Outlook and Terminology</b> .....	<b>9</b>
<b>Trends in Advertising Expenditure in Ireland and United Kingdom</b> .....	<b>12</b>
SECTION THREE: Relevant Product and Geographic Market .....	15
<b>Relevant Product Market</b> .....	<b>15</b>
<b>Relevant Geographic Market</b> .....	<b>27</b>
SECTION FOUR: Market Structure .....	29
<b>Introduction</b> .....	<b>29</b>
<b>Measuring Concentration</b> .....	<b>29</b>
<b>Market Structure for Display Newspaper Advertising in the GDA</b> .....	<b>29</b>
SECTION FIVE: Competitive Effects Analysis – Display Newspaper Advertising in the GDA.....	32
<b>Introduction</b> .....	<b>32</b>
<b>Counterfactual</b> .....	<b>32</b>
<b>Unilateral Effects</b> .....	<b>43</b>
<b>Coordinated Effects</b> .....	<b>46</b>
<b>Conclusion</b> .....	<b>48</b>
SECTION Six: Proposals and Remedies .....	49
SECTION seven: The Determination.....	50
schedule 1 .....	51

## **SECTION ONE: INTRODUCTION**

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### **Executive Summary**

- 1.1 The proposed transaction concerns the restructuring of Fortunegreen Limited ("Fortunegreen"). Fortunegreen, which was the subject of a merger notification in 2005, was established to publish *Metro*, a daily free newspaper, in the Greater Dublin Area ("GDA"). It is currently jointly controlled by Irish Times Limited ("ITL") and DMG Ireland Holdings Limited ("DMG"). Under the proposed transaction, Independent Newspapers (Ireland) Limited ("Independent") will acquire an interest in Fortunegreen and will contribute *Herald AM*, a free newspaper that it currently publishes in the GDA, to Fortunegreen. *Herald AM* and *Metro* will cease to be published. Post-transaction, Fortunegreen will publish a single daily free newspaper, *Metro Herald*. It will be jointly controlled by ITL, DMG, and Independent.
- 1.2 The Authority has concluded that the relevant market affected by the proposed transaction is the market for display advertising in daily paid-for and free newspapers in the GDA. In this market, *Metro* and *Herald AM* are each other's closest competitor. However, both free newspapers currently face competition from paid-for newspapers in the GDA, particularly *Evening Herald*.
- 1.3 The Authority has concluded that three competition concerns are likely to result from the proposed transaction:
  - The ability of Fortunegreen to compete effectively in the market for display newspaper advertising in the GDA may be diminished;
  - A forum will be created that could enhance the potential for coordination between the shareholders of Fortunegreen; and,
  - A forum will be created that could enhance the potential for coordination between the shareholders of Fortunegreen and Fortunegreen.
- 1.4 On 2 November 2009, ITL, DMG, Independent and Fortunegreen submitted proposals in accordance with section 20(3) of the Competition Act, 2002, to address the competition concerns arising from the proposed transaction. The Authority is of the view that these proposals will be appropriate and effective to address the competition concerns.

### **The Notification**

- 1.5 On 17 July 2009, in accordance with section 18 of the Competition Act 2002 (the "Act"), the Competition Authority (the "Authority") received a notification of a proposed transaction whereby Irish Times Limited ("ITL"), DMG Ireland Holdings Limited ("DMG") and Independent Newspapers (Ireland) Limited ("Independent") would acquire joint control of Fortunegreen Limited ("Fortunegreen").
- 1.6 On 17 July 2009, the parties submitted initial proposals under section 20(3) of the Act to address any potential competition concerns arising from the proposed transaction. According to section 21(4) of the Act,

the Authority had a 45 day deadline after the appropriate date to make a Phase 1 determination.

- 1.7 On 20 July 2009, the Authority advised the parties and the relevant Minister that it considered the proposed transaction to be a "media merger" within the meaning of section 23 of the Act.

### **The Undertakings Involved**

#### ***ITL***

- 1.8 ITL is a wholly-owned subsidiary of The Irish Times Trust Limited ("ITTL"). In the State, ITL publishes the daily newspaper *The Irish Times* six times a week. ITL also holds 52% of the shares in Gazette Group Newspapers ("GGN") which publishes eight free weekly newspapers in the Greater Dublin Area ("GDA").<sup>1</sup>
- 1.9 *The Irish Times* is published in Dublin and distributed mainly throughout the State and with a limited distribution elsewhere. *The Irish Times* is printed by ITL at its printing plant in CityWest Business Park in Co. Dublin. ITL's distribution in respect of *The Irish Times* is carried out by a network of third party distributors. ITL also publishes *The Irish Times* online at <www.irishtimes.com>. ITL also operates the <www.Ireland.com> website which is a portal for news and information on Ireland.

#### ***DMG***

- 1.10 DMG is a wholly owned subsidiary of Associated Newspapers Limited ("ANL") which in turn is a wholly owned subsidiary of Daily Mail & General Trust plc ("DMGT"). DMGT is a leading international media company. Its global interests include national and regional newspapers, online classified advertising, specialist financial publishing, business to business information publishing and exhibitions. Its main interests are in the US, the United Kingdom, Ireland, India, Australia and Central Europe.
- 1.11 In the State, DMG publishes two separate newspapers: the daily newspaper *Irish Daily Mail* six times a week and the Sunday newspaper *Irish Mail on Sunday*. Both newspapers are distributed mainly in the State. As of June 2009, *Irish Daily Mail* is printed by Smurfit Kappa in Kells, County Meath. *The Irish Mail on Sunday* is printed at the ITL facility in CityWest.
- 1.12 Distribution for both the *Irish Daily Mail* and the *Irish Mail on Sunday* is handled by EM News Distribution (Ireland) Limited ("EM News Distribution").

#### ***Fortunegreen***

- 1.13 Fortunegreen is an Irish-incorporated company based in Dublin. Fortunegreen is currently owned 45% by ITL, 45% by DMG and 10% by Metro International SA ("MIS"). Fortunegreen publishes the daily

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<sup>1</sup> GGN publishes weekly newspapers in various Dublin suburbs, namely *the Lucan Gazette, the Blanchardstown Gazette, the Clondalkin Gazette, the Dún Laoghaire Gazette, the Swords Gazette, the Malahide Gazette, the Castleknock Gazette* and *the Dundrum Gazette*. The acquisition by ITL of this stake in GGN was the subject of Determination No. M/08/007 of the Authority.

free newspaper *Metro* six times a week in the GDA. The newspaper is printed by ITL in CityWest Business Centre, Dublin.

- 1.14 The creation of this joint venture was the subject of the Authority's Determination No. M/05/071. On 1 December 2005, the Authority cleared the acquisition of joint control of Fortunegreen by ANL, the Irish Times Limited ("ITL") and Metro International S.A. ("MI"). DMG is a wholly owned subsidiary of ANL.

### ***Independent***

- 1.15 Independent is a wholly owned subsidiary of Independent News and Media plc ("INM") with headquarters in Dublin, Ireland. INM is a leading international newspaper and communications group, with its main interests in Australia, India, Ireland, New Zealand, South Africa and the United Kingdom. In these geographic areas, the INM Group publishes over 180 newspaper and magazine titles.
- 1.16 In the State, Independent publishes the daily newspapers *Irish Independent*, *Irish Daily Star*<sup>2</sup>, *Evening Herald* (each six times a week) and the Sunday newspapers, *Sunday Independent*, *Sunday World* and *Irish Daily Star on Sunday*<sup>3</sup>, as well as 15 other regional/non-Dublin newspapers. These newspapers are distributed mainly throughout the State. It also publishes *Herald AM*, a daily free newspaper, six times a week which is distributed on weekday mornings in the GDA. INM's UK newspapers, *the Independent* and *Independent on Sunday*, are also available in the State.
- 1.17 Independent's morning and evening daily and Sunday titles are produced at its offices in Dublin and are printed by INM in Belfast, Newry and Dublin (in CityWest Business Park) with the exception of *Irish Daily Star on Sunday* which is printed by the ITL. *Herald AM* is printed at CityWest.
- 1.18 INM's titles are distributed by Newsread which also distributes third party titles. INM outsources the distribution of the majority of its regional titles to third parties.

### ***Metro and Herald AM***

- 1.19 Fortunegreen and Independent launched *Metro* and *Herald AM*, respectively, in October 2005. *Metro* and *Herald AM* are stapled, full colour, free newspapers, targeted at morning commuters and, in particular, ABC1 full-time working readers aged between 18 and 44. Typically, they contain between 20 and 40 pages, approximately 50% of which contains advertising.
- 1.20 Both *Metro* and *Herald AM* are distributed in the GDA on weekday mornings (with the exception of public holidays) typically between 6.30 and 9.30am. The main distribution points are at Luas and DART stations and high density pedestrian areas throughout the GDA. The *Herald AM* is also distributed at busy traffic junctions.

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<sup>2</sup> *Irish Daily Star* is published by Independent Star Limited which is jointly controlled by Independent and Express Newspapers Limited.

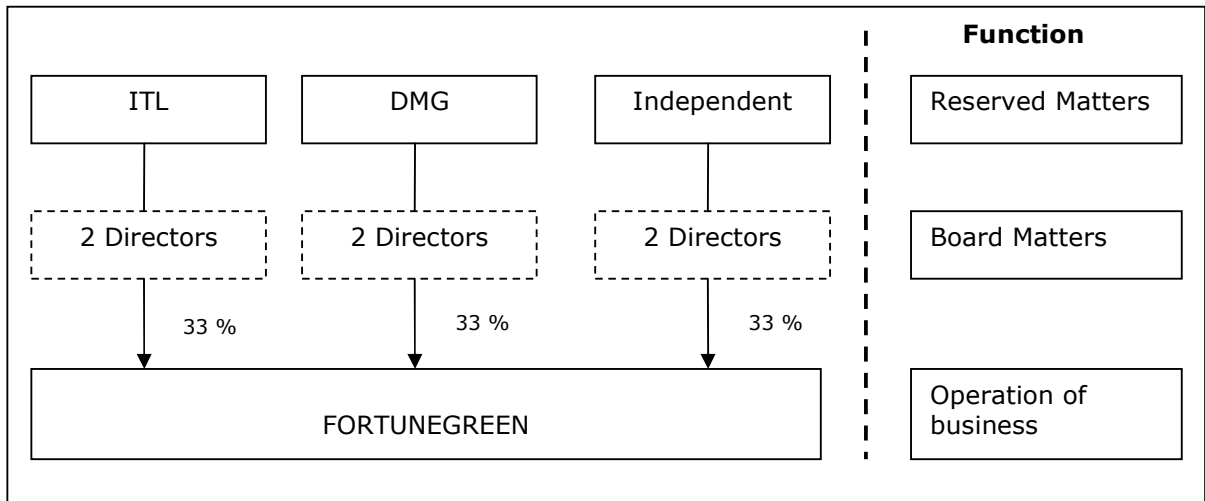
<sup>3</sup> *Irish Daily Star on Sunday* is published by Independent Star Limited which is jointly controlled by Independent and Express Newspapers Limited.

- 1.21 The distribution system for *Herald AM* is similar to that of *Metro* and is contracted out to third parties who are responsible for collection/delivery and distribution respectively. The newspapers are collected each morning from the printing plant and delivered to various distribution points in the GDA. This distribution operation uses teams of merchandisers physically handing the newspapers to readers or leaving the newspapers available to be picked up by readers.
- 1.22 Both *Metro* and *Herald AM* contain a mixture of condensed national and international news items, much of which are sourced from their parents' publications or from the various press agencies. The titles also contain entertainment, travel, food and health features.

**The Proposed Transaction**

- 1.23 The proposed transaction concerns the restructuring of Fortunegreen. Fortunegreen is currently jointly controlled by ITL and DMG. ITL and DMG each hold a 45% shareholding in Fortunegreen. The remaining 10% shareholding in Fortunegreen is held by Metro International SA.
- 1.24 Figure 1 below illustrates the proposed structure of Fortunegreen following completion of the proposed transaction.

**Figure 1: Proposed Restructuring of Fortunegreen**



Source: The Competition Authority based on Notification Form

- 1.25 Post-transaction:
- Each of ITL, DMG and Independent will hold a 33.3% shareholding in Fortunegreen;
  - Each of ITL, DMG and Independent will have to give their consent in writing to adopt the Reserved Matters outlined in Schedule 3 (Part 1) of the Subscription and Joint Venture's Shareholders Agreement (the "Agreement"). The Reserved Matters include certain competitive parameters;
  - The board of Fortunegreen will be comprised of two directors appointed by each of ITL, DMG and Independent and the managing director of Fortunegreen. The prior approval of the Board will be

required to adopt the Board Matters set out in Schedule 3 (Part 2) of the Agreement. The Board Matters include certain competitive parameters (e.g., setting advertising rates and discounts); and,

- The management of Fortunegreen will be responsible for its day-to-day operations without interference or veto from the shareholders or Board of Fortunegreen.

1.26 As noted above, under the proposed transaction, Independent will contribute *Herald AM* to Fortunegreen. Fortunegreen will develop a single daily free newspaper, *Metro Herald*, which will replace the current *Metro* and *Herald AM*.

### **Rationale for the Notified Transaction**

1.27 The parties submit that the proposed transaction is intended to:

- bring an end to the losses currently being experienced by the parties in respect of *Metro* and *Herald AM* and develop a sustainable, profitable business model for a daily free newspaper in the GDA;
- introduce significant efficiencies with respect to distribution, printing, sales and marketing costs; and
- combine the know-how of the parties to produce an improved daily free newspaper providing an attractive offering to readers and advertisers.

1.28 The Authority notes, however, that little or no data was provided by the parties to support whether these claimed efficiencies are merger-specific.

### **The Procedure**

#### ***Preliminary Investigation ("Phase 1")***

1.29 No third party submissions were received by the Authority during the Phase 1 investigation.

1.30 Notwithstanding the absence of third party submissions, the Authority decided to seek the views of advertisers and other persons knowledgeable about advertising in newspapers and other media. In the first category, the Authority contacted advertisers who placed advertising directly as well as those who place advertising through advertising agencies. In the second category, the Authority sought the views of advertising agencies for information about their clients for whom they place advertising and also for their views and knowledge about advertising in newspapers and other media. Also, the Authority sought information from the Institute of Advertising Practitioners in Ireland, the trade association and professional institute for Irish advertising agencies.

1.31 For 2008, [50-100]% and [0-25]% of total advertising revenues in *Metro* were derived from sales to advertising agencies (on behalf of advertisers) and to advertisers who place advertising directly ("direct advertising customers"), respectively. For the same period, [50-100]% and [25-50]% of total advertising revenues in *Herald AM* were

derived from advertising agencies and direct advertising customers, respectively.

- 1.32 During the Phase 1 investigation, the Authority designed a questionnaire to be answered by customers of *Metro* and *Herald AM*: advertising agencies, direct advertising customers and advertisers who use advertising agencies to place their advertising ("indirect advertising customers").<sup>4</sup> The Authority was of the view that it was important to survey indirect advertising customers even though they use advertising agencies. First, agencies represent many advertisers and their response to the questionnaire is likely to reflect the overall experience of their clients and not that of any individual client. Second, the response of an advertising agency may contain views and opinions about advertising in newspapers and other media that may not reflect those of their clients, collectively or individually. Third, many of the indirect advertising customers are large advertisers and their views and experience may be of assistance to the investigation.
- 1.33 The questionnaire consisted of questions about the respondent's experience with buying advertising and in particular, newspaper advertising and its views about the proposed transaction.
- 1.34 Since it was not practical to submit the questionnaire to all advertising customers of *Metro* and *Herald AM*, the Authority decided to send questionnaires to 18 advertising agencies, 16 indirect advertising customers and 21 direct advertising customers.
- 1.35 The sample of 18 advertising agencies was selected on the following basis. As noted above, advertising agencies accounted in 2008 for [50-100]% and [50-100]% of the total advertising revenues, respectively, for *Metro* and *Herald AM*. At the request of the Authority, the parties provided a list of *Metro* and *Herald AM*'s top 15 advertising agencies measured by their advertising spend in 2008. The top 15 advertising agencies account for [50-100]% of the advertising revenues placed by agencies in *Metro*. The top 15 advertising agencies account for [50-100]% of the advertising revenues placed by agencies in *Herald AM*. The Authority decided to survey 18 advertising agencies after eliminating the duplication in the two lists and taking account of the recent formation of a buying group by some agencies.
- 1.36 For direct advertising customers, the Authority asked the parties to provide a list of the top 15 direct advertisers by revenues in 2008 for each of *Metro* and *Herald AM*. The top 15 direct advertising customers account for [0-25]% of the advertising revenues placed by direct advertising customers in *Metro*. The top 15 direct advertising customers account for [0-25]% of the advertising revenues placed by direct advertising customers in *Herald AM*. Due to duplication in the identity of direct advertisers and the fact that some direct advertisers were no longer trading when contacted by the Authority, the questionnaire was sent to 16 direct advertising customers.
- 1.37 Overall, the advertising agencies and direct advertising customers who took part in the Authority's questionnaire survey accounted for [50-100]% and [50-100]%, respectively, of the total advertising revenues

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<sup>4</sup> Indirect advertising customers refer to those customers who advertise in *Metro* and/or *Herald AM* by availing of the services of an advertising agency: they consist mostly of large corporate customers such as Vodafone, O2, Dell, etc.



in *Metro* and *Herald AM* in 2008. This, in the Authority's view, provides a good representative sample for its survey.

- 1.38 In addition to advertising agencies and direct advertising customers, the Authority also sent a questionnaire to 21 indirect advertising customers. For indirect advertising customers, the Authority asked the parties to provide a list of the top 15 indirect advertising customers by revenues in 2008 for each of *Metro* and *Herald AM*. The top 15 indirect advertising customers account for [25-50]% of the advertising revenues placed by indirect advertising customers in *Metro*. The top 15 indirect advertising customers account for [25-50]% of the advertising revenues placed by indirect advertising customers in *Herald AM*.
- 1.39 Typically, respondents were given approximately 10 days to complete the questionnaire. In some cases, the Authority agreed to provide extensions.
- 1.40 On 27 August 2009, Authority officials met with Mr. Sean McCrave, chief executive of Institute of Advertising Practitioners in Ireland (IAPI) in order to obtain views on recent and future developments in the advertising industry in Ireland with particular focus on newspaper advertising.

### **Conclusion of Phase 1 Investigation**

- 1.41 Having considered the notification, the additional materials submitted by the parties and the fact that not all responses to the questionnaire had been received from direct advertising customers and indirect advertising customers, the Authority was unable to form the view at Phase 1 that the result of the proposed acquisition will or will not be to substantially lessen competition in markets for goods and services in the State.
- 1.42 Accordingly, on 27 August 2009, the Authority determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act.

### **Full Investigation ("Phase 2")**

- 1.43 As in Phase 1, no third party submissions were received by the Authority during the Phase 2 investigation. Further information and/or clarifications were provided by the parties during the Phase 2 investigation. On 4 September 2009, the case team requested clarifications on the proposals submitted by the parties on 17 July 2009. On 11 September 2009, the parties provided the requested clarifications. On 2 and 5 October 2009, the Authority held individual meetings with representatives of ITL, DMG, and Independent to clarify certain issues and obtain additional information in respect of the proposed transaction.
- 1.44 During Phase 2, the survey of advertising agencies, direct advertising customers and indirect advertising customers was completed. The vast majority of the responses to the questionnaire were received within the applicable deadline or extensions thereof. On 21 September 2009, the Authority issued witness summons to representatives of five direct advertising customers and five indirect advertising customers who had failed to respond to the Authority's questionnaire. No

summons hearings were held. The Authority revoked the witness summons issued with respect to nine of the advertisers upon the receipt of their response to the questionnaire.

- 1.45 One advertiser failed to respond and its representative failed to attend the witness summons hearing. The Authority is considering whether there is a breach of the Act for which proceedings should be brought under Section 31(4) of the Act.
- 1.46 The response rate to the survey was high in every category. The Authority received a 100% response rate from the sample of 18 advertising agencies surveyed, 13 responses of the sample of 14 direct advertising customers responded (as mentioned above, one direct advertising customer failed to respond to the questionnaire), and 18 out of the sample of 21 indirect advertising customers provided responses.<sup>5</sup>
- 1.47 On 12 October 2009, the Authority informed the parties of the status of the investigation, the competition concerns identified by the Authority and its view that the initial proposals of 17 July 2009 were not sufficient to address the competition concerns. Following further discussions with the parties, revised proposals that satisfactorily address the Authority's competition concerns were submitted on 2 November 2009. Further information on the proposals submitted by the parties is provided in section six below.

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<sup>5</sup> There were logistical problems contacting two of the remaining three indirect advertising customers and one indirect advertiser indicated that their advertising agency would respond on their behalf and, thus, there was no point in the Authority insisting that this indirect advertiser provide a separate response.

## **SECTION TWO: BACKGROUND – NEWSPAPER READERSHIP AND ADVERTISING**

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### **Introduction**

- 2.1 This section describes some of the recent trends in media advertising with particular focus on newspaper readership and advertising.

### **Newspaper Industry: Outlook and Terminology**

#### **Introduction**

- 2.2 Newspapers seek to satisfy the needs of both readers and advertisers. As such, an assessment of the nature of competition in newspaper markets requires a consideration of the interaction between advertisers and readers. This type of assessment is carried out typically in the context of a two-sided market analysis.
- 2.3 In a two-sided market, two groups of players interact through a particular medium (e.g., a newspaper) that enables each group to achieve their inter-related objectives.<sup>6</sup> In this instance, newspapers wish to attract advertisers on one side and readers on the other side to form an audience for advertisers. An advertiser's demand for advertising space in a particular newspaper depends on, amongst other things, the size of the newspaper's readership, its target readers and distribution area.

#### **Readership**

- 2.4 The parties submit that perishability and time sensitivity are key characteristics of the newspaper industry. Copies left unsold at the end of the day are effectively worthless. Accordingly, prompt printing and speedy, effective distribution are critical to the success of all newspapers. Therefore, key variables which advertisers examine, when considering the allocation of their advertising spend across different newspapers, are circulation and readership profile.
- 2.5 Circulation figures for major newspapers are certified by ABC, a UK and Ireland-based organisation.<sup>7</sup> Readership data is based on the Joint National Readership Survey ("JNRS") which is the industry-standard source of readership data. The JNRS provides a breakdown of readers by demographic including location, age and socio-economic grouping. The importance of the distinction between circulation and readership is that the number of copies of a newspaper sold is typically lower than the number of actual readers (i.e., typically a newspaper is read by more than one individual).
- 2.6 The price of paid-for newspapers is decided by taking into account the costs of publication including editorial costs (i.e., procuring the news and feature items), printing/distribution costs, sales/marketing costs, and the revenue generated from the sale of advertising. Free

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<sup>6</sup> For a discussion of two sided markets, see the symposium of papers in *Competition Policy International*, Vol. 3, No. 1, Spring 2007, pp. 147- 298.

<sup>7</sup> ABC is governed by a Council of permanent and elected representatives of advertisers, media buyers, media owners and trade organisations. It is responsible for developing industry standards for reporting circulation and auditing the circulation of individual newspaper titles. ABC circulation figures are prepared on a nationwide (i.e., the State) basis and are not available on a GDA only basis. For further information see [www.abc.org.uk](http://www.abc.org.uk).

newspapers are supplied to readers free of charge. Thus, free newspapers depend solely on the sale of advertising space in order to generate revenue.

### **Advertising**

- 2.7 Advertising revenue is vitally important for all forms of media. Advertising may account for anything from one-third to two-thirds of total revenue for paid-for newspapers and is particularly critical to free newspapers since it accounts for 100% of revenue.
- 2.8 An advertiser's demand for advertising space in a particular newspaper depends to a very large extent on the attractiveness of that newspaper in terms of the location, size and demographic breakdown of its readership. Advertisers' preferences are generally differentiated on the basis of the size and location of a newspaper's readership and its demographic breakdown (i.e., age, gender, socio-economic grouping, etc). Advertisers will generally select the newspapers in which they advertise on the basis of readership figures prepared by the JNRS taking into account price and "reach".
- 2.9 Newspapers may carry national, regional and local advertising. Regional or local titles may also contain advertisements as a part of a national advertising campaign. This allows advertisers to increase the coverage and frequency of its advertising.
- 2.10 Each newspaper publishes the price it charges for advertising space in a form known as a "ratecard". Ratecard information is publicly available from each publisher's website and from Medialive which is an independent media industry portal. The ratecard is, however, only the starting point since the published rates are not necessarily the actual rates paid by advertising customers. The publisher attempts to charge a price as close as possible to the ratecard while the advertising customer seeks to negotiate the maximum discount. Since discounts are widespread, ratecard information may provide a superficial overview of pricing in the industry.
- 2.11 The Authority's survey of advertising agencies confirmed that all newspapers offer discounts off their published ratecards. The size of these discounts, however, is not publicly known. One agency stated that discounts vary between 15% and 50% depending on the available budget and the individual newspaper. The Authority's survey of agencies revealed that the main factors influencing the negotiations between newspapers and advertising customers include the following:
  - Client's expenditure volume in a given newspaper;
  - Commitment to spend a certain amount of money or a share of the client's overall newspaper advertising budget;
  - Position of the advertisement (e.g., front page versus run of paper, etc);
  - Category of advertisement (retail, property, recruitment, etc.);
  - Campaign length;
  - Trade history;

- Strength of the newspaper or publisher group;
- Negotiating skills of the agency; and,
- General market conditions.

#### Display Advertising

- 2.12 Display advertising generally contains graphic information beyond text such as logos, photographs, location maps, etc. In periodicals, it can appear on the same page or a page adjacent to the general editorial content and is generally presented towards the front half of the paper.
- 2.13 The price for display advertising is expressed as a single column centimetre ("SCC") rate. Display advertising space is sold in multiples of a SCC. In line with the standard practice of advertising customers, the Authority uses Cost Per Thousand ("CPT") as a measure of media efficiency based on the cost of reaching a thousand people. The CPT is calculated by dividing the relevant SCC rate by the number of readers in a particular demographic.<sup>8</sup>

#### Classified Advertising

- 2.14 According to the parties, classified advertising can be best described as advertising under a heading. Traditional classified advertising is presented in its own distinct section towards the back of a newspaper and generally comprises text ("Lineage Classified Advertising"). Lineage Classified Advertising consists simply of a description of the item being sold and a contact number. Neither *Metro* nor *Herald AM* carry Lineage Classified Advertising. However, in recent years, many classified advertisements, particularly recruitment, property and motor vehicle sales, have become more elaborate and may often include a photograph and/or logo ("Display Classified Advertising").

#### Advertisers and Advertising Agencies

- 2.15 Advertising is placed either directly by the advertiser or through an advertising agency. According to the parties, the role of advertising agencies is of particular importance. Large advertising agencies develop advertising strategies and specific campaigns for their clients and purchase advertising space across a number of platforms in order to meet each client's needs. Typically, an advertising company engages with its major clients, in advance of the beginning of each year, to design the campaigns to be run in that year. The agency then negotiates with newspapers/radio companies/TV companies/outdoor media companies on behalf of all of its clients in order to meet their needs and negotiate advertising space.<sup>9</sup> Finally, *ad hoc* advertising also takes place but in the case of large organisations the overall advertising strategy will have been planned in advance.
- 2.16 The parties state that the advertising sector in the GDA has undergone significant consolidation in recent years. There are now a small

<sup>8</sup> Determination M/07/069 UTV/FM 104; Determination M/07/040.

<sup>9</sup> However, the parties submit that in the current economic environment advertising customers which traditionally operate on the basis of annual agreements are increasingly seeking to renegotiate these agreements during the course of the year. Indeed, many newspapers are finding that deals with advertising customers are increasingly of a shorter term nature (i.e., quarterly, monthly and even weekly).

number of very large agency groups each operating a number of advertising brands. This consolidation has continued in the 2008-2009 with a number of mergers and consolidations taking place between such agencies.<sup>10</sup>

### **Trends in Advertising Expenditure in Ireland and United Kingdom**

2.17 This section describes the evolution and composition of advertising expenditure in Ireland in recent years. Specifically, advertising expenditure is analysed by medium (newspapers, TV, etc.), by category (retail, property, etc.) and by agency. Recent changes in the overall advertising media mix and future trends in the newspapers advertising industry in Ireland are discussed. Finally, the experience of free newspapers in London is also examined.

#### *Advertising Expenditure By Medium 2001-2008*

2.18 According to the Parties, the total advertising market encompassing all media advertising platforms experienced very significant growth in the five years up to 2008. It was estimated to be worth approximately €1.09 billion in 2008.

2.19 According to the *Advertising Expenditure Overview 2008* published by <medialive.com>, total advertising expenditure grew by 80% during the period 2001-2008. Total advertising expenditure fell by 13% to €1.58bn in 2008 compared to 2007. All media, with the exception of radio, experienced a decrease in advertising spend, ranging from 1% for TV to 21% for newspapers. In contrast, radio advertising increased by 7% over this period.

2.20 The substantial decrease in advertising spend experienced across most of the traditional media (especially newspapers) between 2007 and 2008 appears to reflect the impact of the current economic downturn rather than a long-term industry phenomenon.

#### *Advertising Expenditure by Category in 2008*

2.21 At the meeting with the Authority, Sean McCrave, chief executive of IAPI, stated that the biggest change in the 2008 was that categories such as recruitment, property and motors are no longer the major advertisers. They have been replaced by "retail" categories, especially grocery retailers such as Tesco and SuperValu. Data from the website medialive.com confirms this change at both the level of advertising across all media and newspaper advertising.

#### *Recent Trends in Media Advertising in Ireland*

2.22 According to a new report,<sup>11</sup> the global newspaper publishing industry is in a state of turmoil since: (i) advertising revenues continue to

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<sup>10</sup> In early 2008, AFA O'Meara and McConnells merged to create McConnells Advertising, and then in February 2009, Publicis Groupe Media and McConnells Advertising merged to create Core Media, a €192 million media buying group to rival large competitors such as GroupM and Aegis. Core Media, comprises the media agencies Publicis QMP, MCM, Zenith Optimedia and Clear Blue Water. In early June 2009, the global advertising group Leo Burnett Associates acquired the Irish-owned agency the Larkin Partnership in order to merge it with its Dublin operations.

<sup>11</sup> *Moving into multiple business models: outlook for newspaper publishing in the digital age* by PricewaterhouseCoopers ("PwC Report") in cooperation with the World Association of Newspapers (WAN). See the press release to the report available at: <http://www.pwc.com/ie/en/press-release/press-release3127.jhtml>

plummet due to long-term industry decline; (ii) new digital media, such as the Internet (due to increasing broadband penetration) and other new devices for delivering digital content, are growing in popularity in the marketplace, and (iii) the current economic climate which has exacerbated (i) and (ii).

- 2.23 The parties submit that, in line with the rest of the Irish economy, the total money spent on advertising in paid-for and free newspapers distributed within the GDA has contracted markedly in 2008 and that this contraction is likely to continue throughout 2009. In order to continue to be attractive to advertisers, newspapers must continue to be innovative and competitive so as to attract and retain readers.
- 2.24 This has been confirmed by the Authority's survey of agencies. Agencies note that in general terms the major change since 2008 has been the adverse impact of the current economic environment on advertisers. Advertising budgets are tighter and advertising clients are looking for additional value, i.e., discounts across all media advertising platforms. Agencies stated that clients are expecting media owners to make significant efforts to reward their advertising spend.
- 2.25 Another major change has been the growth of digital media, including the Internet and mobile, which are cost effective and more accountable. Twelve out of 18 agencies stated that the Internet and new digital media have impacted on their clients' choice of media in general. The share of the budget spent on these new media by agencies continues to grow, up to around 10% of overall advertising spend. It was noted that clients are increasingly requiring their agencies to justify the choice of media mix, with particular focus on the performance of newspaper and TV against new digital media. This is driving down the cost of advertising in these two media platforms.
- 2.26 With respect to the impact of the Internet on newspaper advertising, it has been noted by agencies that newspapers have been more adversely affected by Internet growth than other traditional media. Some agencies noted that classified advertising has been more affected by the Internet than display advertising. While most agencies have shifted some portion of their spend from press to Internet, nine out of 18 agencies stated that they did not feel the Internet has impacted on their choice between display advertising and classified advertising.
- 2.27 Notwithstanding this, the combination of newspaper and online advertising has proven effective, according to some agencies. Advertisements in newspapers are increasingly becoming a tool that directs the reader to the client's website for more information.
- 2.28 However, in its press release for the PwC Report, Ann O'Connell, Partner, Entertainment & Media Practice, PwC Ireland stated the following:

*"Ireland has a deep rooted traditional newspaper following and as a result the migration from print to online media is not expected to impact the sector to the same extent as other countries such as the US, where the newspaper industry is facing significant difficulties. It is likely that Irish consumers will for the foreseeable future, continue to place a significant value on the*

*commentary and opinion provided by the well-established newspapers”.*

- 2.29 According to the PwC Report, while newspaper sales are not declining in Ireland to the same extent as in other parts of the world, many challenges exist for newspaper advertising, such as the dramatic slowdown in advertising revenues as a result of the recession, the ongoing migration of readers to online sources for content, combined with the challenges facing publishers resulting from a growing need to maintain a new media online presence. Agencies surveyed by the Authority confirmed that these issues are present. Agencies indicated that they foresee an increasing shift of advertising expenditure from traditional media such as press and TV to new digital media.

*Experience of Free Newspapers in London*

- 2.30 There are currently three free daily newspapers published in London: *Metro*, *London Evening Standard*, and *City AM*. *Metro*, a free morning newspaper, is owned by DMGT and was launched in 1999. The *London Evening Standard* was launched in 1827 and was sold for a nominal sum of £1 in January 2009. It became a free newspaper in early October 2009. *City AM*, a free morning newspaper, was launched in 2005 and it specialises in financial news.

- 2.31 Free evening newspapers in London have been struggling financially in recent years culminating in two afternoon free newspapers, *The London Paper* and *London Lite*, recently exiting the market. The former was owned by Rupert Murdoch’s News International while the latter was owned by DMGT.

- 2.32 *The London Paper* ceased publication in August 2009 while *London Lite* exited in October 2009. The former newspaper had been making annual losses since it started in 2006.

- 2.33 The exit of *London Lite* was prompted by *London Evening Standard* becoming a free newspaper in early October 2009. DMGT gave the following reason for the demise of *London Lite*:

“The latest development in the London afternoon free newspaper space dictates that we look again at the future of London Lite. Despite reaching a large audience with an excellent editorial format, we are concerned about the commercial viability in this highly competitive area.”<sup>12</sup>

- 2.34 The experience of free newspapers in the GDA is similar to that in London. The parties provide data in the notification which indicates that both *Metro* and *Herald AM* have been making substantial losses since their launch in October 2005. Furthermore, three advertising agencies indicated in their response to the Authority’s survey that the GDA cannot support two free newspapers. Another three agencies stated that, absent the proposed transaction, it is likely that both free newspapers will cease publication leaving advertising customers with less choice.

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<sup>12</sup> <http://paidcontent.co.uk/article/419-dmgt-london-lite-closing-capitals-free-newspaper-war-ends/>



## **SECTION THREE: RELEVANT PRODUCT AND GEOGRAPHIC MARKET**

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### **Introduction**

3.1 In this section, the relevant market is defined in terms of its product and geographic dimensions. The views of the undertakings involved are summarised, the Authority's investigation explained and its analysis and conclusions set out.

### **Relevant Product Market**

#### *Views of the Undertakings Involved*

3.2 The parties state that the alternatives to *Metro* and *Herald AM* include not only the morning and evening daily national newspapers distributed within the GDA but also Sunday newspapers distributed within the GDA, local newspapers in the GDA, radio, television, Internet and outdoor advertising.

3.3 The parties also state that having considered the Authority's previous merger decisions and, notwithstanding their views as to the substitutability of radio, television, Internet and outdoor advertising for newspaper advertising, newspapers compete with one another in two distinct markets:

- the market for readership of national daily (morning and evening) newspapers and daily free newspapers distributed within the GDA, for which the customers are readers; and,
- the market for advertising in national daily (morning and evening) newspapers and daily free newspapers distributed within the GDA, for which the customers are advertisers.

#### Market for Readership

3.4 To support their views on the relevant market for readership, the parties submit the following arguments:

- Both free and paid-for daily newspapers distributed in the GDA have comparable content and distribution footprint;
- Free daily newspapers in the GDA have readerships which are broadly comparable to that of paid-for newspapers in terms of age and socio-category;
- Other competition authorities have found that free newspapers and paid-for daily newspapers are in same market; and,
- Local free newspapers are not part of the same readership market.

### *Views of the Competition Authority*

- 3.5 In its 2008 Determination in Alpha Publications/The Herald,<sup>13</sup> the Authority found that:

*"Newspapers are mainly designed to satisfy the needs of both readers and advertisers. As such an assessment of the nature of competition requires a consideration of interaction between advertisers and readers. Newspaper publishers wish to attract advertisers on one side and readers on the other side, to form an audience for advertisers."*

- 3.6 Therefore, Authority sees no reason to depart from its approach to distinguish between a market for readers and a market for advertisers given the two-sided nature of the newspaper industry.
- 3.7 The Authority agrees with the parties' view that the relevant market for readership encompasses all daily (morning and evening) paid-for and free newspapers in the GDA. The content of daily paid-for and free newspapers in the GDA is similar consisting of a mix of national and international news, sport, entertainment, travel, and food and health features. The analysis of newspaper readership set out below in Section 5 confirms that the audience for daily free newspapers is broadly comparable to that of daily paid-for newspapers in terms of age, socio-category and readership habits. However, this is unsurprising since the vast majority of news coverage currently appearing in *Metro* and *Herald AM* is not original as it is taken either from parent newspapers or from various press agencies and accordingly is widely available from sources other than the free newspapers. Therefore, the Authority is of the view that the market for newspaper readership in the GDA is unaffected by the proposed transaction.

### Market for Advertising

- 3.8 The parties submit that there are two market segments within the advertising market in the GDA: display advertising and classified advertising. However, little or no data was provided by the parties to support this view.

### *Display Advertising*

- 3.9 First, the parties submit that *Metro* and *Herald AM* attract the same advertisers because the two newspapers have each reached an audience which is, in terms of age, socio-category and readership habits, broadly comparable to that of other paid-for daily newspapers distributed in the GDA. Contrary to some initial expectations of the parties, neither of the free daily newspapers developed a readership unique to themselves.
- 3.10 Second, the parties state that the proportion of readers of *Metro* and *Herald AM* who do not read any other paid-for daily newspaper is [...] low in comparison to the other daily newspapers distributed in the GDA. In 2008, these so-called "solus" readers represented [0-25]%

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<sup>13</sup> Determination M/08/038 of 22 January 2008.

and [0-25]% of the total readership of *Metro* and *Herald AM*, respectively.<sup>14</sup>

- 3.11 The parties also submit that even when considering the number of readers that read *Metro* and/or *Herald AM*, i.e., the combined readership of *Metro* and *Herald AM*, the share of solus readers is still lower compared to the other daily paid-for newspapers distributed in the GDA. On the basis of the 2008 JNRS, the combined readership of *Metro* and *Herald AM* was 126,000, of which 30.9% did not read any paid-for daily newspaper.<sup>15</sup>
- 3.12 Furthermore, the parties note that the type of display advertising carried by *Metro* and *Herald AM* is the same as in daily and Sunday national newspapers. The parties state that a casual observer could quickly identify, for example, that the same major grocery chains and mobile phone/fixed line/broadband providers regularly advertise in a number of daily newspapers in order to reach their target groups. Analysis of the top 20 advertising customers of the daily free newspapers and the daily national and Sunday newspapers bears this out, showing significant similarities.
- 3.13 Finally, with respect to the type of advertising carried in local newspapers distributed in the GDA, the parties note that it tends to be focused on local/neighbourhood advertisers although there are some exceptions to this trend. Accordingly, the parties submit that the narrowest market to be examined in the context of the proposed transaction is print display advertising in Dublin in which all of the national daily (morning and evening) newspapers distributed in the GDA and *Metro* and *Herald AM* are active.<sup>16</sup>

#### *Classified Advertising*

- 3.14 The parties state that classified advertising is significantly less expensive than display advertising. This reflects the fact that such advertising is located towards the back of the newspaper (a generally less attractive positioning). However, the parties submit that in recent years many classified advertisements, particularly those relating to recruitment, property and motor vehicle sales, have become more elaborate and often include a photograph and/or logo.
- 3.15 The parties submit that Internet advertising has a particularly high level of substitutability in respect of certain categories of classified advertising, specifically property, recruitment and motor sales. In these cases, specialised websites have been developed which are updated in real time, are easily accessible to end users, and are competitively priced for advertisers.
- 3.16 The parties state that online classified advertising is extremely innovative. In a number of instances, advertisements are replicated

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<sup>14</sup> Solus refers to individuals who only read one newspaper.

<sup>15</sup> It should be noted that these figures relate to readers both inside and outside the GDA. While neither *Metro* nor *Herald AM* are distributed outside of the GDA, the JNRS is a residential survey (i.e., interviewers call to people's homes) and, accordingly the JNRS captures a certain number (approximately 6,000 in 2008) of readers of *Herald AM* and/or *Metro* who live outside the GDA (presumably commuters who work within the GDA).

<sup>16</sup> The parties also note, however, that in addition to other advertising platforms, significant competitive restraint is also exercised by both the Sunday newspapers distributed in the GDA and those portfolio operators of local newspapers active in the GDA.

across a number of websites and/or also appear in the print editions of national newspapers. Furthermore, price competition is extremely keen.

- 3.17 In addition to the competitive constraint exercised by Internet advertising, the parties submit that certain paid-for and free local newspaper titles distributed within the GDA are substitutable in respect of these types of classified advertising.

*Views of the Competition Authority*

- 3.18 In assessing the scope of the relevant newspaper advertising market, the Authority begins by asking whether free newspapers occupy a separate advertising market.

***Are Daily Paid-for and Free Newspapers in the same Newspaper Advertising Market?***

- 3.19 The Authority used a number of different types of evidence and sources to determine whether daily paid-for and daily free newspapers are in the same product market.

Review of Parties' Internal Documents

- 3.20 A SWOT<sup>17</sup> analysis prepared by [...] suggests that it perceives free newspapers to be competing in a separate advertising market. However, it is clear from the following quote, taken from an internal document prepared by Independent entitled [...], that Independent sees *Evening Herald* as being in competition with both *Metro* and *Herald AM*.

[...]

- 3.21 It is also clear from the following quote, which appears in an internal document entitled [...]<sup>18</sup>, that Independent perceives free newspapers as being in competition with paid-for newspapers:

[...]

- 3.22 Independent's views on the impact of both free newspapers on *Evening Herald* can also be clearly seen from the following quote taken from an internal document entitled [...]:

[...]

Authority Survey of Advertising Agencies, Direct Advertisers and Indirect Advertisers

- 3.23 The Authority asked advertising agencies and direct advertising customers to indicate which newspapers would also be included in the advertising mix when they advise their clients to advertise in *Metro* or *Herald AM*. All eighteen advertising agencies in the survey sample indicated that they would consider the majority of daily paid-for

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<sup>17</sup> SWOT Analysis is a strategic planning method used to evaluate the Strengths, Weaknesses, Opportunities, and Threats involved in a project or in a business venture.

<sup>18</sup> [...].

newspapers distributed in the GDA and, to a lesser extent, the Sunday newspapers.

- 3.24 Furthermore, as noted in paragraph 3.36 above, twelve out of eighteen advertising agencies stated that there was a reallocation of advertising spend from other newspapers when *Metro* and *Herald AM* launched in 2005.
- 3.25 With respect to direct advertising customers, in paragraph 3.42 above (second bullet point), it was noted that the majority of direct advertising customers (9 out of 14) did not see reallocation of advertising spend from other daily titles to *Metro* and *Herald AM*.
- 3.26 Similarly, in the case of the indirect advertisers, it was noted in paragraph 3.45 above that half did not see any reallocation of advertising spend from other daily titles to *Metro* and *Herald AM* in response to the launch of *Metro* and *Herald AM*.

### **Conclusion**

- 3.27 The parties argue in the notification that daily paid-for and free newspapers compete vigorously against one another in the newspaper advertising market. The Authority's market enquiries and analysis of internal documentation are consistent with this view. Taking all the evidence into consideration, the Authority has concluded that daily paid-for and free newspapers are part of the same newspaper advertising market.
- 3.28 The next issue is whether local newspaper are in the same advertising market as daily paid-for free newspapers in the GDA.

### **Do Local Newspapers Compete in the Same Advertising Market as Daily Paid-for and Free Newspapers in the GDA?**

- 3.29 The parties state in the notification that free and paid-for local newspapers do not compete in the readership market with daily paid-for or free newspapers. However, the parties also argue that advertising in local newspapers in the GDA exerts a competitive restraint on daily free and paid-for newspaper advertising in the GDA. The Authority has considered this issue and has concluded that local newspapers do not compete in the same advertising market as daily free and paid-for newspapers.
- 3.30 First, the Authority notes that local newspapers in the GDA are published on a weekly basis.
- 3.31 Second, the parties submit that the type of advertising carried in local newspapers tends to be local advertisers unlike the daily free and paid-for newspapers in the GDA which mostly contain national advertisers.
- 3.32 Third, advertising agencies surveyed by the Authority indicated that they do not perceive local newspapers as an alternative to advertising in daily paid-for and free newspapers in the GDA. Only three out of 18 agencies stated that their advertising spend in local newspapers declined as a result of the launch of *Metro* and *Herald AM* in October 2005.

- 3.33 The Authority has therefore concluded that local newspapers do not compete in the same advertising market as daily free and paid-for newspapers.
- 3.34 The next issue is whether Sunday newspapers compete in the same newspaper advertising market as daily paid-for and free newspapers in the GDA.

***Do Sunday Newspapers Compete in the Same Newspaper Advertising Market as Daily Paid-for and Free Newspapers?***

- 3.35 The parties also argue that advertising in Sunday newspapers exerts a competitive restraint on daily free and paid-for newspaper advertising in the GDA.
- 3.36 An examination of internal documentation provided to the Authority by Independent supports this view. In a document prepared by Independent entitled [...], there is a "Competitive Analysis" section which discusses the competitive environment in which Independent's newspapers compete. In this document, daily newspapers are discussed separately from the Sunday newspapers. The same demarcation between Sunday newspapers and daily newspapers within the "Competitive Analysis" section also appears in a document prepared by Independent entitled [...].
- 3.37 Similarly, in an internal document provided to the Authority by ITL entitled [...], there are two separate sections: "What's happened in Daily Newspapers" and "What's happened in Weekend Newspapers". In the latter section, although there is brief reference to Saturday supplements produced by *The Irish Times*, *Irish Independent*, and *Irish Daily Star*, the majority of the discussion involves a comparison of ABC and JNRS data for Sunday newspapers.
- 3.38 This distinction can also be seen in an internal document provided to the Authority by ITL consisting of a presentation made to the board of ITL in September 2009. In a section entitled "Circulation Market Share", the market share (by reference to ABC circulation data) of daily newspapers is considered separately from that of Sunday newspapers. Likewise, when examining the latest JNRS readership results, the daily newspapers are considered separately from Sunday newspapers.
- 3.39 Another piece of evidence is the response by advertising agencies to the Authority's survey. When asked whether the launch of *Metro* and *Herald AM* had any impact on their advertising spend in other newspapers (including Sunday newspapers), only three out of the twelve advertising agencies who had switched their advertising spend from other newspapers mentioned a Sunday newspaper.
- 3.40 The Authority has therefore concluded that Sunday newspapers do not compete in the same advertising market as daily free and paid-for newspapers.
- 3.41 The Authority now considers whether display and classified newspaper advertising are in the same market.

### **Display Advertising versus Classified Advertising**

- 3.42 The parties argue in the notification that display advertising in newspapers is a distinct product market from classified advertising. In support of this view, the parties state that (i) classified advertising is a distinct product with a different format/content in comparison to display advertising; and, (ii) classified advertising in newspapers primarily competes with classified-only publications and specialised websites on the Internet.
- 3.43 The Authority agrees with the parties' view that display and classified newspaper advertising are not in the same product market. This is because they have different characteristics (display advertisements are placed throughout the newspaper whereas classified advertisements tend to be placed at the back of the newspaper; they have different pricing structures) and different usage or purpose (display advertising tends to be used when promoting a brand whereas classified advertising targets readers in specific areas such as recruitment, travel, and property). These differences between display and classified newspaper advertising were confirmed by the agencies surveyed by the Authority.
- 3.44 In addition, internal documents provided by the parties (e.g., profit and loss accounts) differentiate between these two types of advertising. In terms of advertising revenue, display advertising is the main source of revenue for the two free newspapers. As described in more detail in Section 4 below, display advertising accounted for over [50-100]% of total advertising revenue earned in both *Metro* and *Herald AM* in 2008. In addition, *Metro* and *Herald AM* accounted for a negligible share of the total revenue generated by classified advertising in all daily free and paid-for newspapers distributed in the GDA in 2008 ([0-10]% and [0-10]%, respectively).<sup>19</sup>
- 3.45 The Authority has therefore concluded that display advertising in newspapers is a distinct product market from classified advertising.
- 3.46 Finally, the Authority considers whether newspaper advertising occupies a separate product market from other media advertising platforms.

### **Is Newspaper Advertising in a Separate Product Market from other Media Platforms?**

- 3.47 The Authority's previous decisions found that newspaper advertising occupies a distinct product market from other media advertising platforms.<sup>20</sup> As described above, however, the parties submit that the alternatives to *Metro* and *Herald AM* available to advertisers include not only the daily paid-for and free newspapers distributed within the GDA but also Sunday newspapers distributed within the GDA, radio, television, Internet and outdoor advertising. No evidence, however, was provided by the parties to support this view. The Authority therefore re-examined this issue.

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<sup>19</sup> Traditional classified advertising is presented in its own distinct section towards the back of a newspaper and generally comprises exclusively text (Lineage Classified Advertising). In recent years, many classified advertisements particularly in respect of recruitment, property and motor vehicle sales have become more elaborate and may often include a photograph and/or logo (Display Classified Advertising). Neither *Metro* nor *Herald AM* carry Lineage Classified Advertising.

<sup>20</sup> Determination M/07/022 Thomas Crosbie Holdings/South East Broadcasting of 5 September 2007.

3.48 The Authority used a number of different types of evidence and sources to determine whether newspaper advertising occupies a distinct product market.

#### Review of Parties' Internal Documents

3.49 The parties' internal documentation provides strong support for the view that newspaper advertising occupies a distinct product market.

3.50 First, the unique nature of newspaper advertising vis-à-vis other media advertising platforms is highlighted in the following quote [...]:

[...]

3.51 Second, the following quote taken from an internal document prepared by Independent entitled [...]:

[...]

3.52 Third, a SWOT<sup>21</sup> analysis prepared by [...] provides no support for the view that the relevant product market affected by the proposed transaction is wider than newspaper advertising.

3.53 Finally, it is significant that when the parties discuss the competitive environment in which their newspapers compete, in the internal documentation, there is almost no mention of any other media advertising platform.

#### Presentation made by Independent to [...]

3.54 A presentation made by Independent to [...] <sup>22</sup> in 2009 describing the attractiveness of its stable of newspapers as advertising platforms makes no reference to any other media advertising platforms. For example, the presentation compares the readership figures of *Irish Independent* with those of *The Irish Times* and *Irish Examiner*. Likewise, the readership figures of *Sunday Independent* are compared with those of *Sunday Times*, *Sunday Business Post*, and *Sunday Tribune*. Furthermore, the following quote from Independent's presentation to [...] suggests that Independent sees itself as competing in a narrow newspaper advertising market:

[...]

#### Authority Survey of Advertising Agencies, Direct Advertisers and Indirect Advertisers

##### *The Authority's Advertising Agency Survey*

3.55 In considering whether a separate product or geographic market exists, the Authority applies the Small but Significant Non-transitory Increase in Price (SSNIP) Test (also known as the hypothetical monopolist test) where the price increase is between 5- 10%.<sup>23</sup> The

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<sup>21</sup> SWOT Analysis is a strategic planning method used to evaluate the Strengths, Weaknesses, Opportunities, and Threats involved in a project or in a business venture.

<sup>22</sup> [...].

<sup>23</sup> The SSNIP Test asks whether a hypothetical monopolist of product A would be able to permanently increase its price by 5-10%. If a sufficient number of consumers respond to the price increase by purchasing another product, say product B, then it is appropriate to include product B in the same



SSNIP test in merger analysis applies a price increase “above the prevailing level.”<sup>24</sup> In some instances, the prevailing price will be the competitive price, in others a price in excess of the competitive level.

- 3.56 The Authority received responses to a detailed questionnaire from a number of leading advertising agencies, direct advertising customers and indirect advertising customers in the State.
- 3.57 One of the questions posed in the Authority’s questionnaire related to the SSNIP test:

Assume that all the newspapers in the State were owned by one undertaking and if this undertaking were to permanently raise the price of newspaper advertising on all these newspapers by between 5% and 10% from its current level. Assume also that at the same time all other conditions (such as demographics, readership, etc) as well as the price of advertising space in other media remained unchanged. In these circumstances, would your clients typically:

- (a) Maintain the spend on newspaper advertising (and buy less newspaper advertising space)?
- (b) Maintain the same newspaper advertising space and pay more?
- (c) Switch some of the spend away from newspaper advertising. If so, to which medium/media and what proportion of spend?
- (d) Other (please specify).

- 3.58 The responses to this question can be summarised as follows:

- Three out of the 18 advertising agencies did not provide a response to the question;
- two advertising agencies stated that their response would greatly depend on the clients (option (d));
- one advertising agency indicated that it would opt for a reduction in newspaper advertising space, option (a) only;
- one advertising agency opted for option (b) only, i.e., maintain the same advertising space and pay the extra 5-10%;

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relevant market as product A. The test is then reapplied to a hypothetical monopolist of both product A and B and asks if a hypothetical monopolist of both products could profitably increase the price of both products by 5-10%. If a sufficient number of consumers switch to another product, say product C, the test is then reapplied by including product C with products A and B. The test is iteratively applied until a hypothetical monopolist of some group of products could profitably increase the price of all products in the group by 5-10%. This group of products is defined as the relevant product market. Full details of the test are explained in the Competition Authority, 2004, *Notice in Respect of Guidelines for Merger Analysis*, Decision No. N/02/004, hereinafter referred to as Competition Authority, *Merger Guidelines*, which are available on the website, [www.tca.ie](http://www.tca.ie).

<sup>24</sup> Competition Authority, *Merger Guidelines*, paragraph 2.5.

- six advertising agencies stated that they would choose option (c) only, i.e., switch some their advertising spend away from newspaper advertising; and,
  - five advertising agencies indicated that they would either choose option (a) or option (c), depending on the client's requirements.
- 3.59 Among those advertising agencies that indicated that they would switch to other media (in combination with option (a) or not), radio was the most popular choice (selected by six agencies), followed by Internet (five agencies), outdoor (two agencies) and TV (one agency). Thus, of the eight advertising agencies that only selected one of the first three options, two indicated that they would maintain the same expenditure on newspaper advertising but buy less while six indicated that they would choose the option of switching.
- 3.60 The results of the SSNIP test are inconclusive for two reasons. First, no figures were provided regarding the proportion of advertising spend that would be switched away from newspaper advertising in response to hypothetical price rise.
- 3.61 Second, while six out of eighteen advertising agencies stated that they would choose option (c) only, (i.e., switch some their advertising spend away from newspaper advertising), five advertising agencies indicated that they would choose either option (a) or option (c), depending on the client's specific requirements, and two advertising agencies selected option (d), saying "it depends". Thus, it is not possible to conclude whether a majority of advertising agencies would choose option (c) only, i.e., divert their advertising spend to other media.
- 3.62 Finally, the Authority also asked advertising agencies what impact, if any, did the launch of *Metro* and *Herald AM* in October 2005 have on their clients' advertising spend with each media platform used in the GDA and each newspaper published in the GDA.<sup>25</sup> The results can be summarised as follows:
- Five out of eighteen advertising agencies reported no change in any newspapers (whether daily, local or Sunday) and one agency said it was not active in 2005;
  - Of the remaining thirteen agencies, twelve reported some reallocation of advertising spend from other newspapers (including local and Sunday newspapers) and one indicated a reallocation of spend from radio; and,
  - Of the twelve who indicated a reallocation of advertising spend from other newspapers, not all of them were able to provide precise figures about the proportion and duration of the switch in spending.
- 3.63 The Authority also asked whether, subsequent to the launch of the two free newspapers in the GDA, there was any reallocation of spend from other media or from other titles when the direct advertising customers

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<sup>25</sup> A table was provided with this question in the Authority survey listing all the daily, Sunday, and local newspapers published in the GDA and any other media advertising platform.

started using *Metro* and/or *Herald AM*. The responses to this question can be summarised as follows:

- The majority of agencies (12 out of 18) stated that there was no reallocation of advertising spending from other media; only four advertising agencies saw a reallocation from radio and one from TV.
- Five out of these twelve advertising agencies stated that the reason for no reallocation from other media including newspapers was due to the fact that *Metro* and *Herald AM* had created a new type of newspaper advertising option (due to its peculiar target audience and distribution system) and they became an addition rather than a substitution.
- Half of the agencies (9 out of 18) saw a reallocation of advertising spend from other daily titles to *Metro* and *Herald AM*. In particular, they mentioned the following titles: *Evening Herald* (9 agencies), the *Irish Daily Star* (7 agencies), *Irish Sun* (6 agencies), *Irish Daily Mirror* (5 agencies). Three out of these nine advertising agencies also mentioned that they reduced their spend in local newspapers.

3.64 Thus, the reaction of agencies to the launch of the two free newspapers in 2005 provides little support for the view that newspaper advertising is in a broader product market with other media advertising platforms.

#### *The Authority's Survey of Direct Advertising Customers*

3.65 The responses to the question concerning the SSNIP test can be summarised as follows:

- Three out of fourteen direct advertising customers did not reply;
- Two direct advertising customers chose option (a), i.e., a reduction in newspaper advertising space;
- None of the direct advertising customers chose option (b), i.e., maintain the same advertising space and pay the extra 5-10%;
- Five direct customers chose option (c), i.e., switching to another medium (two mentioned Internet only, one TV and Internet and two direct advertising customers all the media)
- One direct advertising customer chose option (a) and (c) at the same time (Internet as medium to switch to);
- Three direct advertising customers chose option (d), saying that decisions would depend on several factors, such as an overall reassessment of the campaign needs, budget, attractiveness of other media and so on.

3.66 The results of the SSNIP test are inconclusive for three reasons. First, no figures were provided regarding the proportion of advertising spend that would be switched away from newspaper advertising in response to hypothetical price rise. Second, while five out of fourteen advertising direct customers stated that they would choose option (c) only, (i.e., switch some their advertising spend away from newspaper

advertising), three did not provide a response and another three said "it depends". Therefore, it was not possible to say if on balance the majority of the direct advertising customers would choose option (c) only, i.e., diverting their spend to other media.

3.67 Finally, the Authority asked direct advertising customers what impact, if any, the launch of *Metro* and *Herald AM* in October 2006 had on their advertising spend on each medium used in the GDA and each newspaper published in the GDA. Half of the direct advertising customers (7 out of 14) reported no change. Two stated that there was a permanent reallocation from other newspapers: one indicated a decrease in advertising spend in *Irish Daily Mail* and *Irish Sun* while the other indicated a reallocation from *Evening Herald* (10%).<sup>26</sup>

3.68 The Authority also asked whether, subsequent to the launch of these two new titles in the GDA, there was any reallocation of spend, either from other media or from other newspapers, when the direct advertising customers started using *Metro* and/or *Herald AM*. The responses to this question can be summarised as follows:

- The majority of direct advertising customers (11 out of 14) stated that there has been no reallocation of ad spending from other media and one of them stated that it was a new budget<sup>27</sup>;
- The majority of direct advertising customers (9 out of 14) did not see reallocation of advertising spend from other daily titles to *Metro* and *Herald AM*. Only two direct advertising customers saw a reallocation: one said that it was from *Irish Sun* and *Irish Daily Star* in a permanent way; another one said it was from Sunday newspapers but it was not permanent.

3.69 Thus, as with advertising agencies, the reaction of direct advertising customers to the launch of the two free newspapers in 2005 or subsequently when they started to advertise in either free newspaper provides little support for the view that newspaper advertising competes in a broader product market with other media advertising platforms.

#### *The Authority's Survey of Indirect Advertising Customers*

3.70 The response by indirect advertisers to the SSNIP question is also inconclusive for the same reasons as those noted above for advertising agencies and direct advertising customers. First, not all respondents provided precise figures concerning the proportion of advertising spend that would be switched from newspaper advertising in response to a hypothetical permanent price rise. Second, only six out of sixteen customers went for option c), while half of the customers (eight) indicated that the answer depends on various factors or they did not provide an answer.

3.71 In relation to the impact of the launch of *Metro* and *Herald AM* in 2006, half of the customers (eight out of sixteen) indicated that there was no change in their advertising habits while only five customers reported a

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<sup>26</sup> Five direct advertising customers did not provide a response (of which, two did not advertise on *Metro* or *Herald AM* at the time of the launch in 2006).

<sup>27</sup> Three direct advertising customers did not provide a response.

switching of advertising spend from newspapers such as *Evening Herald, Irish Daily Star, Irish Mirror* and *Irish Sun*.

### **Conclusion**

3.72 The Authority has in previous merger decisions considered newspaper advertising to compete in a different product market to other media advertising platforms.<sup>28</sup> The Authority's market enquiries and analysis of internal documentation in the present case are consistent with this view. Furthermore, no evidence was put forward by the parties to suggest that this view should be changed. Taking all the evidence into consideration, the Authority has concluded that the relevant product market affected by the proposed transaction is no wider than newspaper advertising.

### **Conclusion on the Relevant Product Market**

3.73 The Authority has in previous decisions considered newspaper advertising to be in a different product market to other media advertising platforms. The Authority's market enquiries and analysis in the instant case are consistent with this view. Taking all the evidence into consideration, the Authority has concluded that relevant product market affected by the proposed transaction is the market for display advertising in daily paid-for and free newspapers.

### **Relevant Geographic Market**

#### *Views of the Undertakings Involved*

3.74 The Parties submit that the relevant geographic market is the GDA. As outlined above, both *Metro* and *Herald AM* are only distributed in the GDA. In the notification, the parties adopt the same definition of the GDA as the JNRS:

"Dublin County, Dunshaughlin, Ashbourne, Dunboyne, Leixlip, Naas, Celbridge, Maynooth, Clane, Kill, Bray, Blessington, Greystones, Drogheda, Navan, Kildare Town, Newbridge, Wicklow Town and all areas in between. The adult population aged 15+ living within this catchment area is estimated at 1.32 million – adding approximately 329,000 adults to the population of Dublin City and County."<sup>29</sup>

3.75 The parties state that the Authority and the Commission have tended to define the geographic market for newspapers along national, regional or local lines, on the basis of distribution and coverage (including the attractiveness of content to people in certain areas and/or to persons wishing to advertise in those areas).<sup>30</sup>

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<sup>28</sup> See, for example, Determination M/07/022 Thomas Crosbie Holdings/South East Broadcasting of 5 September 2007.

<sup>29</sup> 2008 JNRS.

<sup>30</sup> Case No IV/M.1455 Gruner +Jahr / Financial Times / JV; Case No IV/M.423 Newspaper Publishing; Case No IV/M.1401 Recoletos / Unedisa; Case M.3817 Wegener/PCM/JV.

*Views of the Competition Authority*

- 3.76 [50-100]% of *Metro* and *Herald AM* readers in 2008 lived in the GDA. Thus, it is clear that advertisers in *Metro* and *Herald AM* specifically reach readers in the GDA.
- 3.77 The Authority also notes that the GDA accounts for almost [25-50]% of the total readership in the State (15 years old and over). Thus, advertisers seeking to reach a GDA audience may, in addition to advertising in a GDA specific title (e.g., the *Gazette* newspapers), also advertise in a national newspaper in order to enhance the campaign's coverage in the GDA.

***Conclusion on the Relevant Geographic Market***

- 3.78 The Authority considers that two geographic markets are relevant for the purposes of assessing the proposed transaction: the market for readership in the GDA and the market for display advertising in daily paid-for and free newspapers in the GDA.

## **SECTION FOUR: MARKET STRUCTURE**

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### **Introduction**

- 4.1 Market structure can be characterised by the number and size distribution of firms. The initial impact of any merger is felt on market structure as two firms pre-merger become one firm post-merger. This section considers the pre-merger and post-merger market shares in the market for display advertising in daily paid-for and free newspapers in the GDA is considered.

### **Measuring Concentration**

- 4.2 Market concentration refers to the degree to which production in a particular market or industry is concentrated in the hands of a few large firms. It refers in particular to the number and size distribution of firms in the relevant market: the fewer the number of firms and/or the more disparate the firms are in terms of their sizes, the more concentrated the market. The significance of concentration in competition analysis is that in highly concentrated markets in which barriers to entry are high, effective competition is likely to be weak.
- 4.3 The most commonly used measure of concentration is the Herfindahl-Hirschman index (HHI), which is defined as the sum of the squares of the market shares of all firms participating in the market. According to the Authority's *Merger Guidelines*, a HHI in excess of 1800 combined with a change in pre-merger HHI compared to the post-merger HHI of greater than 100 indicates a situation where "mergers occur in already highly concentrated industries and more usually be those that raise competitive concerns" (paragraph 3.10). Therefore, if the HHI is above 1800, this indicates that firms in that market may be able to exercise market power.
- 4.4 As explained in Section 3 above, the Authority has concluded that the relevant advertising market affected by the proposed transaction is the market for display advertising in daily (morning and evening) paid-for and free newspapers in the GDA. The Authority now examines the structure of this market.

### **Market Structure for Display Newspaper Advertising in the GDA**

- 4.5 According to the parties, there is no independently verified calculation of the total print advertising spend in Ireland. Both National Newspapers of Ireland and the medialive.com provide estimates of the newspapers advertising spend in Ireland but precise data on the market share of each participant in the market for newspaper advertising in the GDA is not available.
- 4.6 However, the parties provided revenue figures for each of their newspapers and estimates for other newspapers in relation to the total advertising market and the separate segments of display advertising and classified advertising. On the basis of these figures, total advertising revenue for daily paid-for and free newspapers and Sunday newspapers distributed in Ireland in 2008 was €[...], of which €[...] was accounted for by daily newspapers and €[...] by Sunday newspapers.

- 4.7 In order to identify how much of this advertising revenue was focused solely on reaching an audience in the GDA and how much was focused elsewhere, the parties used the overall percentage of the readership resident in the GDA as a proxy: e.g., since [50-100]% of *The Irish Times* readers live in the GDA, the parties apportion [50-100]% of their advertising revenue to the GDA.
- 4.8 Estimated market shares in the market for display newspaper advertising in the GDA in 2008 is presented in Table 2 below. Metro and Herald AM have negligible market shares in relation to classified advertising.

**Table 2 – Display Advertising Revenues for Daily Free and Paid-for Newspapers in the GDA in 2008**

Newspaper	Owner	Pre-merger market shares (%)
		Display Advertising
<i>The Irish Times</i>	ITL	[25-50]
<i>Irish Daily Mail</i>	DMG	[0-10]
<b>Metro</b>	Fortunegreen	<b>[0-10]</b>
<b>Herald AM</b>	Independent	<b>[0-10]</b>
<i>Evening Herald</i>		[0-25]
<i>Irish Independent</i>		[0-25]
<i>Irish Daily Star</i>		[0-10]
<i>Irish Daily Mirror</i>	Trinity Mirror	[0-10]
<i>Irish Sun</i>	News Group Newspapers Ltd.	[0-10]
<b>TOTAL GDA</b>	<b>Total</b>	<b>100.0</b>
Source: Parties' own figures for their titles and parties' estimates for the other titles		



4.9 The following observations can be drawn from Table 2:

- In 2008, the market for display advertising in daily free and paid-for newspapers in the GDA is already highly concentrated with ITL and Independent accounting for [50-100]% of display advertising revenue; and,
- The 2008 pre-merger market shares of both *Metro* and *Herald AM* are very similar.

### **Concentration**

4.10 According to the Competition Authority's *Merger Guidelines*, the level of the post-merger HHI gives a snapshot of market concentration. In order to establish the change in concentration in the market for display advertising in daily paid-for and free newspapers in the GDA, the Authority calculated the pre-merger and post-merger HHIs. Pre-merger, the HHI is 4,301 for the display newspaper advertising market in the GDA. This indicates that the proposed transaction takes place in an already highly concentrated display newspaper advertising market.

4.11 Post-merger, the market share of Fortunegreen cannot be assumed to be the sum of the market shares of *Metro* and *Herald AM* due to the presence of advertisers in both free newspapers on the same day. Furthermore, given that *Herald AM* will cease publication, the total market share of Independent would be expected to decline post-merger. Under this scenario, the post-merger HHI is likely to be lower than the pre-merger HHI, thus giving a lower level of concentration.<sup>31</sup> Notwithstanding this decline in HHI, the Authority's *Merger Guidelines* (paragraph 3.11) state that mergers that do not increase concentration significantly in the affected markets may still give rise to competition concerns.

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<sup>31</sup> Post-merger, the market share of Independent will decrease by approximately [...] percentage points (i.e., the market share of *Herald AM*) from [...]% to [...]%. As a result, the post-merger HHI value is likely to decrease by no less than [...] points.

## **SECTION FIVE: COMPETITIVE EFFECTS ANALYSIS – DISPLAY NEWSPAPER ADVERTISING IN THE GDA**

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### **Introduction**

5.1 In this section, the Authority analyses the competitive characteristics of the market for display advertising in daily paid-for and free newspapers in the GDA to establish whether the proposed transaction raises competition concerns. The section begins with an examination of the parties' counterfactual analysis, namely, a comparison of the competitive situation resulting from the proposed transaction with the competitive situation resulting from alternative scenarios to the proposed transaction.

### **Counterfactual**

5.2 The analysis of the competitive effects of a merger involves comparing the post-merger scenario with an alternative scenario which is usually the pre-merger scenario. However, in a situation where it is claimed that one of the merging parties is failing, the pre-merger scenario is usually not appropriate since it describes the competitive situation in which the alleged failing firm was an effective competitor. It is therefore improper to assume that the alleged failing firm would be an effective competitor absent the merger. The challenge is to describe the appropriate alternative scenario(s).

5.3 In this case, while the parties have not submitted any "failing firm defence" claims, the parties state in the notification that the proposed transaction represents a better competitive outcome given the current economic conditions and the losses incurred so far by *Metro* and *Herald AM*.

5.4 Thus, "the situation that would have been expected to prevail without the merger (sometimes referred to as the counterfactual) is considered".<sup>32</sup> Typically the counterfactual assumes that the merger does not take place and that the "existing pre-merger, competitive conditions"<sup>33</sup> will prevail. *Metro* and *Herald AM* remain separate entities. The competitive assessment then asks whether the merger compared to the counterfactual (i.e., the existing pre-merger situation) will lead to a substantial lessening of competition.

### *Views of the Undertakings Involved*

5.5 The parties argue in the notification that the counterfactual to the proposed transaction (i.e., one or both daily free newspapers exiting the market) will give rise to a less attractive outcome. The parties in the notification explore the following two possible counterfactual scenarios:

- Scenario (a): both *Metro* and *Herald AM* exit the market following a downward spiral; and,

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<sup>32</sup> UK Competition Commission, 2003, *Merger references: Competition Commission Guidelines*, London: the Commission, paragraph 1.22. These guidelines will be referred to as Competition Commission, *Merger Reference Guidelines*. They may be accessed at: [http://www.competition-commission.org.uk/rep\\_pub/rules\\_and\\_guide/pdf/cc2.pdf](http://www.competition-commission.org.uk/rep_pub/rules_and_guide/pdf/cc2.pdf)

<sup>33</sup> Competition Commission, *Merger Reference Guidelines*, paragraph 1.22.

- Scenario (b): both *Metro* and *Herald AM* are subject to a downward spiral and one of these exits the market leaving the other as the sole daily free newspaper published in the GDA with a deteriorated offering.
- 5.6 The parties argue that scenario (a) is a less competitive outcome than the proposed transaction since it will give rise to real damage to both readers and advertising customers. In the case of scenario (b), the parties argue that the remaining daily free newspaper will not be viable and it is likely to ultimately exit the market. However, the parties have not provided any evidence to support their arguments in relation to scenarios (a) and (b).

#### *Views of the Competition Authority*

- 5.7 The Authority considers that the parties overlooked a third possible counterfactual scenario overlooked by the parties. It is possible that one of the free newspapers may cease publication leaving the other the opportunity to compete and grow its share of the market for display advertising in daily free and paid-for newspapers in the GDA. Such a scenario might see the remaining free newspaper improve the quality of its product offering through new innovations, thus becoming a stronger competitor to the paid-for daily newspapers in the display advertising market in the GDA.

#### **Competitive Assessment**

- 5.8 In order to assess whether the proposed acquisition will result in a substantial lessening of competition in the market for display advertising in daily paid-for and free newspapers in the GDA, the Authority analyses the pre-merger competitive characteristics of this market. The characteristics are those identified by the undertakings involved and by the Authority during the course of its investigation and include:
- closeness of competition in terms of newspaper readership and advertising;
  - entry;
  - countervailing buyer power; and,
  - efficiencies.

#### **Closeness of Competition**

- 5.9 The market for display advertising in daily paid-for and free newspapers in the GDA can be viewed as a differentiated product market. While all daily paid-for and free newspapers in the GDA sell advertising space, each possess certain unique features which differentiate them from the perspective of an advertiser. For instance, the readership characteristics of two newspapers may be so dissimilar that they are not regarded as close substitutes from the viewpoint of an advertiser.
- 5.10 Thus, in the competitive analysis of a differentiated product market such as newspaper advertising, it is important to be able to measure the degree to which two (or more) newspapers are close substitutes.

This is because where it is found that the products of the merging parties are not close substitutes, it is likely that the merger will not raise any competition concerns. However, where the products of the merging parties are found to be close substitutes, it is necessary to consider all the competitive conditions in the market before coming to a final conclusion as to whether the proposed transaction will raise any competition concerns.<sup>34</sup>

#### *Views of the Undertakings Involved*

- 5.11 The parties state that *Metro* and *Herald AM* are only minor players in the market for display newspaper advertising in the GDA with a combined market share of [0-25]%. The parties state that the merged entity will face strong competition post-transaction due to direct competition from other daily (morning and evening) national newspapers and the significant competitive restraint exercised by both Sunday newspapers and local newspapers in the GDA.
- 5.12 The parties argue that there is vigorous competition for advertising amongst daily (morning and evening) national newspapers in the GDA. The parties state that in order to establish themselves as even minor players in the newspaper advertising market in the GDA, *Metro* and *Herald AM* have had to offer advertisers Cost Per Thousand (CPT) rates which are amongst the lowest available.
- 5.13 The parties argue that if the proposed transaction were to proceed, Fortunegreen is unlikely to be in a position to introduce a significant increase in the price of advertising in the New Free Newspaper in the foreseeable future. The parties state that in the current economic climate, paid-for and free newspapers in the GDA have all suffered a significant decline in demand for advertising space and are being forced to give deep discounts off their published rates in order to attract advertisers.
- 5.14 The parties argue that even if the New Free Newspaper were to attempt to introduce an increase in advertising rates, it is unlikely to be sustainable. Advertisers seeking a GDA readership have a range of alternative titles open to them and could switch quickly to alternatives penalising the New Free Newspaper for the increase and thus making any such move unprofitable.

#### *Views of the Competition Authority*

- 5.15 The Authority used a number of different types of evidence and sources to determine which newspapers in the GDA advertisers, advertising agencies and readers consider close substitutes. The Authority's analysis, described in detail below, indicates that *Metro* and *Herald AM* are each other's closest competitor in the market for display advertising in daily paid-for and free newspapers in the GDA. The analysis also indicates that *Evening Herald* is the closest substitute to *Metro* and *Herald AM*, followed by other daily newspapers distributed in the GDA such as *Irish Daily Star*, *Irish Daily Mirror* and *Irish Sun*. The evidence supporting these views is set out below and comes from the following sources:

- Review of internal documents of the parties;

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<sup>34</sup> See Authority's *Merger Guidelines*, paragraph 4.14 (a).

- Analysis of the readership profile and overlap between the parties titles in the relevant market;
- Analysis of the published rates and actual rates for display advertising; and,
- Responses from the Authority's survey of advertising agencies, direct advertising customers and indirect advertising customers.

Review of Parties' Internal Documents

5.16 The internal documentation provided to the Authority by the parties clearly indicates the following: (a) *Metro* and *Herald AM* are each other's closest competitor in the market for display advertising in daily paid-for and free newspapers in the GDA; and, (b) *Evening Herald* is the next closest competitor to both free newspapers in this display newspaper advertising market.

5.17 Independent's views on the role and impact of *Herald AM* can be clearly seen from the following quote [...]:

[...]

5.18 In the same internal document, the following quote indicates that Independent views both *Metro* and *Herald AM* as close competitors to *Evening Herald* in the GDA:

[...]

5.19 The following quote appears in an internal document prepared by Independent entitled [...]:

[...]

5.20 In the same internal document, the following quote indicates that Independent considers both *Metro* and *Herald AM* to have had a negative impact on *Evening Herald*:

[...]

5.21 The following quote appears in an internal document prepared by Independent entitled [...]:

[...]

5.22 In a document prepared by Independent entitled [...], there is a "Competitive Analysis" section in which the performance of *Metro* and *Herald AM* in 2007 and 2008 are compared. The figures provided in this document show *Herald AM* gaining advertising revenue at the expense of *Metro*; [...].

5.23 The following quote taken from an internal document prepared by Independent entitled "Memorandum" dated 22 June 2009 also indicates that Independent views *Evening Herald* as a close competitor to both free newspapers:

[...]

- 5.24 It would appear that Independent expects the *Evening Herald* to gain market share as a result of the proposed transaction. This suggests that *Evening Herald* lost market share following the launch of *Metro* and *Herald AM* in October 2006.
- 5.25 A presentation made by Independent to [...] <sup>35</sup> in 2009 describing the attractiveness of its stable of newspapers as advertising platforms indicates that Independent sees *Evening Herald* and *Herald AM* as targeting similar readers. Independent describes *Evening Herald* as [...].

Readership Overlap and Profile

*Readership Overlap*

- 5.26 Table 4 below reports statistics on the proportion of readers of *Herald AM* who also read either *Metro* or another newspaper in the GDA. Similar statistics for *Metro* are also presented.
- 5.27 In relation to *Herald AM*, it can be noted that:
- [50-100]% of *Herald AM* readers currently read a paid-for daily newspaper;
  - [50-100]% of *Herald AM* readers also read *Metro*; and,
  - The proportion of *Herald AM* readers who also read *Evening Herald* is [25-50]% while the equivalent figure for other paid-for newspapers in the GDA is [0-25]%.
- 5.28 Similarly, for *Metro*, it can be noted that:
- [50-100]% of *Metro* readers currently read a paid-for daily newspaper;
  - [50-100]% of *Metro* readers also read *Herald AM*; and,
  - The proportion of *Metro* readers who also read *Evening Herald* is [25-50]% while the equivalent figure for other paid-for newspapers in the GDA is less than 20% with the exception of *Irish Independent*.

**Table 4 - GDA Readership Overlap for *Herald AM* and *Metro* in 2008**

	<b>..and <i>Herald AM</i></b>	<b>...and <i>Metro</i></b>
<b>GDA Readers of both...</b>	<i>(as % GDA Herald AM readers)</i>	<i>(as % GDA Metro readers)</i>

<sup>35</sup> [...].

<b>Herald AM</b>	-	<b>[50-100]</b>
<b>Metro</b>	<b>[50-100]</b>	-
<i>The Irish Times</i>	[0-25]	[0-25]
<i>Irish Daily Mail</i>	[0-10]	[0-10]
<i>Irish Independent</i>	[0-25]	[25-50]
<b>Evening Herald</b>	<b>[25-50]</b>	<b>[25-50]</b>
<i>Irish Daily Star</i>	[0-25]	[0-25]
<i>Irish Daily Mirror</i>	[0-25]	[0-25]
<i>Irish Sun</i>	[0-25]	[0-25]
<b>Any paid-for newspaper</b>	<b>[50-100]</b>	<b>[50-100]</b>
Source: Parties' Submission		

5.29 Thus, in terms of readership overlap, *Evening Herald* is the most similar to *Metro and Herald AM*, followed by other titles of Independent such as *Irish Independent* and by ITL's *The Irish Times*. Finally, it should also be noted that in terms of geographic coverage, *Evening Herald* is the closest to *Metro and Herald AM*. [50-100]% of *Evening Herald* readers live in the GDA and therefore, despite being a national newspaper, it is sold predominantly in the GDA.

#### Readership Profile

5.30 This section analyses the readership profile of each title in the GDA. Advertisers rely on the JNRS readership figures in deciding which newspapers to choose. Readership data is collected by the JNRS which is the industry-standard source of readership data. The JNRS provides a breakdown of readers for each newspaper by demographic including location, age, and socio-economic grouping. The composite demographic group ABC1 is broadly taken to signify "middle-class".<sup>36</sup>

5.31 The JNRS reports on the number of readers for each title, broken down by age and social grade. Newspapers that carry similar content tend to

<sup>36</sup> Social class definition for households: "A" (upper middle class), "B" (middle class), "C1" (lower middle class), "C2" (skilled working class), "D" (other working class), "E" (lowest level of subsistence), "F50+" (large farmers) and "F50-" (small farmers). See JNRS 2008 report.: <http://www.jnrs.ie/pdf/2008Report.pdf>

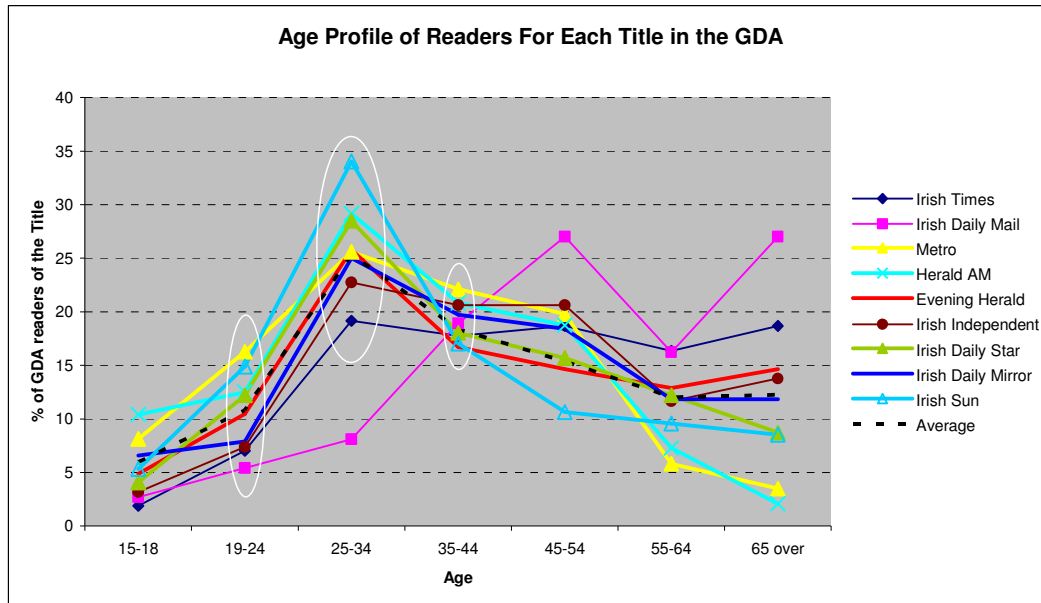
attract a similar readership. As such, newspapers with a similar readership profile are seen by advertisers as close substitutes for one another.

5.32 According to the 2008 JNRS, there were 390,000 readers in the ABC1 19-44 demographic in the GDA. The combined readership of *Metro* and *Herald AM* (i.e., readers who read *Metro* and/or *Herald AM*) in the ABC1 19-44 demographic in the GDA was 44,000 (or 11.3% of all readers in that demographic in the GDA).

5.33 Figure 2 below shows the profile of readers by age group for each newspaper in the GDA. The following observations can be drawn from Figure 2:

- Most titles have a bell-shaped age distribution profile with a peak in readership for the 25-34 age group. The only exception is the *Irish Daily Mail* which has a relatively high proportion of readers in the 45-54 and over-65 age groups;
- All titles have a similar proportion of readers in the 35-44 age group (i.e., 15-20%). They differ, however, in the relative proportions of younger and older readers;
- As expected, *Metro* and *Herald AM* have a very similar distribution of readers by age group, with the bulk of their readers belonging to the 25-54 age group; and,
- Evening Herald, Irish independent, *Irish Daily Star* and *Irish Daily Mirror* have a similar readership profile to *Metro* and *Herald AM*, but they have a relatively higher proportion of older readers.

**Figure 2 - Age Profile of Readers for Each Title in the GDA**



Source: Competition Authority based on Parties' Submission of 2008 JNRS figures

5.34 A similar analysis has been conducted with respect to the breakdown by socio-economic grouping of each newspaper's readership. In his



regard, over 50% of the readers of *Metro* and *Herald AM* are in the ABC1 category. Almost 40% of *Evening Herald* readers are in the same category.

#### *Conclusion on Readership Profile*

- 5.35 In terms of age and socio-economic profile, *Evening Herald* is the most similar to *Metro* and *Herald AM*, followed by other titles of INM group. *The Irish Times* and *Irish Independent* appear to be similar to each other in terms of readership profile.

#### Cost Per Thousand (CPT) Analysis – Closeness of Competition Advertising

- 5.36 The Authority has in previous merger decisions used Cost Per Thousand ("CPT") as an indicator of closeness to competition.<sup>37</sup> CPT is a measure of media efficiency based on the cost of reaching a thousand readers of a particular newspaper.<sup>38</sup> CPT is a comparative tool used by advertising agencies and advertisers to assess the value for money of placing an advertisement with a particular newspaper. It indicates efficiency across newspapers and thus allows advertisers to choose the newspaper which offers the best value for money. It also gives an indication of the closeness of competition between newspapers, i.e., newspapers with similar readers and who have similar CPTs are likely to be close competitors.
- 5.37 The parties provided information regarding CPT rates based on the average discounted Single Column Centimetre (SCC) rate negotiated by [...] in 2008. This information is detailed in Table 5 below.

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<sup>37</sup> Determination M/07/040: Communicorp/SRH.

<sup>38</sup> It is calculated by dividing the rate card by the number of readers in a particular demographic multiplied by a thousand.

**Table 5 - GDA Display Advertising – CPT based on the average discounted SCC negotiated on behalf of [...] in 2008**

<b>Newspaper</b>	<b>SCC rate after advertiser discount but before agency commission</b>	<b>CPT</b>	<b>Average discount as a percentage of colour rate card SCC rate (%)</b>
<i>The Irish Times</i> (Readership – 214,000)	€[...]	€[...]	[...]
<i>Irish Independent</i> (Readership – 189,000)	€[...]	€[...]	[...]
<i>Irish Daily Mail</i> (Readership – 37,000)	€[...]	€[...]	[...]
<i>Irish Daily Star</i> (Readership – 172,000)	€[...]	€[...]	[...]
<i>Irish Sun</i> (Readership – 94,000)	€[...]	€[...]	[...]
<i>Metro</i> (Readership – 86,000)	€[...]	€[...]	[...]
<i>Herald AM</i> (Readership – 96,000)	€[...]	€[...]	[...]
<i>Irish Daily Mirror</i> (Readership – 76,000)	€[...]	€[...]	[...]
<i>Evening Herald</i> (Readership – 287,000)	€[...]	€[...]	[...]
Source: The Parties. Readership figures - JNRS Survey January to December 2008 (Readers are adults in the GDA).			

5.38 The following observations can be drawn from this table:

- [...]; and,
- [...];

#### *Conclusion on CPT Analysis*

5.39 The CPT analysis provides support for the view that: (a) *Metro* and *Herald AM* are each other's closest competitor; and, (b) *Evening Herald* is a close competitor to both free newspapers.

#### Authority Survey of Advertising Agencies and Direct Advertising Customers

5.40 As noted above, when *Metro* and *Herald AM* were launched in October 2005, twelve out of eighteen agencies switched some proportion of their clients' advertising spend from paid-for newspapers to the two free newspapers. *Evening Herald* was mentioned by 11 of the 12 agencies and five of these agencies stated that the switch was permanent. Other titles mentioned were *Irish Daily Star* (seven agencies), *Irish Daily Mirror* and *Irish Sun* (mentioned by six agencies), *The Irish Times* and *Irish Independent* (mentioned by four and three agencies, respectively).

5.41 These survey findings indicate that advertising agencies view *Evening Herald* as the closest competitor to both free newspapers in the newspaper advertising market in the GDA, followed by the other daily newspapers.

5.42 With respect to direct advertising customers, the findings are not supportive of the view that *Metro* and *Herald AM* compete closely with paid-for newspapers. A majority of direct advertising customers (9 out of 14) did not see a reallocation of advertising spend from other daily titles to *Metro* and *Herald AM* in 2005. Only two direct advertising customers saw a reallocation: one indicated that it was from *Irish Sun* and *Irish Daily Star* and the switch was permanent; another indicated that it was from Sunday newspapers but that it was not permanent. However, it should be noted that direct advertising customers accounted for only [0-25]% and [25-50]% of *Metro* and *Herald AM*'s total advertising revenues in 2008, respectively. The bulk of the advertising is placed by advertising agencies.

#### *Conclusion on Closeness of Competition*

5.43 Unsurprisingly, *Metro* and *Herald AM* are each other's closest competitor in the market for display advertising in daily paid-for and free newspapers in the GDA. However, it is clear that both free newspapers face competition from other newspapers in the GDA, particularly *Evening Herald*. In addition to *Evening Herald*, the evidence also indicates that other daily newspapers, most notably *Irish Daily Mirror*, *Irish Sun* and *Irish Daily Star*, are competitors to *Metro* and *Herald AM*.

5.44 These conclusions have significant implications for the Authority's assessment of the competitive effects of the proposed transaction. Post-transaction, any decision taken by Fortunegreen concerning certain competitive parameters will require the consent of the three shareholders or the board of directors of Fortunegreen. All three

shareholders publish daily paid-for newspapers that will compete with the New Free Newspaper in the relevant display newspaper advertising market in the GDA.

- 5.45 There may be an incentive for a shareholder to block a decision taken by Fortunegreen if it believes that such a decision will negatively impact upon its own newspaper(s). In particular, Independent, which publishes *Evening Herald*, the closest competitor to both *Metro* and *Herald AM* in the display newspaper advertising market in the GDA, may be concerned about any decisions taken by Fortunegreen that would negatively impact upon *Evening Herald*. It is unlikely that ITL and DMG will have an incentive to prevent Fortunegreen from competing effectively in the display newspaper advertising market in the GDA since their newspapers are not close competitors to *Metro* and *Herald AM*.
- 5.46 Thus, a potential conflict of interest at the board level may hinder Fortunegreen's ability to compete effectively in the market for display advertising in daily paid-for and free newspapers in the GDA. In order to preserve the competition that currently exists in the display newspaper advertising market in the GDA, Fortunegreen should have full independence from its shareholders in respect of the adoption of decisions concerning certain competitive parameters.

## **Entry**

### *Views of the Undertakings Involved*

- 5.47 The Parties argue that the barriers to entry with respect to setting up a new GDA-wide newspaper, whether a daily free or paid-for newspaper, are low and falling. The parties believe that entry will be timely, likely, and sufficient.

### *Views of the Competition Authority*

- 5.48 The Authority's *Merger Guidelines* require the following three requirements to be met for entry to be able to constrain the merged entity from raising prices post-merger<sup>39</sup>:
- Entry must be timely – entry is considered timely only if it occurs within two years;
  - Entry must be likely – in other words, entry must be profitable at existing (or lower) prices; and,
  - Entry must be sufficient – entry must return prices to their pre-merger levels. For this to happen, entry must occur on a sufficient scale.
- 5.49 The Authority considers that the entry of a daily free or paid-for newspaper in the GDA will be timely. However, it is not clear that entry will be either likely or sufficient to prevent a permanent price rise by the New Free Newspaper for the following reasons.

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<sup>39</sup> Competition Authority, 2004, *Notice in Respect of Guidelines for Merger Analysis*, Decision No. N/02/004.

- 5.50 First, the industry-wide nature of the proposed transaction which involves the two largest newspaper publishers in the State (ITL and Independent) may dissuade a new entrant from launching a free newspaper in the GDA. Second, it is not clear that the newspaper advertising market in the GDA is large enough to support more than one free newspaper. Three out of 18 agencies indicated such a view in their response to the Authority's survey. Third, given the decline in newspaper advertising following the recent economic downturn and the fact that both *Metro* and *Herald AM* have been making substantial losses since their launch in October 2005, it is not clear that entry will occur within the next two years.
- 5.51 It is not, however, necessary for the Authority to come to a definitive view on entry since its conclusions regarding the competitive effects of the proposed transaction will be unaffected by whether or not entry will be timely, likely and sufficient.

### **Countervailing Buyer Power**

#### *Views of the Undertakings Involved*

- 5.52 The parties argue in the notification that advertising customers enjoy very significant buyer power which will prevent the New Free Newspaper from significantly raising prices post-transaction.

#### *Views of the Competition Authority*

- 5.53 As is clear in the Authority's Merger Guidelines, effective countervailing buyer power post-merger requires that buyers have alternative sources of supply, or are capable of credibly threatening to set up alternative supply arrangements. The examination of closeness of competition in the display newspaper advertising market in the GDA (see paragraphs 5.9-5.43 above) indicates that *Evening Herald* is currently a close competitor to both *Metro* and *Herald AM*. Thus, any attempt by the New Free Newspaper post-transaction to act independently of its competitors by permanently raising the price of advertising should fail since advertising customers can credibly threaten to switch some of their advertising spend to *Evening Herald*.
- 5.54 This conclusion on buyer power, however, assumes that the New Free Newspaper is free to make unilateral decisions on all competitive parameters and, thus, compete effectively in the relevant newspaper advertising market. As discussed below, however, this may not be the case due to the degree of influence that the shareholders will have over Fortunegreen post-transaction.

### **Unilateral Effects**

- 5.55 Unilateral effects refer to a situation where the anti-competitive effect of a merger results from non-coordinated action by market players. It arises where the merged entity has the incentive and ability to unilaterally exercise market power by, for example, raising price or reducing output. The exercise of unilateral effects usually involves a merger of sellers of differentiated products competing on the basis of price and depends largely on the closeness of the merging firms' products. In other words, if two products, A and B, are each other's closest substitute, a pre-merger price increase of Product A would result in customers switching their purchases to Product B (and other

rivals). Post-merger, the merged entity would internalise consumer substitution away from Product A, thereby avoiding at least some of the penalty otherwise associated with raising price.

#### *Views of the Undertakings Involved*

5.56 The parties state that proposed transaction will not give rise to a substantial lessening of competition in any advertising market regardless of the manner in which either the product or geographic market is defined due to the following:

- the market is highly competitive and will remain highly competitive post-transaction;
- [...];
- barriers to entry are low and there are a number of potential entrants to the market once the economic conditions improve;
- the proposed transaction will give rise to significant efficiencies; and,
- both daily free newspapers currently make substantial losses, the levels of which are not sustainable.

#### *Views of the Competition Authority*

5.57 Before outlining the Authority's competition concerns in relation to the proposed transaction, it is important to consider the views of advertising agencies and advertising customers.

5.58 A majority of advertising agencies (15 out of the sample of 18) expressed no concerns in relation to the proposed transaction.<sup>40</sup> Three agencies stated that the GDA cannot support two free newspapers. Another three agencies were of the view that, absent the merger, it is likely that both newspapers will cease publication leaving advertising customers with less choice. Some agencies stated that benefits will result from the proposed transaction including an improved, unified distribution system and greater newspaper content that will attract additional readers. In addition, some agencies stated that one free newspaper would make it easier for advertising customers to target commuters in the GDA.

5.59 As for direct advertising customers, the vast majority (12 out of the sample of 14) expressed no concerns while two did not respond to the question. Some advertising customers indicated benefits stemming from the proposed transaction, e.g., three customers stated that it will be easier to target GDA commuters while two customers stated that improved content in the new free newspaper will attract additional readers.

5.60 Finally, similar responses were received from indirect advertising customers: only three (out of the sample of 16) expressed concerns in

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<sup>40</sup> Three advertising agencies expressed a concern about a possible post-merger increase in advertising rates. However, two of these three agencies stated that they do not consider that this will be a significant issue since there are other newspapers in the GDA which cover a similar demographic to that delivered by *Metro* and *Herald AM*.

relation to the proposed transaction.<sup>41</sup> Nine customers did not have any concerns while four did not respond to the question.

5.61 Thus, the overwhelming majority of advertising agencies and advertising customers expressed no concerns about the proposed transaction.

5.62 Notwithstanding these views of advertising agencies and advertising customers (direct and indirect) and having considered all the evidence, the Authority has concluded that three competition concerns are likely to result from the proposed transaction:

- The ability of Fortunegreen to compete effectively in the market for display newspaper advertising in the GDA may be diminished;
- A forum will be created that could enhance the potential for coordination between the shareholders of Fortunegreen; and,
- A forum will be created that could enhance the potential for coordination between the shareholders of Fortunegreen and Fortunegreen.

#### **Ability of Fortunegreen to compete effectively**

5.63 The creation of Fortunegreen in 2005 was the subject of the Authority's Determination No. M/05/071. On 1 December 2005, the Authority cleared the acquisition of joint control of Fortunegreen by ANL, the Irish Times Limited ("ITL") and Metro International S.A. ("MI"). The Authority considered that the transaction did not raise any competition concerns in any market for goods or services in the State for the following two reasons: (1) the newspapers of the two shareholders of Fortunegreen (ITL and DMG) were found not to be close competitors of *Metro*. Thus, there was no competitive conflict of interest between the shareholders of Fortunegreen; and, (2) the newspapers published by Independent, in particular, *Evening Herald* and *Herald AM*, provided sufficient competitive constraint to *Metro*.

5.64 The Authority is of the view that there is a risk that the proposed transaction will diminish the ability of Fortunegreen to compete effectively in the market for display newspaper advertising in the GDA, especially against its shareholders. This competition concern stems from two factors. First, there is the degree of influence that the shareholders will have over Fortunegreen post-transaction, as a result of the new ownership structure of Fortunegreen. As mentioned above, the proposed transaction requires that any decision taken by Fortunegreen post-transaction concerning certain competitive parameters be agreed by its shareholders.

5.65 Second, an examination of the competitive characteristics of the market for display advertising in daily paid-for and free newspapers in the GDA indicates that, post-transaction, the remaining competition

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<sup>41</sup> The main concern expressed by these three indirect advertising customers was that post-merger there will only be one free newspaper which will enjoy a strong negotiating position with the possible risk of higher advertising rates. However, these three indirect advertising customers also stated that the proposed transaction will lower costs since advertisers will only need to advertise in one free newspaper in order to reach commuter readers in the GDA. One indirect advertising customer also expressed the view that the proposed transaction might generate a conflict of interest among the shareholders of the New Free Newspaper.

will be provided overwhelmingly by the newspapers of the shareholders. In particular, *Evening Herald*, owned by Independent, will be the closest competitor to Fortunegreen post-transaction. Thus, the requirement of unanimous consent of the shareholders or the board of directors of Fortunegreen to changes in certain competitive parameters of Fortunegreen raises a concern about the ability of Fortunegreen to be an effective competitor post-transaction in the display newspaper advertising market in the GDA. Since there may be an incentive for a shareholder, particularly Independent, to block a decision taken by Fortunegreen if it believes that such a decision will negatively impact upon its own newspaper(s).

#### *Conclusion on Unilateral Effects*

- 5.66 The Authority is of the view that there is a risk that the proposed transaction will diminish the ability of Fortunegreen to compete effectively in the market for display newspaper advertising in the GDA, especially against its shareholders.

#### **Coordinated Effects**

- 5.67 Coordinated effects occur where the proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will engage in co-ordinated interaction to raise prices or decrease output. Such interaction refers to actions that are profitable only as a result of each firm accommodating the reactions of others. Thus, the key question is whether the proposed transaction materially increases the likelihood that firms in the market will successfully coordinate their behaviour or strengthen any existing coordination.

#### *Views of the Undertakings Involved*

- 5.68 The parties state that they recognise that the proposed transaction might give rise to a competition concern regarding possible coordinated conduct. The parties state that they have given due consideration to how best to design the new structure of Fortunegreen to avoid creating legitimate competition concerns about how the merged entity will be managed and how the interactions between the parents and the joint venture and between the parents themselves might be organised. The parties state that they have identified the necessary steps to ensure that the proposed transaction will not give rise to coordination either between the joint venture and its parents or the between the parents themselves. To that end, the parties state that they have put in place robust structures to ensure that Fortunegreen is managed as an entirely separate business from its parents. Furthermore, the parties have submitted proposals under section 20(3) of the Act to address possible concerns that the proposed transaction might give rise to coordinated conduct. The parties state that these proposals will address possible concerns about competition dampening in the readership and advertising markets in the GDA.
- 5.69 The parties also state that with respect to the risk of coordination between the shareholders of Fortunegreen, this risk is not merger-specific. The parties note that the Authority did not indentify a merger



specific coordination concern in its previous decision concerning Fortunegreen.<sup>42</sup>

*Views of the Competition Authority*

5.70 The Authority is of the view that two competition concerns regarding possible coordinated behaviour are likely to result from the proposed transaction related to:

- the potential for coordination between the shareholders of Fortunegreen; and,
- the potential for coordination between the shareholders of Fortunegreen and Fortunegreen.

**Potential for coordination between the shareholders of Fortunegreen**

5.71 The Authority notes that, pre-merger, the market for display newspaper advertising in the GDA is already highly concentrated as indicated in Section 4 above. Such a highly concentrated market is conducive to facilitating coordination. Post-merger, the Authority is of the view that the proposed transaction will create a forum that could raise additional coordination concerns between the shareholders of Fortunegreen. In particular, the Authority is of the view that the proposed transaction will increase the potential for the exchange of commercially-sensitive information between the shareholders (and/or any Director appointed by the shareholders) in respect of their own businesses relating to competition, in particular, relating to advertising policy and actual advertising rates and discounts.

**Potential for coordination between the shareholders of Fortunegreen and Fortunegreen**

5.72 The Authority is of the view that the proposed transaction will create a forum that could enhance the ability for coordination between the shareholders and Fortunegreen. The Authority considers that the proposed transaction creates a forum that could facilitate discussion of commercially-sensitive information between the shareholders and Fortunegreen in respect of their respective business activities. This exchange of commercially-sensitive information between the shareholders and Fortunegreen will, in the Authority's preliminary view, enhance the ability for coordination between the shareholders and Fortunegreen.

5.73 This coordination concern arises, in particular, from the exchange of commercially-sensitive information between the shareholders (and/or any Director appointed by the shareholders) and Fortunegreen about their respective businesses relating to competition, in particular, with respect to advertising policy and actual advertising rates and discounts.

5.74 The Authority is of the view that the restructured Fortunegreen may give rise to coordination concern arising from the disclosure of commercially-sensitive information (namely, information relating to competition and in particular, advertising policy and actual advertising rates and discounts) concerning Fortunegreen to the shareholders

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<sup>42</sup> M/05/071 – Associated Newspapers & Irish Times & Metro/Fortunegreen.

(and/or any Director appointed by the shareholders) by the management team of Fortunegreen and/or any employee of Fortunegreen.

*Conclusion on Coordinated Effects*

5.75 The Authority is of the view that the proposed transaction will create a forum that could enhance the ability for coordination between the shareholders. The Authority is also of the view that the proposed transaction will create a forum that could enhance the ability for coordination between the shareholders and Fortunegreen.

**Conclusion**

5.76 The Authority is concerned that three competition concerns are likely to result from the proposed transaction:

- The ability of Fortunegreen to compete effectively in the market for display newspaper advertising in the GDA may be diminished,
- A forum will be created that could enhance the potential for coordination between the shareholders of Fortunegreen; and,
- A forum will be created that could enhance the potential for coordination between the shareholders of Fortunegreen and Fortunegreen.

5.77 These concerns arise in the context of the proposed structure and decision-making procedures of Fortunegreen.

## **SECTION SIX: PROPOSALS AND REMEDIES**

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- 6.1 As outlined in section 5, the Authority's investigation indicates that three concerns are likely to result from the proposed transaction: the ability of Fortunegreen to compete effectively, potential for coordination between the shareholders of Fortunegreen and potential for coordination between the shareholders of Fortunegreen and Fortunegreen. These concerns arise in the context of the proposed structure and decision-making procedures of Fortunegreen.
- 6.2 The Authority informed the parties of these concerns and, pursuant to section 20(b) of the Act, entered into discussions with the parties with a view to identifying measures which would ameliorate any effects of the proposed transaction on competition in the affected markets. On 2 November 2009, ITL, DMG, Independent, and Fortunegreen submitted proposals (the "Proposals") in accordance with section 20(3) of the Act to address and resolve in a satisfactory manner the competition concerns arising from the proposed transaction.
- 6.3 The Proposals ensure that Fortunegreen will have the incentive and the ability to be an effective competitor in the market for display newspaper advertising in the GDA. In particular, the parties undertake that the shareholders will direct Fortunegreen to operate the New Free Newspaper as an independent competitor of the shareholders' newspapers and the management of Fortunegreen will make decisions in respect of certain competitive parameters without requiring the approval of the shareholders or their representatives on the Board.
- 6.4 The Proposals also ensure that the proposed transaction will not create a forum that could enhance the ability for coordination between the shareholders and between the shareholders and Fortunegreen. In particular, the parties undertake that the directors nominated to the Board of Fortunegreen will not have day-to-day responsibility for the advertising function of any daily newspaper sold in the GDA and certain information will not be exchanged between the shareholders and between the shareholders and Fortunegreen in respect of their own business activities.
- 6.5 The Authority is of the view that the Proposals are appropriate and effective to address the competition concerns and will preserve the competition that currently exists between the shareholders and between the shareholders and Fortunegreen.
- 6.6 The Authority has taken the Proposals into account and they form the basis of the Authority's determination. Therefore, in accordance with section 20(3) of the Act, the Proposals have become binding upon ITL, DMG, Independent and Fortunegreen, as appropriate, and are commitments within the meaning of section 26(1) of the Act.

## **SECTION SEVEN: THE DETERMINATION**

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The Competition Authority, in accordance with section 22(3)(a) of the Act and having taken into account the proposals submitted by Irish Times Limited, DMG Ireland Holdings Limited, Independent Newspapers (Ireland) Limited and Fortunegreen Limited in accordance with section 20(3) of the Act (the "Proposals") has determined that, in its opinion, the result of the proposed transaction whereby Irish Times Limited, DMG Ireland Holdings Limited and Independent Newspapers (Ireland) Limited would acquire joint control of Fortunegreen Limited will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect, subject to the provisions of section 23(9)(b) of the Act and subject to the Proposals which are attached hereto as "Schedule 1".

For the Competition Authority

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William Prasifka  
Chairperson of the Competition Authority  
Member of the Competition Authority

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Declan Purcell  
Member of the Competition Authority

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Dr. Stanley Wong  
Member of the Competition Authority

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Carolyn Galbreath  
Member of the Competition Authority

## SCHEDULE 1

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### Proposals under section 20(3) of the Competition Acts 2002-2006

Each of Irish Times Limited ("ITL"), DMG Ireland Holdings Limited ("DMG") and Independent Newspapers (Ireland) Limited ("Independent") ("Shareholders") together with Fortunegreen Limited ("Company"), (together "Parties") each of which are parties to the proposed transaction whereby the Company shall be jointly controlled by ITL, DMG and Independent ("Proposed Transaction") hereby submit to the Competition Authority proposals under section 20(3) of the Competition Acts 2002-2006 ("Competition Act"). Accordingly, the Parties undertake to the Competition Authority the following (on their own behalf and on behalf of their respective successors and assigns):

1. The Shareholders shall direct the Company to operate *Metro Herald* (and any other future newspaper of the Company) as an independent competitor(s) of the Shareholders' newspapers, and the Company shall in turn direct its management to do so.
2. The management of the Company shall be responsible for the day-to-day operations of the new free newspaper, *Metro Herald* and shall operate within the prevailing business plan ("Business Plan") without the involvement of the Shareholders or their representatives on the Board of the Company ("Board").

In particular, (and having regard to section 6 below) the management of the Company shall make decisions on the following day-to-day issues relating to competition between the Shareholders or between the Shareholders and the Company without requiring the approval of the Shareholders or their representatives on the Board:

- target customers and discount policy (except for target yield per page);
  - actual advertising rates and discounts offered to customers, advertising agencies and other agents;
  - circulation policy except for any decision to increase circulation above [...];
  - distribution policy including the means of distribution in the greater Dublin area ("GDA") ("Territory");
  - editorial policy except for any departure from the editorial policy provided for in the business plan in operation as of the date of this undertaking;
  - ratio of editorial content to advertising content [...].
3. The Company shall not request from any of the Shareholders and shall not provide any of the Shareholders with any Commercially Sensitive Information ("CSI") regarding the operations of the businesses of the Shareholders.

For the purposes of this undertaking, the term "Commercially Sensitive Information" or "CSI" means information relating to a Shareholder or to the Company the exchange of which between the Parties would constitute

a breach of Section 4(1) of the Competition Act in particular information relating to competition between the Shareholders or between the Shareholders and the Company, including the respective advertising policies and actual advertising rates and discounts offered to customers and advertising agencies and other agents of either the Shareholders or the Company.

4. The Directors nominated to the Board by each of the Shareholders ("Nominee Directors") shall not have day-to-day responsibility for the advertising function of any daily newspaper sold in the GDA.
5. Each Director shall enter into a confidentiality agreement in favour of the Company in which that Director commits not to:
  - (a) discuss with any Director (other than a Nominee Director nominated by the same Shareholder) or any employee of another Party any CSI relating to the Shareholders' business activities other than confidential information which relates to their interests in the Company;
  - (b) disclose to the Company including any employee of the Company any CSI relating to any Shareholder other than confidential information that relates to their interests in the Company;
  - (c) disclose any CSI in respect of the Company to anyone outside of the Company.
6. The Company shall not provide any Shareholder with any CSI in respect of the Company apart from the information provided to Nominee Directors identified under section 7 below.
7. In the normal course of business only the weekly and monthly reports and board packs prepared by the Company in accordance with the broad format of the documents attached as Appendixes 1, 2 and 3 shall be provided to the Nominee Directors together with information on the average target yield per page. Where Nominee Directors have reasonable grounds to believe that they could be at risk of acting in breach of their statutory obligations under the Companies Acts 1963-2009 ("Companies Act") and related company law principles, information which those Nominee Directors, acting reasonably, deem necessary for the purpose of assessing the performance of the business of the Company shall be provided to them to enable appropriate consideration to take place.
8. The Parties shall appoint a non-executive Chairman to the Board ("Chairman"). The Chairman shall be either: (a) a recently retired partner of a leading accountancy (or other professional services) firm, who is or has been a member of the Institute of Chartered Accountants Ireland or similar body; or (b) a former chairman (or other high office holder) of an organisation having national/international standing and repute. As a member of the Board he shall be provided with all the financial information provided to each of the Nominee Directors as set out in section 7 and shall attend all meetings of the Board. The role assigned to the Chairman shall include supervision that there is compliance with this undertaking and submitting to the Competition Authority on an annual basis commencing six months from completion of the Proposed Transaction a report verifying that this has been the case. If the Chairman were to step down from this position in future, he shall be replaced by a person of similar stature, such

appointment to be subject to the approval of the Competition Authority, such approval not to be unreasonably withheld.

9. The Company shall at completion of the Proposed Transaction put in place a competition compliance programme ("Programme") to keep the Chairman, Directors and executives of the Company aware of their competition law obligations including their obligations under this undertaking. The Programme shall be updated and reviewed from time to time with any new Company Chairman/Directors/executives being provided with such Programme as soon as reasonably practicable after taking up their respective positions. Such Programme shall be developed by Matheson Ormsby Prentice Solicitors or such other law firm with an expertise in competition law matters.
10. The Parties shall seek the consent of the Competition Authority (such consent not to be unreasonably withheld) 30 days in advance of any proposed change in control of the Company whereby one Shareholder divests itself of joint control and the Company comes under the joint control of two Shareholders only.
11. These proposals shall become binding upon the parties to the extent that the Competition Authority takes them into account and states in writing that they form the basis or part of the basis of its Determination on the Proposed Transaction and will become commitments within the meaning of section 26 of the Competition Act ("Commitments"). These proposals will come into effect on the date of the said Determination and will remain in force (subject to paragraph 12) until 16 November 2019.
12. The Competition Authority may amend or revoke the Commitments at any time either at the request of the Parties (having given 30 days written notice) or, upon the Competition Authority's own initiative after allowing the parties the opportunity to make submissions to the Competition Authority.

**Irish Times Limited**

Signed: .....

Name: .....  
(Print)

Position: .....

Date: .....

**DMG Ireland Holdings Limited**

Signed: .....

Name: .....  
(Print)

Position: .....

Date: .....

**Independent Newspapers (Ireland) Limited**

Signed: .....

Name: .....  
(Print)

Position: .....

Date: .....

**Fortunegreen Limited**

Signed: .....

Name: .....  
(Print)

Position: .....

Date: .....

**APPENDIX 1**  
**(Template Weekly Profit and Loss for Directors)**

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[Confidential]



**APPENDIX 2**  
**(Template Monthly Financial Accounts for Directors)**

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[Confidential]

**APPENDIX 3**  
**(Template Board Pack)**

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[Confidential]

