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## Anticipated acquisition by Guardian Media Group of Trader Media Group

The OFT's decision on reference under section 33 of the Enterprise Act given on 29 September 2003

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### **PARTIES**

**Guardian Media Group (GMG)** is an unlisted UK based company and all of its ordinary shares are owned by the Scott Trust. It is active in national and regional newspaper and radio. It publishes the Guardian and Observer as well as a number of regional newspapers in the North West of England and the Surrey / Berkshire area. **Trader Media Group (TMG)** is a joint venture company owned as to 48 per cent by GMG (carrying 50 per cent of the voting rights), as to 47 per cent by BC Partners (47 per cent of votes) and as to 5 per cent by its management (3 per cent of the votes). TMG's principal activity is the publication of specialist advertising only publications, focusing mainly on motor advertising, including Auto Trader and Auto Freeway. In the year ended 30 March 2003, TMG had a UK turnover of £230m.

### **TRANSACTION**

GMG proposes to purchase all the shares in TMG that it does not currently own. The transaction was notified to the Office on 8 August 2003 and the administrative timetable expires on the 6 October.

### **JURISDICTION**

As a result of this transaction GMG and TMG will cease to be distinct for the purposes of section 26(4)(a) of the Enterprise Act 2002 (the Act), since GMG will move from having the ability to control the policy of TMG to that of a controlling interest. The UK turnover of TMG exceeds £70 million, so that the turnover test in section 23(1)(b) of the Act is satisfied. The parties overlap in the supply of advertising space in print and internet formats for vehicles for sale in Greater Manchester and parts of West Surrey and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met in these areas. It is therefore probable that a relevant merger situation will be created.

## BACKGROUND

Prior to May 2000, GMG wholly owned three Auto Trader and Auto Freeway titles (in particular, it owned the North West Auto Trader title whose circulation area includes Greater Manchester). Hurst Publishing (Hurst) owned four titles and four more Auto Trader and Auto Freeway titles were jointly owned by GMG and Hurst. In May 2000 GMG entered into a joint venture with BC Partners to bring the titles under common ownership. The joint venture was established to allow Hurst to sell its interest to BC Partners while maintaining on-going expertise to run the titles<sup>1</sup>.

Under the terms of the shareholders' agreement between GMG and BC Partners, BC Partners is required to serve GMG with an exit notice, granting one month's notice, before it can seek third party purchasers for its shareholding in TMG. BC Partners served such an exit notice on GMG on 25 July 2003 which resulted in the execution of the share purchase agreement referred to at paragraph 2 above.

## RELEVANT MARKET

### Product market

The parties overlap in the supply of print publications providing advertising space for vehicles for sale. However, the circulation of their publications overlaps only in Greater Manchester and parts of West Surrey<sup>2</sup>. Customers of the parties comprise trade and private individuals placing advertisements for vehicles for sale. Trade customers are typically auto dealerships and second hand auto dealers. Views gathered from third parties suggest that print advertising is largely viewed as complementary to other forms of advertising (such as outdoor posters, TV, radio and the internet). However a few respondents did comment on the potential to switch to the internet. For the purpose of analysing the effect of this merger it appears most appropriate to exclude from the frame of reference media other than print advertising. This is consistent with the findings of the Competition Commission (CC) in a number of recent cases<sup>3</sup> where the CC has concluded that different advertising media were distinct markets.

Some third parties, including a number of dealers, considered that GMG titles, and other local newspapers, did compete with titles such as Auto Trader, Auto Freeway and Auto Express and they made use of all of them. It appears that there is a certain amount of blurring between the various types of publications (local newspapers, free and paid for, regional newspapers and advertising only titles). Consequently, from a demand side, the focus would appear to be on publications which carry auto advertisements placed by

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<sup>1</sup> The parties wish to clarify that GMG wholly owned three Auto Trader and six Auto Freeway titles. It owned a majority share of two further Auto Trader titles. Hurst Publishing owned four Auto Trader and four Auto Freeway titles. GMG and Hurst jointly owned the final four Auto Trader and three Auto Freeway titles. BC Partners then bought Hurst Publishing's interests in 1998 and the joint venture, to unite the titles under common management, was established in May 2000.

<sup>2</sup> Clarification - limited overlaps also occur in other parts of Surrey, Berkshire, Oxfordshire and Hampshire but as these did not raise any competition issues they were not addressed further.

<sup>3</sup> Competition Commission reports on the proposed mergers between Johnston Press plc / Trinity Mirror plc Cm 5495 (2002) and Scottish Radio Holdings plc and GWR Group plc / Galaxy Radio Wales and West Cm 5811 (2003).

vehicle dealers. For individuals selling their own car, it would appear that demand side substitution is based around those publications which carry auto advertisements placed by individuals (as well as the above this would also include Loot and Exchange & Mart which dealers tend not to use). Individual sellers may also choose to sell their vehicle by means of a notice in a shop window or on the vehicle itself as well as to a dealer.

Supply side substitution is most likely to occur by means of newspapers which currently contain a minimal amount of motor advertising expanding, for example, by adding a motoring supplement. The success of such expansion would be dependent upon the attractiveness of the title (mainly in terms of circulation figures) to motor dealers. In addition, there is some evidence of other publications expanding to produce publications aimed at motor dealers (e.g, Loot has been publishing a weekly 'London Car' edition since 2000).

### **Geographic market**

Advertisers of vehicles for sale seek to place advertisements in publications which will reach their prospective customer base. Discussions with third parties have indicated that while for a small amount of specialist cars, customers are willing to travel a long distance, dealerships tend to view their clientele as being within a 20 mile radius and would be unlikely to place adverts to attract customers from beyond this range.

In conclusion, the parties' publications overlap in the provision of print advertising for the sale of vehicles within local areas and this can be further subdivided into advertisements for trade and private individuals. This is considered to be the appropriate frame of reference for examining the potential impact of this merger.

## **HORIZONTAL ISSUES**

### **Market shares**

There are two areas of the country where GMG and TMG publications overlap: Greater Manchester and West Surrey<sup>4</sup>.

Although it has proved difficult to accurately derive the parties' share of supply, using the frame of reference outlined above, we estimate that in Greater Manchester the parties combined currently have a (40 per cent - 60 per cent) share of supply in trade motor print advertising (increment (15 per cent-25 per cent)) and (60 per cent-90 per cent) for private motor print advertising (increment (25 per cent-35 per cent))<sup>5</sup>. The primary TMG publication in this area is the North West edition of Auto Trader which circulates in an area including North Wales to the Borders and inland to the Pennines. The most important GMG publications in this area are the Manchester Metro News (a free weekly) and the Manchester Evening News (paid for daily) which circulate within Manchester itself. For dealers, the main alternative appears to be Auto Exchange (published by United Publications). Other alternatives such as Exchange and Mart which

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<sup>4</sup> See footnote 2

<sup>5</sup> Actual figures replaced by ranges at parties' request

does not have regional editions<sup>6</sup> and Loot which focuses on private sellers are seen to be of limited value by dealers.

The primary TMG publication in West Surrey is the Thames Valley edition of Auto Trader. This circulates from West London to parts of South Wales, north to Northampton and south to parts of Dorset. The most important GMG publication in this area is the Surrey Advertiser which covers the Guildford area. Although it has not proved possible to derive share of supply figures, the data obtained and third party comments suggests that GMG and TMG are likely to represent a large proportion of vehicle adverts in this part of West Surrey.

### **Competition issues in areas of overlap**

While the overlaps between the parties publications are limited to specific areas, it is noted above that the TMG publications covering these areas have a much wider geographical distribution. With this in mind, we have considered the possibility of the merged entity engaging in price discrimination to the detriment of those customers in the overlap areas. Such discrimination could occur if, for example, in the area of overlap, Auto Trader were to raise its prices above the competitive level. It may be possible for GMG to do this profitably in the knowledge that advertisers would either pay the premium or switch to GMG's other publications in the overlap area.

To counteract such an assertion, GMG has referred to the wider geographical coverage of TMG's titles. From figures provided by the parties, for the North West Auto Trader (10 per cent-20 per cent) of revenue is obtained from the Greater Manchester area and for the Thames Valley Auto Trader (10 per cent-20 per cent)<sup>7</sup> of revenue is obtained from the area of overlap with GMG publications. Thus, in the event of any switching away from TMG titles, over 80 per cent of this might be in areas where GMG is not represented. Moreover, as TMG operates regional price lists with set discounts included in the rate card, the parties maintain that it would not be possible for the merged entity to discriminate against customers in the overlap areas without damaging its wider customer base. While such pricing policies can change, we note that there is no evidence of price discrimination from the period when GMG previously wholly owned North West Auto Trader.

### **Barriers to entry and expansion**

In relation to local / regional newspapers, the CC has previously identified that the main barrier to entry lies where a single publisher is represented in an area who can deter and fend off entrants. However, they also noted that the same did not hold true for advertising-only publications.

The parties have provided the example of Auto Exchange as a new entrant. This was launched in Greater Manchester, Leeds and North East London / Essex in 1996. There are now 21 Auto Exchange editions covering 75 per cent of the UK's population. The parties also point to the prospect of the most likely new entry being an advertising-only

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<sup>6</sup> Clarification - although not specific to the Greater Manchester or North West area, Exchange & Mart is published in two main UK editions - Northern and Southern.

<sup>7</sup> Actual figures replaced by ranges at parties' request.

publication aimed specifically at Greater Manchester or West Surrey if prices were to rise in these areas and entry became attractive. The parties point to an example of local entry (sponsored by local dealers) in another part of the country where start-up costs are estimated to be in the range of £200,000 to £250,000. There are further examples of entry including Loot's launch of 'London Car' in 2000.

Nevertheless the extent to which new entry can be expected to be timely and sufficient enough to prevent a substantial lessening of competition could potentially be limited by the reputational effects of readers seeking out publications they know and one knock-on effect of this is that new entrants may try to reach a different type or more specialist audience.

### **Buyer power**

Auto dealers can vary in size enormously, from small local traders to national networks. The larger national dealerships may well have some bargaining power from the business they place elsewhere in the country. Private individual advertisers are unlikely to hold any buyer power.

### **Move to total control**

In considering the potential impact of this merger it is necessary to consider GMG's move from partial to full control of the business. As noted above, GMG currently holds 50 per cent of the voting shares in TMG. In terms of board composition, GMG and BC Partners are each entitled to appoint two directors to the TMG board and the Board is currently chaired by the GMG Chief Executive. GMG maintains that the acquisition of sole control of TMG would put it in no better position to co-ordinate the commercial behaviour of its newspaper titles and TMG publications than the position it enjoys already. GMG also states that as a financial investor, BC Partners relies heavily on GMG's commercial leadership in the publishing business.

While noting the points made above, it is possible that BC Partners might be in a position to exert some commercial constraint on TMG due to its current shareholding. At present, BC Partners might be expected to resist any GMG strategy designed to co-ordinate the commercial behaviour of the overlap titles which was not beneficial to the TMG titles, although, as suggested above, the limited area over which GMG titles overlap with the TMG titles suggests that co-ordination would be improbable.

### **Internet sites**

One third party raised a concern about the combination of the Auto Trader with the Fish4 website (in which GMG owns a 25 per cent shareholding). However, there are a number of competing websites offering similar services (such as carsource and thecarexchange) and there appear to be few barriers to entry in this sector. Therefore, this aspect of the transaction is not considered further.

### **VERTICAL ISSUES**

There appear to be no vertical issues raised by this merger.

## **THIRD PARTY VIEWS**

Broadly speaking, competitors appeared unconcerned by the merger while customers were divided with some expressing concerns while others were unconcerned. However, even those that raised concerns about future behaviour did not suggest there were any problems in the period prior to 2000 when GMG wholly owned the North West edition of Auto Trader. These views have been incorporated into the assessment.

## **ASSESSMENT**

The transaction qualifies in respect of both the turnover test and the share of supply test under the Act. The parties overlap in the supply of advertising space for the sale of motor vehicles in print and internet formats in Greater Manchester and parts of West Surrey. The parties represent a large proportion of vehicle advertisements in the two areas.

We have considered whether it would be likely that the merged entity would engage in price discrimination in the overlap areas to the detriment of customers. GMG have stated that this would not be possible due to their regional pricing structure and while the continuation of this structure cannot be guaranteed, we note that no such price discrimination occurred in the Greater Manchester area prior to 2000, when GMG previously wholly owned North West Auto Trader. We have no evidence to show that the structure of the vehicle advertising sector in the Greater Manchester area has changed such that price discrimination is any more likely now.

Barriers to entry, while not insignificant, do not appear to be insurmountable, particularly for existing publishers or publications focussed in local areas. There have been a number of instances of successful new entry in recent years usually by established publishers. Moreover, the barriers to expansion by existing publications – extending their coverage of vehicle advertisements – or extending the geographical scope appear even lower. Some of the larger dealers possess buyer power – and have used this to sponsor new entry - but this is not the case for smaller dealers or those placing private advertisements.

To consider the potential impact of this merger it is necessary to look at the move from partial to full control of TMG. GMG has argued that its current holding of 50 per cent of the voting shares and the relative positions of the other shareholders, means that, for all intents and purposes, it is, in effect, in control of the day-to-day management of the TMG business. While BC Partners might be expected to place some constraint on GMG it is accepted that this constraint might be relatively weak. Moreover, the limited area of overlap between the GMG and TMG titles, and the inability of TMG to price discriminate, suggests that co-ordinated behaviour is unlikely to be profitable. The lack of evidence of co-ordination of commercial behaviour at present – nor in the period prior to 2000 - suggests that such behaviour is unlikely to occur following the acquisition.

On balance, therefore, it does not appear that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom for goods or services.

## **DECISION**

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