

Anticipated acquisition by Smiths News plc of Dawson Holdings plc

**ME/5041/11**

The OFT's decision on reference under section 33 given on 19 July 2011. Full text of decision published 01 August 2011.

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**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.**

## **PARTIES**

1. **Smiths News plc** (Smiths News) is a distributor of newspapers and magazines throughout the UK and a wholesaler of books to retailers through its subsidiary company, **Bertram Trading Limited** (Bertrams). Bertrams also distributes books on behalf of some small publishers and it distributes books and audiovisual products to libraries and schools.
2. **Dawson Holdings plc** (Dawson) supplies books to libraries and newspapers and magazines on a retail basis to airlines and the Eurostar train service. Last year Dawson's UK turnover was around £45 million.

## **TRANSACTION**

3. On 7 June 2011 Smiths News made a public offer (pursuant to the City Code on Takeovers and Mergers) for the entire issued share capital of Dawson. The transaction is conditional on (amongst other things) the Office of Fair Trading (OFT) giving competition clearance and shareholder approval.

## **JURISDICTION**

4. As a result of the proposed merger the enterprises Smiths News and Dawson will cease to be distinct.
5. The parties together have more than a 25 per cent share of the supply of books to libraries (public and academic) in the UK. Therefore, the OFT believes that the share of supply test in section 23(2) of the Enterprise Act 2002 (the Act) is met in this case.
6. Consequently, the OFT considers that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
7. The statutory deadline (extended) pursuant to section 97 of the Act is 19 July 2011.

## **MARKET DEFINITION**

### **Product scope**

8. The parties overlap in the supply of books to libraries. They also overlap in the provision of newspapers and magazines to businesses, as end users, in Manchester.

### **The supply of books to libraries**

9. The parties submitted that there are separate markets for the supply of books to public and academic libraries. This is because the two involve distinctly different customers, books, purchasing requirements, tender processes, stocking requirements, and publisher-led discounts structures. Further, the two types of libraries have different suppliers.
10. The OFT's market testing exercise largely corroborated this view. One third party told the OFT that the supply of books to public and academic libraries are very different markets buying different products in different ways.
11. Libraries may source books from publishers, wholesalers, library suppliers, and retailers. The parties estimate that almost all books supplied to public and academic libraries are sourced from specialist

library suppliers, such as the parties. Publishers confirmed this with the OFT.

12. Pricing is driven by publishers who are responsible for setting prices for each title, the Recommended Retail Price (RRP). Publishers tend to offer different discounts according to the ultimate customer or supply channel. For public libraries, the parties submitted that the discounts from RRP are typically in the region of [ ] per cent while to academic libraries they are typically around [ ] per cent.
13. Public libraries source a wide range of books across the spectrum of genres and popularity, although the parties submitted that they purchase primarily best selling fiction genre books. The parties supplied data to the OFT showing that, of the top 100 books supplied by Bertrams to public libraries last year, [ ] per cent were adult fiction.
14. Suppliers to public libraries specialise in providing books and bespoke services including cataloguing of books to enable libraries to choose their selections, coding and tagging of books so that books are recognised by the library catalogue systems, reinforcing books or fitting protective covers to them, assisting libraries in selecting ranges suitable for the library, and supporting library promotions to attract different types of readers.
15. A local authority will purchase multiple copies of the same book for each of the public libraries it runs, procuring these books through local or regional consortia. Third party feedback suggested that most consortia tenders were sufficiently large for them to be tendered under European procurement rules. The parties estimate that [ ] per cent of public library books are purchased by buying consortia.<sup>1</sup>
16. Consortia may tender for different lots of books: for example, adult fiction, adult non-fiction, reference, children's fiction, and children's non-fiction. They may select multiple suppliers and allow them to supply books under a framework agreement for the term of the contract.

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<sup>1</sup> The main consortia in England are Central Buying Consortium, Eastern Shires Purchasing Consortium, Consortium for United Stock Purchase, North Eastern Procurement Organisation, and North West and Yorkshire Libraries Consortium. In Scotland the main one is Scotland Excel and in Wales it is TalNet and the Welsh Purchasing Consortium.

17. Some suppliers may specialise in supplying certain books. For example, [ ] while the parties note that other suppliers may specialise in certain genres (for example, children's books).
18. Academic libraries, on the other hand, are run by schools, colleges and universities. Academic library books will be mainly text books and academic books, including a wide range of titles including out of print and foreign language books.<sup>2</sup> By way of example, from April 2009 to March 2010, Bertrams sold around [ ] titles to public libraries whereas over the same period Dawson sold around [ ] titles to academic libraries.
19. The parties submitted that not only do academic libraries purchase different book titles, but also tend to purchase difference book formats (that is, they are more likely than public libraries to buy hardbacks).
20. Suppliers to academic libraries offer a total book management service to their customers, including recommendations on books to purchase. The parties submitted that the ability to advise on books for specialist subjects partly distinguishes suppliers to academic libraries from those to public libraries (where advice sought is generally wider – for example, on children's books). This requires suppliers to employ staff with academic library experience and subject expertise.
21. Academic suppliers provide a range of services to academic libraries including the coding and tagging of books so that books are recognised by the library catalogue systems, reinforcing books or fitting protective covers to them, inserting front plates in books to identify the book as being owned by a particular institution and providing space for a ticket holder, cataloguing of books (including fixing spine labels), advising academic libraries on the selections they should make and on new titles, sourcing of out of print books, and sourcing and supply of standing orders (monographs in series such as yearbooks, annuals, directories, part works, or books in series).
22. As with public libraries, many tenders are sufficiently large to fall within European procurement rules, and many libraries have formed consortia to purchase books. Again, lots allow for multiple suppliers to win contracts. Following the tender, libraries form framework agreements with suppliers for the length of the contract.

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<sup>2</sup> Whilst [ ] of Bertrams sales to public libraries are adult fiction, Dawson's top 100 books to academic libraries are [ ].

23. As with public libraries, academic libraries form consortia for buying. However, there are fewer academic library consortia than for public libraries covering a wider geographic territory, whereas consortia buying for public libraries will be considerably more regionally or locally focussed.
24. Academic libraries tend to buy fewer copies for each title of book than public libraries. Further, academic libraries purchase books at times which fit in with the academic calendar whereas public libraries, the parties submitted, have more year round constant demand.
25. The OFT acknowledges that there may be sufficient differences in the characteristics of the supply of books to public and academic libraries to assess this merger separately. For example, on the demand-side, the two types of libraries have different buyers and demands for different titles. On the supply-side, suppliers have different specialisms, offer different services and suppliers tend to focus on one type of library only.
26. However, the OFT has not found it necessary to conclude on product market definition in this case and has examined the merger on the basis of public and academic libraries together as well as separately.

### **The supply of newspapers and magazines to business**

27. The parties overlap in the supply of newspapers and magazines to business as end users. Typically, these businesses are hotels, offices and libraries which require newspapers and magazines for their guests, staff or customers. As such, this activity is the retail supply of newspapers and magazines and is distinct from the wholesaling of these products (which Smiths News also undertakes). For example, the newspapers and magazines are not supplied to retailers, [ ] and customers have choice as to where they source their newspapers and magazines from.
28. The parties argued that this activity is constrained by retailers, specialist distributors and newsagents offering this delivery service.
29. Given the outcome of the competition assessment the OFT has not found it necessary to conclude on the product market for the supply of newspapers and magazines to business. The OFT has assessed the merger on the basis of these distribution services alone.

## **Geographic scope**

### **Public and academic libraries**

30. For public libraries, the OFT was told by customers that many consortia contracts are tendered in the Official Journal of the European Union. Customers said that a UK presence was important because it allows for better servicing of contracts.
31. On the supply-side, even where there are differences in tendering processes between England, Scotland, Wales and Northern Ireland, the main suppliers participate in many of the tenders.
32. Consortia are not national but tend to be regionally focussed. Nevertheless, there was an almost unanimous view amongst third parties that the market is UK-wide.
33. For academic libraries, most customers said to the OFT that having a UK base was important to them in their choice of supplier. None said that being regionally based was important. The parties submitted that academic library contracts could be served from a single point within the UK.
34. Whilst not need to conclude on the geographic scope, the OFT has examined this merger on the basis of the whole of the UK.

### **The supply of newspapers and magazines to business**

35. In the retail supply of newspapers and magazines, the parties are both active in Manchester. Given the outcome of the competition assessment the OFT has not found it necessary to conclude on the geographic scope but has assessed the merger on the basis of the Manchester area for this activity.

## **HORIZONTAL ISSUES**

### **Public and academic libraries**

36. The parties together supply around [20–30] per cent of books to public and academic libraries (table 1).

**Table 1: Shares of the supply of books to public and academic libraries (2009, per cent)**

Smiths News (Bertrams)	[10–20]
Dawson	[10–20]
<b>Combined</b>	<b>[20–30]</b>
Gardners	[20–30]
Coutts	[10–20]
Blackwell	[10–20]
Peters	[5–10]
Others (including direct supply)	[10–20]

Source: The parties.

37. On this basis, after the merger the merged entity would continue to face competition from Gardners, Coutts and Blackwell.
38. Most customers were unconcerned about the merger and see different competitors as being alternatives to their requirements (segmented according to whether the customer is a public library or academic library). Further, third parties do not view the merger parties as being close competitors. These points are discussed further below.
39. Therefore, the OFT does not consider that the merger would give rise to a realistic prospect of a substantial lessening of competition with respect to the supply of books to public and academic libraries together.

### **Public libraries**

40. Dawson is not especially active in the supply of books to public libraries (table 2). Smiths News has around a [20–30] per cent share of supply and will remain at around that level after the merger.

**Table 2: Shares of the supply of books to public libraries (2009, per cent)**

Smiths News (Bertrams)	[20–30]
Dawson	[0–5]
<b>Combined</b>	<b>[20–30]</b>
Gardners	[35–45]
Peters	[10–20]
Others (including direct supply)	[10–20]

Source: the parties

41. One public library commented that the merger would reduce the number of effective suppliers in the market from four to three, and that this might be a problem for libraries not in consortia. However, Dawson supplies very few books to public libraries and may not be an effective competitor to the larger firms in the market.
42. Customers did not consider the merger parties to be close competitors. They named Askew and Holt Jackson (both owned by Gardners), Blackwell and Coutts as likely and credible alternative to the merger parties.
43. The OFT examined bidding data submitted by the parties. Over the past three years (May 2008 to May 2011) [ ].
44. On the basis of the information available to it, the OFT does not consider that the merger would give rise to a realistic prospect of a substantial lessening of competition with respect to the supply of books to public libraries.

### **Academic libraries**

45. By share of supply, the situation for academic libraries is the converse to that for public libraries. That is, Dawson accounts for around [30–40 per cent] of the supply of books to academic libraries where as Bertrams accounts for [zero to five] per cent (table 3).

**Table 3: Shares of supply of books to academic libraries (2009, per cent)**

Smiths News (Bertrams)	[0–5]
Dawson	[30–40]
<b>Combined</b>	<b>[30–40]</b>
Coutts	[20–30]
Blackwell	[20–30]
Holt Jackson	[5–10]
Others (including direct supply)	[10–20]

Source: the parties

46. Bid data supplied by the parties shows that Dawson bid for [ ] contracts between May 2008 and May 2011, winning [ ] of these contracts. Bertrams, on the data submitted, [ ].
47. No customers thought that the parties are close competitors. All named Coutts as a viable alternative to Dawson with some also naming Blackwell.
48. On the basis of the information available to it, the OFT does not consider that the merger would give rise to a realistic prospect of a substantial lessening of competition with respect to the supply of books to academic libraries.

### **The supply of newspapers and magazines to business**

49. The parties overlap in the supply of newspapers and magazines to business in Manchester. They submitted that in the last financial year Dawson earned around [ ] from this activity in Manchester and Smiths News around [ ]. Combined, they earned less than [ ] and, the parties submitted, irrespective of any competition concerns, the market would be considered de minimis.
50. Under section 33(2)(a) of the Act the OFT may exercise its discretion not to refer a merger to the CC if it believes that the market in which the duty to refer applies is not of sufficient importance to justify a reference.<sup>3</sup> OFT guidance says that the where the annual value in the UK of the market concerned is, in aggregate, less than £3 million a reference to the CC will generally not be justified.<sup>4</sup>

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<sup>3</sup> 'Mergers: Exceptions to the duty to refer and undertakings in lieu of a reference', OFT1122, December 2010, paragraph 2.5.

<sup>4</sup> Paragraph 2.15.

51. There are no reliable figures available on what the value is of the retail distribution of newspapers and magazines to businesses in Manchester.
52. The parties estimated that the total value of retail sales for newspapers and magazines in Manchester (that, including sales made in retail outlets, not just sales of delivered newspapers and magazines) was equal to £[ ], which would mean the parties' combined share would be very small (less than [ ] per cent).
53. The OFT contacted a number of third parties in the Manchester area. None were able to quantify the value of the business delivery market in Manchester.
54. The parties argued that they face competition in Manchester from Gold Key Media (owned by COMAG) and a number of independent retailers including The Kiosk (which confirmed to the OFT that it delivers newspapers to businesses and homes in Manchester). Further, they submitted that any retailer of newspapers and magazines in Manchester could offer the same delivery service to businesses.
55. Moreover, the parties submitted that there are a number of specialist delivery firms who could easily enter the Manchester market. These include Jones Jarrell (owned by Menzies) and News Time.
56. Given the competition that the merged entity would face in Manchester after the merger, from one national distributor and several local ones, the OFT does not consider that the merger raises a realistic prospect for a substantial lessening of competition in the supply of newspapers and magazines to businesses in Manchester.

### **THIRD PARTY VIEWS**

57. Almost all third parties were unconcerned about the merger. Most told the OFT that the parties are not close competitors and that they would not experience a diminution of competition after the merger.

### **ASSESSMENT**

58. The parties overlap in the supply of books to public libraries and academic libraries. The OFT has assessed this merger on the basis of the supply to these library types together and separately.

59. For both types of libraries, share of supply data, third party comment and bidding data indicate that the parties have not been close competitors. Customers do not see a loss of competition arising from the merger and are able to identify credible alternate suppliers.
60. The parties also overlap in the supply, at the retail level, of newspapers and magazines to businesses in Manchester. Whilst information on this activity is not readily available, the evidence available to the OFT indicates that the parties face sufficient pre-merger competition that will remain after the merger.
61. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

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