

Completed acquisition by Game Group plc of Gamestation Limited

The OFT's decision on reference under section 22(1) given on 9 August 2007. Full text of decision published 3 September 2007.

PARTIES

1. **Game Group plc** ('GAME') is a retailer primarily of new and pre-owned video games, video consoles and related accessories. Pre-merger, it operated around 800 stores, concessions and franchises across eight European countries and in Australia, of which almost 400 are in the UK. In the year ending 31 January 2007, Game achieved sales of £801.3m, £586.4m of which was generated in the UK.
2. **Game Station Ltd** ('Gamestation') is a UK retailer of new and pre-owned video games, video consoles and related accessories. Prior to the merger, Gamestation operated 252 outlets, of which 35 were concessions in Blockbuster stores not subject to the transaction. In the year ending 31 December 2006, Gamestation achieved UK sales of £229.2m.

TRANSACTION

3. On 2 May 2007, GAME acquired the entire issued share capital of Gamestation for a total cash consideration of £74m. The statutory deadline is 1 September 2007.
4. On 12 June 2007, GAME provided initial 'hold separate' undertakings to the OFT pursuant to section 71 of the Enterprise Act 2002 (the Act).

JURISDICTION

5. As a result of this transaction, GAME and Gamestation have ceased to be distinct. Gamestation's UK turnover for the year ending 31 December 2006 was

£229.2m. Consequently, the turnover test in Section 23 of the Act is satisfied. The OFT therefore believes that it is, or may be the case, that a relevant merger situation has been created as a result of the transaction.

MARKET DEFINITION

Introduction

6. The parties argue that there is an overall 'gaming market' within which customers shop for new (or 'mint') and second-hand (or 'pre-owned') gaming software and gaming hardware goods interchangeably.
7. Before turning to an assessment of individual products and product ranges segments within the gaming sector - for example, mint hardware, pre-owned hardware, mint software and pre-owned software - the OFT has two general observations. First, market definition is an analytical framework used to assess the relative competitive pressures that different suppliers place on one another and in turn the merged firm; it is not an end in itself and, in differentiated goods markets creates a risk of drawing sharp bright lines that either overstate or underestimate the degree of competitive constraints posed by respective suppliers. Second, it is important in a merger between competing retail chains not only to consider the strength of various retail channels on a product category by category basis but also to 'step back' and consider that parties may compete on an overall retail proposition that draws together the value they offer to consumers more holistically.

Competition within and across differentiated retail channels

8. In this case, GAME and Gamestation are the only two national specialist bricks and mortar (B&M) chains specialising in the retail sale of mint and pre-owned gaming software and gaming consoles and hardware, including peripherals (together, specialist gaming retailers). Despite the ubiquity and growth of Internet retail commerce and the presence of generalist high street retailers across the UK that stock mint gaming products, these competitors do not appear to have arrested the growth of the parties' chains or indeed led to negative growth of either parties' business model to date. On the contrary, the parties' success appears to be responding to particular consumer demand for specialist B&M outlets, as demonstrated by the growth of Gamestation in recent years: it opened 160 new stores between 2003 and 2005 alone. At a time where Internet

sales of mint gaming software have grown from 5 per cent to 14 per cent, the parties combined share of mint gaming software has remained relatively stable at around 39 per cent.¹

9. The parties' successful value proposition to customers, therefore, may be regarded as a distinct mix of product range, service quality and price factors. This approach has recently been applied in the grocery retail sector: the CC in *Somerfield/Morrisons*² and OFT in *CGL/United*³ have analysed merger effects in combinations of rival retail supermarkets in terms of their price, quality, range and service (so-called PQRS) proposition, and where the focus of harm was on the overall deterioration of the value proposition to consumers, rather than, say, merely or even primarily on prices of products stocked on shelves. This theme of how and on what parameters retail outlets compete is being explored further in relation to the grocery sector in the current CC grocery inquiry.⁴
10. Indeed, non-price factors appear substantially to contribute to the retail experience of specialist B&M outlets over internet and more generalist B&M options, including the immediacy of the purchase and the tangibility of the product range, allowing consumers physically to inspect individual products and browse among a range of products, before making a purchase. In addition, to the extent the customer seeks assistance in selecting the right purchase (for example, because the purchase is on behalf of a family member, relative or friend) the availability of specialist staff. While this may not arise in grocery purchases, it assists in explaining the focus of the OFT and CC in *HMV (Waterstone's)/Ottakar's* on whether that merger of specialist bookstore chains

¹ TNS data actual mint software sales, Computer Game Market by Revenue 2000-07.

² See Competition Commission, *Somerfield plc and Wm Morrison Supermarkets plc, A report on the acquisition by Somerfield plc of 115 stores from Wm Morrison Supermarkets plc*, September 2005.

³ See Office of Fair Trading, *Anticipated merger between Co-operative Group (CWS) Ltd and United Co-operatives Limited, decision of 23 July 2007*.

⁴ The proposition that specialist retail outlets can operate, in terms of their direct competitive constraints, in a different antitrust market from generalist retail outlets, also finds support, again in the grocery sector, in the current court challenge by the Federal Trade Commission (FTC) to the merger between Whole Foods Markets, Inc. and Wild Oats Market, Inc., two U.S. nationwide chains of premium natural and organic supermarkets. In defining the relevant markets, the FTC found that premium natural and organic supermarkets are differentiated from conventional retail supermarkets in several critical respects, namely the breadth and quality of their products and the wide array of products and services they offer. The FTC also noted that such specialist supermarkets seek a different customer than do traditional grocery stores; the FTC argues that the parties customers in that case 'are buying something more than just the food product – they are seeking a shopping 'experience' where environment matters as much as price'. See further, *FTC Seeks to Block Whole Foods Market's Acquisition of Wild Oats Markets*, 5 June 2007, available at www.ftc.gov/opa/2007/06/wholefoods.stm

would have adverse effects for consumers on a range of non-price factors that contribute to retail proposition of the parties' chains.⁵

11. Given the above, it appears that the parties are closely competing retail propositions taking into account all of (i) their specialist nature, dedicated to games; (ii) their B&M status on the high street and (iii) their geographic coverage, each being a national chain of hundreds of stores.

Competition within and across mint and pre-owned product categories

12. In respect of the parties' specialist game stores in particular, it is not just these elements in relation to mint products but, as noted, in relation to a product range mix that covers both a substantial range of mint products on the one hand, and a substantial range of pre-owned items of hardware and software under the same roof, on the other. Sales of pre-owned goods within both GAME's and Gamestation's retail chains are generated principally by customers trading in used items for cash or in exchange for discounts on further in-store purchases. This means that the sale of pre-owned stock is necessarily linked to the trade-in by customers of used items and that the overall market dynamic of pre-owned sales is driven by the new release and consequent trade-in by customers of mint games (see further under horizontal issues). As may be expected, pre-owned goods retail at a discount to identical mint items.
13. The OFT has considered how the interaction between sales and purchases of mint and pre-owned goods impacts on framing the scope of candidate relevant product markets. Evidence provided by the parties indicates that, on the demand side, the majority of consumers are willing to switch between mint and pre-owned gaming products.
14. However the evidence before the OFT also indicates that, as the only two national specialist chains selling pre-owned goods, there is a relative scarcity of competing B&M retailers offering as full a range of pre-owned gaming goods as that carried by GAME and Gamestation at local level, and certainly none at national level. Third party comment from competing retailers of mint software suggests that supply side substitution into the pre-owned segment is difficult to achieve on a sufficient and timely basis on a scale anywhere close to that of the national chains operated by each merging party.

⁵ The parties considered changes in UK leisure expenditure in the KPMG project Kennel report; at a time when consumer spending on books, newspapers and magazines declined by three per cent, electronic gaming experienced growth of 1.7 per cent.

15. Additionally, within the pre-owned segment, a substantial body of consumer concern is directed at the effect of the merger on retail sales specifically of pre-owned gaming software rather than hardware. Given that the OFT's concerns, set out below in relation to software, ultimately warrant reference to the Competition Commission, it can be left open whether the merger impacts adversely on competition in the retail sales specifically of pre-owned gaming hardware. Gaming hardware segments are therefore not subject to further discussion under market definition or considered any further in this decision.

Competition for retailing of gaming software

The mint plus pre-owned retail model

16. As noted, a key element of the parties' national chain model is that each store features a substantial range of mint and pre-owned gaming software (among other products). It is clear from consumer comment and from internal documentation provided by the parties – that GAME's and Gamestation's acceptance of used games as trade-in and their retail sales of pre-owned games are both key features of their commercial models.

17. Internal documentation provided by the parties indicates that a pre-owned trading program is an initiative that has been created by the specialists to:

- 'deliver higher gross margins in the price war on new release games and consoles against on-line retailers and grocers'
- differentiate specialists from other retailers with a different type of offer
- deliver repeat purchases from customers
- broaden the market to non core gamers and add new customers by making games more affordable.'

18. Both parties have independently invested in logistics for the recall of pre-owned gaming titles from certain stores within their respective retail chains for redistribution to other stores. These systems enable each GAME and Gamestation store to carry an optimum range and depth of pre-owned gaming titles available for immediate selection by the consumer. By operation of this model, GAME's and Gamestation's offerings in the pre-owned segment comprise – just as they do in the mint segment – the off-the-shelf supply of a range of game genres and depth of available titles within each genre that by far exceeds

the range of pre-owned gaming software available in any other non-specialist B&M retail channel.

19. In addition, the OFT considers that the ability to walk into a GAME or Gamestation store, trade-in a used item of gaming software and immediately obtain cash or, alternatively, a new gaming item from such a well stocked range, differentiates the parties' commercial offering from many other types of pre-owned retail channel.
20. Additionally, GAME offers consumers the ability to defer purchases by storing available credit generated from trade-ins on a loyalty card. This further differentiates GAME from other B&M retailers and ties consumers to its retail chain.

Constraints from other retailers in relation to mint software

21. In contrast to pre-owned, it seems clear in relative terms that the parties are less close competitors as rival retailers of **mint software** because other retailers are less distant substitutes, and therefore diversion of customers in response to a reduction in the value proposition – such as higher prices – to other retail channels could make such action unprofitable. In this respect, the parties argue that there are a number of other significant B&M retailers. They submit that supermarkets account for as much as one third of the retail sales of a new gaming title immediately after launch.
22. Evidence submitted by third parties to the OFT indicates that non-specialist B&M retailers focus on the supply to the consumer of a limited range comprising the most popular titles of mint gaming software. By contrast, the parties - as B&M retail gaming specialists - operate a business model that comprises the off-the-shelf supply of a range and depth of available titles that by far exceeds the range offered by the supermarkets and all other non-specialist B&M retail channels.
23. In the area of online retail, the parties have provided some evidence to show that online retailers offer at least as broad a range as that offered by the parties, at lower average prices, though this raises the question as to why, if average internet prices are lower, the B&M retailer is able to charge a sustainable price premium.
24. Third party comment from consumers indicates that, if GAME's post-merger prices of mint gaming software were to rise, there would be customer switching

in significant numbers to online retailers. The importance of online retailers as sellers of mint software has grown significantly in recent years, as indicated by their share almost doubling to just under 14 per cent (by value) in the last three years, according to TNS data.

Geographic dimensions of competition

25. Both the parties' retail chains comprise a wide dispersion of B&M outlets across the vast majority of major towns and cities in Great Britain.
26. In previous cases in the retail sector, the OFT has considered the impact of mergers at a local level, measured by a rational walking or driving distance around the relevant retail outlets, because demand-side considerations suggest that consumers will only travel a certain distance for purchases of the relevant product(s).⁶ The parties in this case have argued that gaming software is a 'destination purchase' and that the appropriate measure to be applied in this case is therefore, on the one hand, a five-mile radius for non-supermarket competitors and, on the other hand, ten to fifteen minute drive time isochrones for supermarket competitors.
27. The parties are therefore proposing significantly wider local areas than those previously considered by the OFT in cases involving the merger of retail chains.⁷ An important item of evidence, at least in relation to the trade-in element of sales, is the fact that GAME explicitly offers lower discounts on its products (by way of trade-in value) in areas where it does not face a B&M competitor within one mile of its outlet. This tends to corroborate the conclusion that a one-mile radius is the appropriate lens to adopt in this case. In any event, evidence before the OFT indicates that the average distance between the current locations of GAME and Gamestation retail outlets is around 160 metres, and such is the range and dispersion of the stores within the parties' respective chains that the vast majority of local areas charted by a one mile radius around all of one party's outlets capture at least one of the other party's stores.

⁶ HMV/Ottakars – December 2005
Thresher Group/Unwins – June 2006
Mosaic/Rubicon – September 2006
O2/Link – October 2006

⁷ For example, in HMV/Ottakars, the merger's impact at local level was assessed on the basis of a one mile radius – as was also the case in Threshers-Unwins. In Mosaic/Rubicon, the OFT looked at high street or shopping centre locales, whilst in O2/The Link the benchmark applied consisted of one mile radii in city centres and three mile radii in market and provincial towns.

Conclusions

28. On the basis of the above, the OFT considers that the parties may be regarded as close competitors both in terms of product dimensions – here referred to as retail proposition – and geographic dimensions, because each is the only national specialist gaming chain present across hundreds of high streets in the UK. As such, a candidate approach to market definition and share calculation purposes is to consider a lens limited to specialist gaming retailers and to consider several hundred relevant local geographic markets representing one-mile radii within towns and high street areas, as the case may be. At the other extreme, an alternative candidate relevant market would, on the product dimension, encompass all retail channels, and, on the geographic dimension, cover all of the UK. However, even based on one of the widest definition most favourable to the parties, the merger results in a combined share of mint software supply of around 40 per cent at the national level, according to TNS data. Given this and other more direct evidence suggesting a realistic prospect of unilateral effects, no definitive conclusion need be reached on the market definition. It should be noted, however, that on the 'worst case' cautious basis, to the extent a hypothetical monopolist in the form of a specialist B&M gaming retailer in the UK could profitably raise price or reduce value by a small but significant amount – the merger could be regarded a merger to monopoly in over 100 local high street areas across the UK.

HORIZONTAL ISSUES

Introduction

29. Internal documentation provided by the parties contains estimates that retail sales of mint gaming software in the UK amounted to around £1.3bn in 2006. The UK is the largest video games market in Western Europe and has seen compound annual growth of around 13.4 per cent over the last five years. During this period non-specialist gaming software retailers have seen negative growth of 6.5 per cent in mint software sales while the internet has grown by 27.5 per cent, the supermarkets have experienced growth of 45 per cent and GAME and Gamestation combined have remained relatively stable with growth of 2.4 per cent.

30. According to independent data compiled by TNS, the merger brings together the two largest B&M retailers of mint software in the UK – with the enlarged GAME

having a 40 per cent share of supply (increment 11 per cent). This same source attributes a share of supply of eight per cent to Woolworths and six per cent to HMV. The total market share of independent gaming specialists in the UK, according to TNS, amounts to only four per cent

Pre-owned gaming software

31. The parties estimate that the total value of the retail sales of pre-owned gaming software in the UK is approximately £325m (around 27 per cent of the value of mint software) and that their own combined share of the supply of pre-owned software amounts to approximately [30-40] per cent – Gamestation's share being [15-25] per cent.
32. GAME and Gamestation operate similar business models, in that their source of the supply of pre-owned software comes from customers trading-in new and older gaming titles in exchange either for cash or for discounts on other gaming titles that the customer can choose from the available in-store range.

The pre-owned trading cycle

33. The OFT recognises that there is a correlation – inherent within GAME and Gamestation's business models – between the parties' retail sales of mint and pre-owned gaming software. Internal documentation provided by the parties sets out a diagrammatic trading cycle which charts the flow of mint titles being bought, used, traded in, pooled and subsequently re-sold as pre-owned. According to the parties' internal documents trade-in of mint games starts only a few weeks after release⁸, with trading-in peaking on average at [10-30] weeks after release and pre-owned sales exceeding mint sales for the first time [25-45] weeks after the initial launch of the game.⁹
34. It is possible that the intensity of competition in the retail supply of mint software may indirectly determine the degree of competition faced by the parties in the retail supply of pre-owned software. However, the OFT has received mixed evidence from the parties on the extent to which competition in the mint segment impacts on competition in the pre-owned segment.

⁸ KPMG Project Kennel report.

⁹ OC&C and parties own data.

Constraint from other B&M retailers in mint and pre-owned software

35. The parties highlighted the importance of Woolworths, HMV and others as 'critical' high street competitors. They provided evidence of GAME using an external agency to assess a basket of mint software prices from range of competitors each week. These internal documents show GAME assessing its prices against those of Gamestation, HMV, Woolworths, Currys, Virgin, Tesco, Asda, Toys R Us and PC World. Further, GAME's own customer survey evidence indicated that, for those customers who shopped less at GAME in the 12 months to March 2006, Gamestation was the most popular retailer at which they spent more over the same period.
36. Internal documentation provided by the parties indicates that non-specialists have lost market share as they have been unable to compete on price, product range and expertise with other participants. These non-specialists have experienced negative growth of 6.5 per cent in the period 2001–06.¹⁰
37. The same documentation proposes that increased competition and consolidation have forced many small independent specialists in the B&M retail sector out of the market, stating that their overall share in the gaming segment has declined from 15-20 per cent to 7-8 per cent over the past five years.
38. Specifically with regard to the B&M retail of pre-owned software, the parties estimate that the independent gaming specialists' share of the total supply of pre-owned software amounts to nearly 26 per cent. However, the OFT considers that the parties' estimate of such a market share figure in pre-owned software sits uneasily with TNS's estimate that the specialist independents' share of the supply of mint software amounts to only four per cent (see paragraph 30).
39. Other evidence before the OFT indicates that one non-specialist retailer of mint software is currently trialling a commercial model comprising the offer to consumers of being able to trade-in used gaming software at all the stores in its retail chain – but is offering pre-owned gaming software for retail at around 12 per cent of its total stores.
40. Another non-specialist in the mint segment indicated to the OFT that it would not be feasible for it to expand into the retail of pre-owned software due to the

¹⁰ TNS data Computer Market by Revenue 2000-07.

costs involved and limitations on the range of any pre-owned software offering they could make imposed by the non-specialist nature of their business.

41. In summary, given that (a) GAME and Gamestation offer an unmatched range and depth of both mint and pre-owned gaming titles in hundreds of retail outlets across the whole of Great Britain, and (b) the stores within their respective chains compete within an average distance of 160 metres (in some areas considerably less) the OFT considers that the parties are each other's closest actual and potential competitors in B&M retail sales.

Constraint from online retailers in mint and pre-owned software

42. As stated above, the parties have provided some evidence of the broad and comparable range offered (at lower average prices) by online retailers in mint software. The majority of these online retailers, however, do not offer pre-owned software for sale.
43. [- *Redacted at parties' request* -]
44. However, data provided by the parties on eBay's sales split between pre-owned software and hardware shows much stronger activity in hardware, which accounts for two-thirds of turnover in pre-owned gaming sales. This is in stark contrast to the parties, for whom software represents all but [-] per cent of pre-owned sales value. This casts significant doubt on the strength of the constraint on the parties posed by eBay in the pre-owned software segment.
45. In addition, a substantial number of customers have informed the OFT of their reticence in buying pre-owned software online, in particular through the type of person-to-person online transactions which typify the eBay trading model – not least due to the lack of ability to closely inspect the quality and condition (given that DVDs are prone to damage by scratching etc) of the used media prior to purchase.
46. The advantage to the customer in using a GAME or Gamestation store for the purchase of pre-owned gaming software is not only in the range and depth of pre-owned titles on offer, but also in the opportunity to inspect the pre-owned items. Additionally, consumers are more confident dealing with a B&M retailer – given that they perceive better opportunities of obtaining redress in the event of the item proving to be flawed.

47. Internal documents from Game indicate that it offers different trade-in prices depending on the constraints that they face within a one mile radius of their stores. Gamestation also offer a policy of price-matching on trade-in prices, with retail prices of pre-owned software determined primarily by levels of stock. The wide dispersion of and the generally close proximity between GAME's and Gamestation's respective retail outlets means that they are most frequently each other's closest competitor and the variation of trade-in price depending on whether the other competitor is present is indicative of the constraint they pose on one another.

Summary

48. Taken together, the total value of the retail sales of both mint and pre-owned software amount to approximately £1.5 billion. The parties have combined shares of supply of around [35-45] per cent in each segment.

49. The parties themselves have pointed to the importance of trade-in – the link between mint and pre-owned gaming software – in both their business models.

50. The OFT does not doubt that the parties face some competition in the selling of pre-owned games from Amazon, play.com and eBay, and from retailers such as Woolworths. However, as gaming specialists, the parties' individual stores carry an unmatched offering in terms of the available range and depth of both mint and pre-owned gaming titles. In the OFT's view, therefore, GAME and Gamestation are each other's closest competitors and the loss of actual and potential competition between them as a result of this merger is significant. On the basis of the evidence before it, the OFT cannot dismiss the possibility that the constraint posed by other B&M retailers or by online retail sales is insufficient to offset the loss of rivalry between the parties.

Other issues

51. A number of software publishers (suppliers to the parties) have submitted that the merger would confer a measure of extra negotiating power on GAME and thereby improve its ability to secure enhanced procurement terms by, for example, obtaining larger discounts. These publishers go on to argue that any further increases in discounts available to the merged entity, combined with the high volumes of retail sales that they represent, would significantly compromise profitability. A consequence of this would be a limitation in the amount of money

available for investment in the development of future gaming titles. This, they conclude, would ultimately result in a reduction in quality.

52. The evidence available to the OFT indicates that negotiating leverage is currently fairly evenly split between the parties on the one hand and the publishers on the other. This is so given that they both share a common aim in obtaining revenue from the sale of gaming software – ultimately to a high proportion of discerning 'hard core' gaming consumers. The OFT therefore considers that the merger does not bring about any material change in either the parties' or the publishers' mutual interdependence or their common imperative in selling gaming software of the quality demanded by consumers.
53. Technological innovation and marketing strategies on the part of the manufacturers provide that innovative types of console are released onto the market in successive 'generations' on average every four or five years.¹¹ Launches of new gaming consoles usually take place in November in order for the manufacturers and retailers to benefit from increased demand in advance of the Christmas period.
54. A further concern raised by a number of competitors relates to the possibility for uneven allocation by the manufacturers of newly launched gaming consoles. These competitors propose that the quantity of stocks of newly-launched consoles that manufacturers allocate to retailers is partly a function of the retailer's market share – with the largest and earliest stock consignments being allocated to the largest retailers.
55. Given the cyclical nature of demand for newly launched gaming consoles, the complainants submit that such an allocation model would lead to the reinforcement of the parties' strong retail position at times of peak demand, with consumers choosing a retailer on the basis of product availability rather than price, quality of service or any other criteria.
56. If such demand is more likely to be satisfied by the merged entity, this will lead to compound increases in its market share, the effect of which will be yet further increases in the allocation of stock by the manufacturers. The competitors in question argue that the merger will thereby restrict the ability of other retailers to compete against the parties and enhance their own market shares.

¹¹ The most recent generation of game consoles began with the release of Nintendo DS in November 2004 and has progressed with the release of Microsoft's Xbox 360 (November 2005) and Sony's PlayStation 3 and Nintendo's Wii (November 2006).

57. The OFT notes, however, that these concerns arise as a result of distribution policies set by the manufacturers – and over which the parties do not necessarily have any control or influence.

Barriers to entry and expansion

58. The parties submit that barriers to entry in the B&M retail sales of gaming hardware and software are low. They argue that, as recognised by the Competition Commission in *Somerfield/Wm Morrisons Supermarkets plc*, it is possible to set up any retail outlet once A1 planning permission has been granted in favour of a property.¹² Accordingly, the basic costs associated with setting up a games retail outlet are limited and there are no onerous regulatory barriers to overcome.

59. Some third parties contradicted the parties' assertion by suggesting that barriers to entry were in fact high, given a scarcity of available retail space and the necessity to have a strong specialist retail brand and a recognized national chain in order to attract consumers.

60. The OFT notes evidence provided by the parties in the form of online property marketing websites demonstrating a substantial quantity of retail property available. One such website lists:

- over 18,000 retail properties available for rent
- of which over 3,600 properties fall within the size range that might be considered suitable for an electronic games retailer (i.e. 1,000 to 3,000 sq. ft).

61. Gamestation's ability to obtain suitable retail premises is also evidenced by its opening of 160 stores between 2003 and 2005 – of which 96 stores were high street outlets.

62. However, the OFT considers that, whilst barriers to entry and expansion are not insurmountable, there is little or no scope for de novo entry or for expansion by

¹² Planning regulations provide that the uses of many business premises are grouped together into 'use classes'. For example, shops are classified as 'A1'. No additional planning permission is needed to change from one A1 use to another A1 use.

an existing player to offset, on a timely and sufficient basis, the loss of competition between GAME and Gamestation – specifically in terms of the range and depth of the mint and pre-owned gaming they sell, the specialist brands they have developed and the national scale of their chains of hundreds of retail outlets across the whole of Great Britain.

Buyer power

63. Given that the parties are retailers and that their customers are all individual consumers no buyer power can realistically be attributed to the demand side.

VERTICAL ISSUES

64. The OFT considers that no vertical issues arise as a result of this merger.

THIRD PARTY VIEWS

65. The OFT received a number of responses from consumers in response to its invitation to comment – many of which expressed concerns with regard to the increase in concentration amongst high street specialist gaming retailers. These customers considered that they could switch to online retailers for mint gaming software in response to a post-merger price increase, but many expressed concerns with regard to using online retailers for purchasing pre-owned software due to the lack of opportunity to inspect the quality and condition of the goods in advance.

UNDERTAKINGS IN LIEU

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

67. The OFT has therefore considered whether there might be undertakings in lieu of reference which would address the competition concerns outlined above. The OFT's *Mergers Substantive Assessment Guidance* states that, 'undertakings in lieu of reference are appropriate only where the competition concerns raised by

the merger and the remedies proposed to address them are clear cut, and those remedies are capable of ready implementation.'

68. GAME has formally undertaken [- *undertakings in lieu of reference redacted at parties request in order to safeguard legitimate business interests* -]
69. The OFT believes that the behavioural undertakings offered by the parties fail to meet the criteria set out in the OFT's *Mergers Substantive Assessment Guidance*. They do not restore the competitive dynamic lost as a result of the merger and are not clear cut or capable of remedying the adverse competition effects that this merger will give rise to. The duty to refer therefore remains.

ASSESSMENT

70. The parties are both bricks and mortar (B&M) specialist retailers of brand new (mint) gaming consoles and hardware (including peripherals) and gaming software.
71. Unlike the majority of other types of retail channel, the commercial model operated by gaming specialists includes the B&M sales to consumers of second-hand ('pre-owned') items of hardware and software.
72. Sales of pre-owned goods within both GAME's and Gamestation's retail chains are generated principally by customers 'trading in' used items in exchange for discounts on further in-store purchases or for cash. Pre-owned goods retail at cheaper rates than identical brand new ('mint') items.
73. GAME and Gamestation – as specialist gaming retailers and by the operation of their virtually identical business models (of which trade-ins are an important part) – each offer consumers a wide dispersion of hundreds of stores that carry an unrivalled offering in terms of the available range and depth of **both** mint and pre-owned software gaming titles. The OFT considers that the closeness of this competition would appear to extend to geographic location. The average distance between a GAME and a Gamestation store is only around 160 metres.
74. The OFT considers that there is no doubt that the combined entity would face competition from online retailers such as Amazon and eBay and from other B&M retailers such as Woolworths, HMV and Virgin in relation to mint sales. However, this merger involves the loss of competition between two parties who, in some

segments at least, appear to be each other's closest competitors and in circumstances where the OFT cannot confidently rely on new market entry resolving issues quickly. There is a shortage of evidence at this stage in the analysis that competition from other suppliers will be sufficient to prevent the merged firm from raising prices, lowering trade-in values or cutting back services in a way that would harm consumers. The OFT therefore believes that the removal of Gamestation as a competitive specialist gaming retailer can be expected to give rise to an increase in prices of pre-owned gaming software, a lowering of trade-in values and/or a reduction in service to gaming customers.

75. Consequently, the OFT believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

76. This merger will therefore be referred to the Competition Commission under section 22(1) of the Act.