
Anticipated acquisition by Hachette Livre SA of Hodder Headline Limited

The OFT's decision on reference under section 33 given on 15 September 2004

Please note square brackets indicate figures removed or replaced by a range at the request of the parties

PARTIES

1. **Hachette Livre SA (Hachette)** is active in book publishing. It is a wholly-owned subsidiary of the Lagardère group, active worldwide in communications/media/publishing, high technology and defence and aerospace. For the financial year ending 31 December 2003, the UK turnover of Hachette was approximately [].
2. **Hodder Headline Limited (HH)** is the publishing arm and wholly-owned subsidiary of WH Smith Plc. For the financial year ending 31 [August] 2003, the UK turnover of HH was approximately [].

TRANSACTION

3. Hachette [announced its intention] to acquire HH on 2 August 2004. The acquisition was notified on 3 August 2004 and the 30 day statutory deadline is 15 September 2004.

JURISDICTION

4. As a result of this transaction Hachette and HH will cease to be distinct. The UK turnover of HH exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

RELEVANT MARKET

Product market

5. Hachette and HH overlap in the publication, sale and distribution of books.

Book publishing and sales to resellers

6. Publishing includes choosing authors and editing works, but not the printing of books. It can be segmented according to major categories of books (e.g. general

literature, children's books, etc.). At a narrower level, different categories may be further subdivided into smaller segments based on genre (e.g. general literature can be divided into crime, thrillers, romance, etc.).

7. The parties propose a segmentation according to major categories as follows:¹
 - General literature in hardback
 - General literature in paperback
 - Children's books
 - School text books
 - Academic and professional
 - Scientific, technical and medical
 - Dictionaries
 - Encyclopaedias and
 - Consumer education
8. It is doubtful whether these proposed categories compete closely. Purchasers of children's or academic books, for example, are unlikely to view books from within other categories as substitutes, and both authors and publishers often specialise in particular categories. For this reason, the above categories are considered as separate frames of reference for the purpose of this assessment.
9. Hardback editions of general literature tend to be available to consumers to the exclusion of substantially cheaper paperbacks for a given period, after which they tend to be withdrawn in favour of paperbacks. The transaction does not, however, raise concerns when the hardback/paperback distinction is employed. It is nonetheless appropriate to take a cautious view on substitutability and consider both formats separately as well as jointly. In contrast, it has not been necessary to distinguish between genre type in the assessment below as third parties broadly support the parties' view that there is substitutability across genres: the available evidence suggests that most publishers are active across the range of general literature genres and customer purchasing patterns tend to be similarly varied. In any event, as share of supply data and third party evidence raises no concerns in this case, firm conclusions on genre and format distinctions for market definition purposes is unnecessary.

Distribution services

10. Distribution, which can be carried out in-house and/or on behalf of outside publishers, covers the range of logistical activities involved in supplying books to customers including co-ordinating stock, warehousing, order taking and dispatch, invoicing, returns processing, and debt management.
11. As the immediacy and extent to which publishers could self-provide distribution services and/or wholly captive providers could supply third parties are both unclear, it is appropriate to limit the relevant frame of reference for the purpose of this assessment to the provision of distribution services to third parties, while considering the former alternatives as constraints in the assessment below.

¹ This broadly follows the sub-sectors identified by the European Commission in Case No COMP/M.2978 (Lagardère / Natexis / VUP).

Geographic market

12. Publishing houses active in the UK make most of their sales and distribute within this area. Accordingly, the relevant frame of reference for assessment is the UK.

HORIZONTAL ISSUES

Market shares

13. Both the parties and third parties characterise the publishing sector as fairly fragmented and highly competitive, with in excess of two thousand publishers in the UK, ranging from niche publishers to the ten large firms that account for approximately 60 per cent of sales. Rival publishers therefore appear to pose a strong constraint on the merged entity, despite the fact that, according to the parties, it will be the [third] largest publishing group in the UK in terms of turnover.

Book publishing and sales to resellers

14. The parties overlap in relation to seven categories, the largest of these being general literature in hardback and paperback. The parties estimate that, post merger, the merged entity's share will be approximately [15-20 per cent] (increment of [5-10 per cent]) of hardback, approximately [15-20 per cent] (increment of [5-10 per cent]) of paperback, and below 20 per cent (increment below 10 per cent) if taken together. Whilst it will be the second largest supplier overall in this category, other publishing houses appear to be able to compete effectively against the merged entity, including smaller publishers who are able to spot and attract good authors.
15. In relation to the other five categories of overlap (children's books; school text books; academic and professional; scientific, technical and medical; and dictionaries), the parties estimate that the merged entity's share of each will be less than [15 per cent] (increment below 5 per cent).
16. In summary, the combined shares of supply will generally remain low in relation to each category considered, and in any event comparable to or less than the merged firm's main competitors. The increments to shares are also small (10 per cent or less). This remains the case, even when a broader generic segmentation of the sector (fiction, non-fiction, and children's books) is considered.

Distribution services

17. The parties estimate that the merged entity will only account for [5-10 per cent] (increment below [5 per cent]) of third party distribution services. There are numerous other distributors actively offering this service, including the three largest UK publishing houses (Bertelsmann, Harper Collins, and [Macmillan]) each with shares in excess of the merged entity, as well as a range of potential entrants currently providing services in-house.

Barriers to entry and expansion

18. The lack of high barriers to entry into the publishing sector is confirmed by both the parties and third parties, using examples of recent new entrants who have published highly successful titles. Barriers to expansion are similarly low, it being relatively simple for a publisher to switch its operation to other book categories.
19. Third parties suggest that barriers to entry for the outsourcing of distribution services are also low and there is potential new entry by in-house publishers in the event of a price rise.

Buyer power

20. Large book retailers and supermarkets may, by virtue of their size, be able to exert some downward pressure on prices. This is generally borne out by third party respondent comments, although it would not be relevant to smaller customers. Similarly, there may exist a degree of countervailing buyer power on the part of larger publishing houses which outsource distribution services, by virtue of their size.

VERTICAL ISSUES

21. The OFT examined whether any foreclosure issues might arise in relation to publishers relying on third party distribution services, but the existence of abundant competing distributors and potential entrants alleviates any such concerns.

THIRD PARTY VIEWS

22. Third parties generally revealed no concerns about this transaction.

ASSESSMENT

23. The parties overlap in the publication, sale and distribution of books. For the purposes of this assessment, the impact of this anticipated transaction has been considered in relation to book publishing and sales to resellers (within the categories of general literature in hardback; general literature in paperback; children's books; school text books; academic and professional; scientific, technical and medical; and dictionaries) and distribution services (third party outsourced operations).
24. The combined shares of supply in the UK of the merged entity will be relatively low (less than 20 per cent) on the narrowest and broadest product definitions considered, comparable or lower than the shares of its closest competitors. The increment to the share of supply will also be small (10 per cent or less) in each case as a result of the transaction.
25. A number of factors lend additional support to the conclusion that the merger will not materially affect competition. Third parties tended to confirm that the book publishing sector in the UK is fragmented and competitive. Among a number of

smaller rivals, the merged entity will face competition from the three largest publishing houses in the UK, each of which has a strong presence across the product range of the publishing sector. Moreover, barriers to entry and expansion appear to be relatively low in respect of both publishing and sales, and third party distribution services.

26. 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

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