

**COMPLETED ACQUISITION BY WOOLWORTHS GROUP PLC
OF BERTRAM GROUP LIMITED**

Statement of issues

9 May 2007

Background to the reference

1. The inquiry group (the Group) is considering the acquisition of Bertram Group Limited (Bertram) by Entertainment UK Limited (EUK), a subsidiary of Woolworths Group PLC (Woolworths). The Group is required to determine:
 - whether a relevant merger situation has been created; and
 - if so, whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
2. Bertram is primarily a wholesaler of books to various retailers including independent book shops, chains of book shops, media book clubs and Internet suppliers. It also supplies libraries with books and some home entertainment products (HEPs) such as CDs, DVDs and video games.¹
3. EUK supplies books and HEPs to supermarkets and large retail chains. Another subsidiary of Woolworths, Total Home Entertainment Distribution Limited also acts as a wholesaler of books and HEPs to these same categories of retailers, as well as to independent retailers, internet suppliers and libraries.

Market definition

4. The Group will explore the appropriate definition of the economic market or markets affected by the merger (the relevant market(s)). In particular, whether:
 - (a) the relevant geographic market(s) is/are regional, national or international;
 - (b) there are separate relevant markets for the supply of books to some or all types of retailers, the supply of books to libraries, the supply of HEPs to retailers, and the supply of HEPs to libraries;
 - (c) markets should be defined according to:
 - (i) the method of customers' business, such as independent retailer, retail chain, Internet supplier, book club, supermarket etc;
 - (ii) the reason for the purchase, such as to meet general stock requirements, to purchase front list stock (including best sellers or other titles with anticipated high sales), back list stock replenishment, and purchases of products requiring immediate delivery (such as for specific customer orders);
 - (iii) different types of purchase, such as purchases from large or small publishers, purchases of high or low volume orders, and purchases of

¹Audio books are classified as 'books' rather than 'home entertainment products'.

products requiring immediate delivery (such as for specific customer orders) as against non-urgent orders; and

(d) there is a relevant economic market or markets for HEPs, and if so whether there are different such markets according to the type of HEP or according to the factors identified in 4(c) above.

5. As part of our consideration of issues relevant to market definition, the Group will be concerned to establish whether retailers or libraries can access supplies from sources other than wholesalers on similar terms and pricing, and whether this applies for all types and circumstances of order.

Theories of harm

6. The Group has provisionally identified four ways (see paragraph 7(a) to (d) below) in which the merger might generate an SLC, which might face some customers with:

(a) an increase in price (ie reduction in the discount off Recommended Retail Price (RRP) offered to library and/or retail customers); and/or

(b) a reduction in promotional support for book sellers; and/or

(c) a reduction in the range of books or other products offered; and/or

(d) a reduction in the quality of service; and/or

(e) a reduction in innovation;

7. These four hypothetical and provisional theories of harm ((a) to (d) below) do not preclude an SLC being identified on another basis. The theories advanced consider whether or not the merger has resulted, or may be expected to result in:

(a) an increase in the market power of the merged entity in the wholesale supply of books to some or all types of retailers;

(b) an increase in the market power of the merged entity in book wholesaling to libraries;

(c) an incentive for the merged entity to favour its own book retailing operations, to the disadvantage of other customers, as part of the vertical integration of its wholesale supply and retail of books; and

(d) the creation or strengthening of coordination between book wholesalers.

8. In considering these theories of harm, the Group notes that the evidence available to date suggests that Woolworths's current involvement in the wholesale of books to libraries appears to be small, and that Bertram face several competitors of a similar or larger size. The CC is ready, however, to take evidence on this issue.

9. Bertram's involvement in the provision of non-book products (HEPs such as DVDs) appears to be very limited. At this stage, the Group has not formulated any theories of harm relating to the provision of those products.

Related competitive issues

10. The Group intends to consider a number of issues, identified below, when determining whether the merger may be expected to lead to an SLC on the basis of any of the above, or any other, theories:
- (a) the degree to which (if at all) Woolworths and Bertram have competed with each other historically, currently compete, or are likely to compete in the future;
 - (b) whether, and if so to what extent, Woolworths and Bertram have historically faced, currently face or are likely to face actual and/or potential competition from other book wholesalers;
 - (c) whether Woolworths and Bertram have historically faced, currently face or are likely to face actual and/or potential competition from other sources of book supply, in particular from direct supply from publishers;
 - (d) whether competition between wholesale book distributors is national or differs throughout the UK on a regional basis, and if so, what differences occur;
 - (e) how competition is manifested, for example in prices (in terms of discount off RRP), range of books sold, speed of delivery, the ability to cater for small orders, advice and marketing support to retailers, innovation, etc;
 - (f) whether there are any significant barriers restricting the ability of retailers and/or libraries to switch between suppliers (for example pricing mechanisms, stock control and/or ordering systems), and the likely effect of the merger upon those factors;
 - (g) whether publishers' RRPs and the discounts negotiated between publishers, wholesalers, and retailers or libraries affect competition at the wholesale level;
 - (h) whether and if so to what extent any increase in market power of the merged entity may be expected to result in a reduced number of book retailers and/or libraries, and if so what effect might this have on final consumers; and
 - (i) whether any barriers to entry or expansion in any relevant market are likely to change as a result of the merger.

Offsetting factors

11. The Group will explore whether any factors might offset any of the consequences of the merger, in particular:
- (a) whether and if so to what extent any potential lessening of competition might be offset by sustainable entry or expansion into book wholesaling;
 - (b) whether any potential lessening of competition might be offset by the publishers' control over RRPs and the discounts offered to their customers;
 - (c) whether any identifiable trends in any relevant market have had, or may be expected to have a significant effect on competition in any relevant market in the short to medium term which may offset any effects of the merger (or alternatively reinforce those effects); and

- (d) whether new technologies might significantly affect competition in any relevant market in the short to medium term which may offset any effects of the merger (or alternatively reinforce those effects).

Substantial lessening of competition

12. The Group will have to consider whether, taking account of all the above, the merger has resulted, or may be expected to result in an SLC in any relevant market.

The counterfactual

13. The Group will need to compare the expected effects of the merger against the situation which is most likely to have occurred had the merger not taken place (the counterfactual). In particular, whether in the absence of this merger:
- (a) Bertram would have been likely to have been acquired by an alternative purchaser, and if so what strategy such a purchaser would have followed; or
 - (b) Bertram would have been likely to have remained as an independent competitor in the short to medium term, and if so what strategy it would have been likely to follow; and
 - (c) Woolworths and its subsidiaries would have been likely to continue as a competitor in the wholesale supply of books and/or HEPs in all the areas and to all the customers they serviced before the merger.

Relevant customer benefits

14. The Group will explore whether any relevant customer benefits may be expected to arise as a result of the merger, the nature of any such benefits, and those customers most likely to receive those benefits.

Possible remedies

15. Should the Group conclude that the merger has resulted, or may be expected to result in an SLC, it will consider whether remedies are appropriate and what remedies would effectively address the SLC. If so, the Group will issue a further statement at the appropriate stage.

Comments

16. Anyone wishing to comment on any of the issues raised is requested to do so by 18 May 2007 by email to woolworths.bertram@cc.gsi.gov.uk or in writing to:

Woolworths/ Bertram Inquiry,
Inquiry Secretary,
Competition Commission,
Victoria House,
Southampton Row,
London WC1B 4AD