

**ANTICIPATED ACQUISITION BY HMV GROUP PLC THROUGH  
WATERSTONE'S PLC OF OTTAKAR'S PLC**

**Statement of issues**

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The issues that the CC intends to consider are:

**Assessment of the competitive effects of the proposed merger**

The inquiry group (the Group) would like to explore the competitive effects of the proposed merger within any relevant market compared with what would be likely to occur in the absence of the merger (the counterfactual). In particular, the Group will consider:

***Underlying factors***

- (a) whether there are identifiable trends in the market which have had, or are likely to have, a significant effect on competition in any relevant market in the short to medium term;
- (b) whether new technologies (eg e-books, print-on-demand) might significantly affect competition in any relevant market in the short to medium term;

***Competitive effects***

- (c) whether, and if so to what extent, Waterstone's and Ottakar's have competed with each other historically, currently compete, or are likely to compete in the future;
- (d) whether, and if so to what extent, Waterstone's and Ottakar's have faced in the past, currently face, or are likely to face actual and/or potential competition from other 'bricks and mortar' book retailers (eg WHSmiths, Borders/Books etc, independent book retailers);
- (e) whether, and if so to what extent, Waterstone's and Ottakar's have faced in the past, currently face, or are likely to face actual and/or potential competition from other retailers including supermarkets, Internet retailers, book clubs etc;
- (f) whether any competition between 'bricks and mortar' retailers is primarily local, regional or national in nature;
- (g) whether any competition between Waterstone's, Ottakar's, and other retailers is competition on price and/or on non-price factors;
- (h) whether publishers' Recommended Retail Prices (RRPs) act as effective ceilings for retail prices and how the RRP, and associated discounts negotiated between publishers and retailers, affect retail competition;
- (i) whether the proposed merger might be expected to create or increase the exercise of market power by the merged entity in any relevant market at a local, regional or national level, and lead to:
  - (i) an increase in price (ie reduction in the level of discount off RRP offered to customers); and/or

- (ii) a reduction in range of books; and/or
- (iii) a reduction in quality of service; and/or
- (iv) a reduction in innovation;

and if so which customers would be affected and in what ways;

- (j) whether the proposed merger might be expected to create or increase the exercise of market power by the merged entity in any relevant market and lead to a reduction in the number of independent book retailers, and if so what effect this might have on customers;
- (k) whether, and if so to what extent, the proposed merger would reduce the opportunities for publishers to get their books stocked, and if so whether this would lead to a reduction in the range of books available to customers;
- (l) whether, and if so to what extent, the proposed merger would result in fewer promotions of new titles by book retailers considered by customers as specialists, leading to:
  - (i) fewer opportunities for the creation of 'bestsellers'; and/or
  - (ii) fewer opportunities for other books to achieve a reasonable volume of sales;
- (m) whether, and if so to what extent, the proposed merger might increase the bargaining power of retailers with respect to publishers which might be expected to cause authors and/or publishers to:
  - (i) reduce the numbers of books published; and/or
  - (ii) increase the RRP of certain books; and/or
  - (iii) exit the market;
- (n) whether the proposed merger may be expected to create or increase the likelihood of coordination between retailers leading to:
  - (i) an increase in price (ie a reduction in the level of discount off RRP offered to customers); and/or
  - (ii) a reduction in range of books; and/or
  - (iii) a reduction in quality of service; and/or
  - (iv) a reduction in innovation;

and if so which customers would be affected and in what ways;
- (o) whether barriers to entry or expansion in any relevant market at a local, regional or national level are likely to change as a result of the proposed merger;

### **Offsetting factors**

- (p) whether, and if so to what extent, any potential lessening of competition might be offset by sustainable entry or expansion at local, regional or national level, in particular

given the effects of the abolition of the Net Book Agreement and the emergence of substantial entrants within the last ten years;

- (q) whether any potential lessening of competition might be offset by the publishers' control over RRP's and the discounts offered to wholesalers and retailers; and

### ***Substantial lessening of competition***

- (r) whether, taking account of all of the above, the proposed merger may be expected to result in a substantial lessening of competition in any relevant market.

### **The counterfactual**

The Group would like to explore what would be likely to occur in the absence of the proposed merger (the counterfactual), in particular:

- (a) whether, if the proposed merger did not go ahead, Ottakar's would be likely to be acquired by an alternative purchaser, and if so the likely future strategy of such an alternative purchaser; or
- (b) whether, if the proposed merger did not go ahead, Ottakar's would be likely to remain independent in the short to medium term and if so, what strategy an independent Ottakar's might be expected to follow.

### **Market definition**

The Group would like to explore the appropriate definition of the economic market or markets affected by the proposed merger (the 'relevant market'), in particular:

- (a) whether the relevant product market includes all retail sales of books, or whether, for example, retail sales to institutional customers or sales from campus book stores should be excluded;
- (b) whether a narrower product market definition is appropriate, and if so how this should be defined:
  - (i) method of sale, for example bricks and mortar vs Internet sales or other distance selling;
  - (ii) size of range, for example large-range vs small-range retailers;<sup>1</sup> or
  - (iii) popularity of titles sold, for example best sellers vs other; or
  - (iv) genre of book, for example fiction vs non-fiction;
- (c) whether the relevant geographic market is national, or whether there are any relevant regional markets (eg Scotland or Wales) or local markets.

In relation to (a), information received so far by the CC supports the OFT's view that retail sales to institutional customers should not be included in the relevant product market.

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<sup>1</sup>Large-range retailers stock a wide range of titles (10,000–25,000 or more). Small-range retailers stock a comparatively small range of titles (often fewer than 5,000) and may devote only a proportion of their retail space to sales of books.

In relation to (c), since Ottakar's has no book stores in Northern Ireland, the CC currently considers that the proposed merger would not have regional or local effects outside Great Britain.

### **Relevant customer benefits**

The Group would like to explore whether any relevant customer benefits might be expected to arise as a result of the proposed merger, and if so what these benefits are likely to be, which customers they would be likely to benefit, and why they would be unlikely to arise in the absence of the proposed merger.

### **Possible remedies**

Should the Group conclude that the proposed merger may be expected to result in a substantial lessening of competition, it will consider whether, and if so what, remedies might be appropriate, and will issue a further statement at a later date.