

**OFFICE FOR COMPETITION**

**DECISION**

13 August, 2011

**Comp-CCD/35/11– Amazon.com, Inc/The Book Depository International Ltd**

**Decision on acquisition in terms of regulations 6 (1) (ii) of the Control of Concentrations Regulations (LN 294 of 2002 as subsequently amended)**

**The Office for Competition,**

**Having considered the notification of 4 July, 2011 pursuant to regulation 5 of the Control of Concentrations Regulations**

**Having considered the provisions of the Control of Concentrations Regulations**

**Whereas,**

**A. FACTS**

1. On 4 July, 2011, Amazon.com, Inc (henceforth 'Amazon') notified the Office for Competition (henceforth 'OC') with a share purchase agreement of the 30 June 2011, whereby Amazon EU S.à.r.l., a wholly-owned subsidiary of Amazon, will acquire all outstanding shares in The Book Depository International Ltd (henceforth 'Book Depository'), which is the holding entity of The Book Depository.
2. The filing and the acceptance of such notification was notified to the public through a public notice in the Government Gazette number 18, 775, on 8 July, 2011 and a notice that appeared in a local newspaper on 8 July, 2011.

**B. PARTIES**

3. The Notifying Party is a company listed on the Nasdaq Global Select Market and registered under the Laws of the United States of America, having its registered office at 410 Terry Avenue North, Seattle, Washington 98109-5210, United States of America. Amazon is an online retailer and its product lines include books, music CDs, videotapes and DVDs, software, consumer electronics, kitchen items, tools, lawn and garden items, toys and games, baby products, apparel, sporting goods, jewellery, watches, health and personal-care items, beauty products, musical instruments, clothing, industrial and scientific supplies and groceries. It is active worldwide and

has its operations divided into two principal segments: North America and Worldwide. Amazon's customers in the United States are served primarily by Amazon.com, however it has specific sites in the United Kingdom (Amazon.co.uk), Germany (Amazon.de), France (Amazon.fr), Japan (Amazon.co.jp), Canada (Amazon.ca) and China (Amazon.cn).

4. Book Depository is a company incorporated under the Laws of the Republic of Cyprus having its registered office at Andrea Zakou 4, Egkomi, 2404 Nicosia, Republic of Cyprus. It is an online book shop that offers a wide range of books in all book formats to approximately 100 countries. It also offers a range of other products including DVDs, CDs, Video and PC games, hardware and other products. However, the sale of these products is negligible.

#### **C. NOTIFIABLE CONCENTRATION**

5. Regulation 2(d) (ii) refers to the acquisition by one or more undertakings or by one or more persons already controlling at least one undertaking, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more undertakings.
6. In this case, the notified operation is a concentration within the meaning of regulation 2 (d) (ii) of the Regulations on the Control of Concentrations whereby Amazon through its subsidiary Amazon EU S.à.r.l, acquires sole control of Book Depository by a share purchase agreement.

#### **D. THRESHOLD FOR NOTIFICATION**

7. The aggregate turnover of the undertakings concerned in the preceding financial year exceeds €2.33 million in Malta and each of the undertakings concerned had a turnover in Malta equivalent to at least ten per cent of the combined aggregate turnover of the undertakings concerned.
8. The notified concentration, therefore, meets the notification threshold as set out in regulation 2(d) of the Regulations.

#### **E. THIRD PARTY OBJECTIONS**

9. There were no Third Party Objections.

## **F. THE RELEVANT MARKET**

10. The parties subject to the proposed concentration overlap in the online retail supply of books, in software products such as video games, DVDs, CDs and in PC hardware. However, Book Depository's turnover in relation to software and hardware products in Malta is insignificant, therefore, these markets will not be assessed further and the OC will proceed to assessing the market for the retail supply of books.
11. Consumer demand for books has risen over the past five years, registering a growth of 28 percent.<sup>1</sup> According to a recent study by MISCO International<sup>2</sup>, 65 per cent of the respondents aged eleven years and over in Malta, bought books from bricks and mortar retailers. On the other hand, 23 per cent purchased books from the internet.
12. The OC identified four predominant types of book retailers present in Malta:
  - i. Generalist bricks and mortar book retailers, which may also have their own online service;
  - ii. Specialist bricks and mortar book retailers, which may also have their own online service;
  - iii. Bricks and mortar retailers that sell books, largely bestsellers, as part of a wide range of goods, such as stationeries; and
  - iv. Online retailers.
13. In defining the relevant market, the OC took into consideration:
  - i. Submissions of the Notifying Parties;
  - ii. Submissions of other book retailers; and
  - iii. Submissions of the National Book Council.

### **F.1 PRODUCT MARKET DEFINITION**

#### *Individual Titles and Book Categories*

14. The narrowest possible product definition, in theory, would be that of an individual book title. A wider definition would be book categories. From the replies submitted, the OC considers that it would not be helpful to define the market within the Maltese context in terms of individual titles or book categories, as the majority of book retailers active on the market supply a wide range of

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<sup>1</sup> Data submitted by National Statistics Office.

<sup>2</sup> 'Research on Reading Habits: Volume 1-Adults', MISCO International, 2010.

titles and all or a broad category of books. In addition, retailers wishing to vary or increase the titles and categories they offer should not face any significant constraints to do so in a short span of time and at little if any cost.

#### *Best-Sellers and Deep-Range Titles*

15. Another possible avenue to defining the market for book retailing would be that on the basis of a distinction between 'best-sellers'<sup>3</sup> and 'deep-range'<sup>4</sup> books. Industry participants expressed the view that considering the size of the local market such a fine distinction would not be appropriate. This is because the majority of retailers do not sell solely best-sellers or deep-range titles since doing so would not be financially viable. On this basis the OC also considers that it would not be helpful in practice to determine the effects of the proposed concentration in the context of a market for best-sellers and deep-range titles.

#### *Public Libraries and Second-Hand*

16. The OC did not consider that the market definition should include second-hand books or books borrowed from public libraries as there was no evidence that customers would switch from purchases of new books to second-hand books or borrowed books following a small change in the price of new books.

#### *Types of Retailers*

17. The OC also considered whether it is appropriate to define the market according to the different channels for distribution at retail level.

18. Online retailers provide customers with a visual interface that displays the title range available. Customers select their book(s) and make a purchase using remote payment methods. The time taken between placing an order and receipt of the book can vary from one to three weeks, depending on the location of the customer. Online retailers do not hold stock, and therefore are not limited by physical space. In addition, online retailers provide value-added services such as reviews and clustering<sup>5</sup>.

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<sup>3</sup> Titles ranked in the top 5,000 in terms of sales.

<sup>4</sup> Titles ranked outside the top 5,000 in terms of sales.

<sup>5</sup> Clustering is a function which shows other books purchased by customers who purchased a specific title.

19. On the other hand, bricks and mortar shops hold books in stock and offer interactive shopping experience, which allows customers to peruse the titles prior to purchasing books. Furthermore, bricks and mortar shops offer face-to-face advice, which is often valued highly by the customer.
20. Whilst, there is a clear difference in the shopping experience offered by bricks and mortar retailers and online retailers, the distinction has blurred over time. In Malta, nowadays, the majority of households have access to Internet and are more familiar with online purchasing. Indeed, according to the Malta Communications Authority, 41 per cent<sup>6</sup> of online buyers have bought books in 2010. In addition, free-riding between internet and book retailers is common: a customer might look for reviews online, but then purchase the book from a bricks and mortar shop. By analogy, a customer might browse titles at a book store and look for advice, but then buy the book from an online retailer. Moreover, the OC is satisfied that there is price competition between bricks and mortar retailers and online retailers. For the above-mentioned reasons, the OC considers that the retail supply of books through bricks and mortar retailers and that through online retailers is substitutable.
21. From a supply-side perspective, the OC considers that it is possible to set up an online bookshop without incurring significant costs or risks in the short term. It is only set-up and marketing costs that are incurred since no rental costs have to be borne by the entrant. Indeed, some bricks and mortar shops in Malta have established their online bookstore.
22. For the above-mentioned reasons, the OC considers that bricks and mortar shops and online retailers form part of the same market.<sup>7</sup> Therefore, for the purpose of this investigation the relevant product market is the sale of new books through bricks and mortar and online retailers.

## **F.2 GEOGRAPHIC MARKET DEFINITION**

23. The geographic market for retail sales may be considered wider than national because of internet sales. However, the OC notes that sales through bricks and mortar shops represent the large majority of total sales of books generated in Malta, that bricks and mortar shops are able to constrain the behaviour of online retailers and that customers are located in Malta. In view of

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<sup>6</sup> MCA Data - as a percentage of those who have bought online in last 6 months.

<sup>7</sup> The Commission in its Decision *Egmont/Bonnier* has also identified a single market for all sales of books to final customers and noted that its market investigation did not bring forward any elements on the basis of which a distinct 'distant sales' market 'including book clubs and mail orders and sales via the internet' might be identified (COMP/M.4611 – Egmont/Bonnier, 15 October 2007, paragraphs 13 and 19).

this, the OC considers that the effects of the proposed concentration should be considered primarily at the national level. Thus, the OC adopts a conservative approach in defining the geographic market and considers it to be national. While such definition may be limited, the OC recognises that if competition concerns are not identified within a narrowly defined market, they are unlikely to arise in a more broadly defined market.

### **F.3 CONCLUSION ON THE RELEVANT MARKET**

24. The relevant market is therefore the retail sale of new books through bricks and mortar and online retailers in Malta.

## **G. ASSESSMENT**

### **G.1 MARKET SHARES**

25. There is no data available on the turnover of books in order to determine the market share of industry participants. According to the Notifying Party the estimated total value of the book retail market segment in Malta is between €15 and €20 million. This estimate was based on the average per-capita expense on books for citizens of the United Kingdom (€50.5 million) applied to the population of Malta, 400,000, which amounts to approximately €20 million. The Notifying Party submitted that since there might be slightly less of a publishing culture in Malta than there appears to be in the United Kingdom, this estimate was to be lowered to arrive at an estimate between €15million and €20 million.<sup>8</sup>

26. The National Book Council estimates that the total turnover in Malta is in the range of around €12 million. Based on a conservative turnover of €12million to €15million, the parties' market share would be around [confidential] per cent. Given this market share, the OC is satisfied that the concentration will not significantly affect competition on the relevant market.

### **G.2 COMPETITIVE CONSTRAINTS FROM OTHER RETAILERS**

27. Price competition in the book retail sector appears to be predominantly in place, with different types of retailers competing on price. Moreover, the OC considers that competition within the book retailing market in general, also appears to occur on non-price factors, including the range

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<sup>8</sup> Amazon and Book Depository submissions.

of stocked titles and the quality of retail experience, like pre-sales service, marketing activities and postage and delivery.

#### *Bricks and Mortar Book Stores*

28. The major bricks and mortar bookstores, which are strategically dispersed around Malta and stock a wide range of titles, enjoy a stronger position on the market. Some of the generalist and specialist bookstores have now developed their online store, increasing their market share in the past few years by providing customers with an enhanced browsing experience and significant pre-sales service. Since neither of the parties to the concentration have an offline site in Malta, following the acquisition Amazon's turnover would only be limited to customers who tend to purchase online, whereas, bricks and mortar shops which have developed their online store will attract both offline and online customers.

#### *Other Bricks and Mortar Retailers*

29. The OC also recognises that although, other retailers that sell books as part of a wide range of goods, may not stock a sufficiently wide range of books, they can nevertheless provide a competitive constraint particularly if they have a strong customer base.

#### *Online Retailers*

30. Although, Amazon and Book Depository have built a good brand image on the national market they face competition from other online retailers, both national and foreign based. Online retailers offer comparable browsing experience, in that they can make recommendations based on past purchases and provide customer reviews. Moreover, online retailers compete with both parties in terms of prices and on other factors such as range of titles and postage and delivery.

### **G.3 POTENTIAL COMPETITION: ENTRY AND EXPANSION**

31. The Notifying Party has argued that barriers to entry are low, both for the traditional 'bricks and mortar' shops and online retailing. It argued that it is fairly easy to set up a bookshop as the investment would be limited to lease of a property, adequate working capital and sufficient stock. With regard to an online bookshop, the parties argued that it is fairly straightforward as there are no costs associated with property lease.

32. The OC agrees that entry into the market is not difficult particularly in the online retail segment of the market as evidenced by the fact that a number of bricks and mortar retailers have

developed their online retail shop. The OC also considers that expansion is possible at a national level, especially in the case of book retailers having an existing network of stores in Malta. Once established in the market, it is likely that an efficient retailer could source additional stock through existing supplier relationships.

#### **H. ANCILLARY RESTRICTIONS**

33. The Notifying Party submitted that contractual obligations exist in the Share Purchase Agreement that they consider to be directly related to and necessary to the implementation of the concentration. These relate to a *non-compete obligation* and a *non-solicitation obligation* on the sellers for a period of [confidential] from the *Closing Date* of the Agreement. The OC notes that these two obligations refer solely to the same economic activities as the purchased business. The OC considers these restrictions as directly related and necessary for the implementation of the concentration and are therefore cleared by this decision.

#### **DECISION**

34. For the above mentioned reasons and in terms of regulations 6 (1) (ii) of the Regulations on Control of Concentrations, it is therefore decided:

- (1) that the Concentration falls within the scope of the Regulations on Control of Concentrations;
- (2) that the Concentration does not raise serious doubts as to its lawfulness;
- (3) not to oppose the notified Concentration and to declare it a lawful Concentration.

**Dr Sylvann Aquilina Zahra**  
Director General (Competition)