



## **DETERMINATION OF MERGER NOTIFICATION M/11/019 -**

### **Amazon/The Book Depository**

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#### **Section 21 of the Competition Act 2002**

#### **Proposed acquisition by Amazon.com, Inc. of The Book Depository (International) Limited.**

**Dated 26 July 2011**

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#### **Introduction**

1. On 4 July 2011, in accordance with section 18 of the Competition Act 2002 (the "Act"), the Competition Authority (the "Authority") received a notification of a proposed transaction whereby Amazon.com, Incorporated ("Amazon") would acquire sole control of The Book Depository (International) Limited ("The Book Depository").

#### **The Undertakings Involved**

##### ***The Acquirer***

2. Amazon is a publicly traded company incorporated in the United States. Amazon is active worldwide and in the State in the online sale of a wide variety of products within the following categories: Unlimited Instant Videos<sup>1</sup>, MP3s and Cloud Player<sup>2</sup>, Amazon Cloud Drive<sup>3</sup>, Kindle<sup>4</sup>, Appstore for Android<sup>5</sup>, Digital Games & Software, Audible Audiobooks, Books, Movies, Music & Games, Electronics & Computers, Home, Garden & Tools, Grocery, Health & Beauty, Toys, Kids & Baby, Clothing, Shoes & Jewellery, Sports & Outdoors and Automotive & Industrial.
3. Amazon also provides an online platform/marketplace from which approximately [...] retailers<sup>6</sup> sell their products to customers. Abebooks is an online platform for book retailers that is owned by Amazon.<sup>7</sup> The Book Depository is amongst a number of online sellers who use this platform to sell its books to customers.

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<sup>1</sup> This involves the instant streaming of movies and TV shows from the online subscription service offered by Amazon.

<sup>2</sup> Amazon offers digital storage space for MP3 music libraries.

<sup>3</sup> Amazon offers digital storage space.

<sup>4</sup> The Kindle is the electronic book reader that is manufactured and sold by Amazon.

<sup>5</sup> Amazon provides the platform for the downloading of applications for the Android mobile device.

<sup>6</sup> These are professional retailers and exclude the private sale of books by individuals.

<sup>7</sup> Third party book retailers pay a commission to Abebooks for each sale made through the platform. Sales of books by The Book Depository through Abebooks are included in The Book Depository's turnover.

4. Amazon has divided its operations into two principal geographic segments; North America and Worldwide. Amazon's North American customers are served primarily by the website Amazon.com. Elsewhere, customers are served by the specific national websites such as: Amazon.co.uk (United Kingdom), Amazon.de (Germany), Amazon.fr (France), Amazon.co.jp (Japan), Amazon.ca (Canada), Amazon.it (Italy) and Amazon.cn (China). Currently, there is no specific Amazon website for the State; customers here are served primarily via the Amazon.co.uk website.
5. In relation to the online sale of books, Amazon is active in the sale of a wide range of new and used books such as general literature, fiction, non-fiction, children's books and comic books. These books are available for purchase in all formats, namely: paper back, hard back, audio books and electronic books (e-books). Amazon is not active in the wholesale of books outside of the United States.
6. Amazon is also engaged in the following book related activities:
  - the publication of little known or foreign language books through Amazon Crossing and Amazon Encore, business entities within the Amazon group of companies;
  - the provision of production services to customers to enable them to produce their own CD, DVD or book, through Createspace, a business entity within the Amazon group of companies;
  - the manufacture and sale of the Kindle e-book reader; and,
  - the production of audio books through Audible Limited<sup>8</sup> and Brilliance Audio Inc.<sup>9</sup>, subsidiaries of Amazon.
7. In the State, Amazon has a corporate office located in Dublin that provides technical support services to the business activities of Amazon. Amazon also has a customer service centre located in Cork that provides support to customers shopping from Amazon's websites in the United Kingdom, France and Italy.
8. For the financial year 2010, Amazon generated a worldwide turnover of €25.7 billion. In the State for the same period, Amazon generated turnover of €[...] million.<sup>10</sup>

### ***The Target***

9. The Book Depository is a privately held company that was established in 2004 and has its registered office in Nicosia, Cyprus. The Book Depository is primarily active in the online sale of new books (in all

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<sup>8</sup> Audible.com was acquire by Amazon in 2008 and supplies audio books to Apple's iTunes stores and produces exclusive science fiction and fantasy audio books under its "Audible Frontiers" imprint.

<sup>9</sup> Brilliance Audio, which was acquired by Amazon in 2007, [...].

<sup>10</sup> Amazon reports its turnover in US Dollars which is converted to Euro on the basis of the average annual exchange rate published by Bloomberg, i.e., EUR1=USD 1.3269.

formats, including e-books<sup>11</sup>) and to a lesser extent videogames, CDs, DVDs, PC hardware and calendars to over 100 countries worldwide including the State. The Book Depository operates through the websites: [www.bookdepository.co.uk](http://www.bookdepository.co.uk) and [www.bookdepository.com](http://www.bookdepository.com). Currently, there is no specific website for the State; customers here are served primarily via the [www.bookdepository.co.uk](http://www.bookdepository.co.uk) website.

10. Up until May 2010, The Book Depository re-published out-of-copyright books under its Dodo Press label. Whilst The Book Depository is no longer active in publishing these books, the back catalogue is still available through Print on Demand<sup>12</sup>. [...].
11. In the State, the Book Depository is primarily active in the online sale of books. However, it does not have any physical presence in the State or on the island of Ireland.
12. For the financial year 2010, The Book Depository generated turnover of €[...]. In the State for the same period, it generated turnover of €[...]. Of this figure, €[...] was generated from the sale of products other than books.<sup>13</sup>

### **Third Party Submissions**

13. No third party submissions were received.

### **Analysis**

14. In the State, there is no vertical overlap between the activities of the parties. However, there is horizontal overlap between the parties' activities as both are active in the sale of books, CDs, DVDs, Videogames, PC hardware and calendars to final customers.

### ***Sale of CDs, DVDs, Videogames, PC hardware and calendars to customers in the State***

15. There is minimal horizontal overlap in the State in relation to the parties' online sales of CDs, DVDs, videogames, PC hardware and calendars. In 2010, The Book Depository generated approximately €[...] from the sale of CDs and approximately €[...] from the sale of DVDs, videogames and other products.
16. Given the minimal amount of sales of CDs, DVDs, videogames, PC hardware and calendars by The Book Depository in the State and the presence of alternative retailers such as HMV, Game, Play.com and CDWoW.ie, the Authority considers that it is unlikely that the proposed transaction will give rise to any competition concerns in relation to the sale of these products in the State.

### ***Sale of Books to Customers in the State***

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<sup>11</sup> The parties state that the online sale of e-books by The Book Depository represented less than [...] % of its total book sales in 2010.

<sup>12</sup> Print on Demand means that The Book Depository will print any of the out-of-copyright Dodo Press titles upon receiving an order from a customer. The book will be provided in both hard and soft copy.

<sup>13</sup> €[...] was generated from the sale of CDs and €[...] from the sale of DVDs, videogames and other products.

## *Relevant Markets*

### *Views of the parties*

17. The parties state that the most appropriate frame of reference for the purposes of the proposed transaction is the retail sale of books. The parties further state that even if the retail sale of books was segmented according to any of the following three categories, no competition concerns arise as a result of the proposed transaction. The parties identified the following three categories:
- (i) *The sales channel* - to include independent book stores, book chains, supermarkets, newsagents/kiosks, book clubs, the internet, mail order and telemarketing.
  - (ii) *The type of book* - by category, (e.g., general literature, children's books, art books, educational books) and by format (i.e., hard or paper back, audio book and e-book).
  - (iii) *The type of customer* - institutional (libraries and educational institutions) and private customers.
18. The parties state that they operate on an international retail market with neither operating a specific website for the State. The parties suggest that, given The Book Depository's limited activities in the State, the precise geographic market definition may be left open.

### *Views of the Authority*

19. The parties are both active in the online sale of books to final customers. They source books from either wholesalers or, in the case of Amazon, directly from publishers.
20. The Authority considers that the market for the retail sale of books to final customers may be segmented according to the different categories suggested by the parties in paragraph 17 above.
21. However, for the purposes of assessing the proposed transaction, the Authority does not consider it necessary to reach a conclusion on the precise relevant product market(s) definition because regardless of whether the market is defined in a broad or narrow manner it is unlikely that the proposed transaction will give rise to any competition concerns.
22. Whilst the parties are both involved in the online sale of books to customers in the State, neither party has a website dedicated to the State. Customers located in the State are more likely to purchase books from the websites of the parties dedicated to the United Kingdom.<sup>14</sup> Therefore, the Authority considers that the relevant geographic market is likely to be as wide as the State and the United Kingdom.<sup>15</sup>

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<sup>14</sup> In relation to The Book Depository, customers in the State are re-directed automatically to the U.K. based website: [www.bookdepository.co.uk](http://www.bookdepository.co.uk). In relation to Amazon, customers located in the State are recommended to use Amazon.co.uk.

<sup>15</sup> The geographic market is unlikely to be international or worldwide given that customers based in the State are redirected to websites located in the United Kingdom.

23. However, for the purposes of assessing the proposed transaction, the Authority considers that it is not necessary to reach a conclusion on the relevant geographic market(s) because regardless of whether it is defined in a broad or narrow manner it is unlikely that the proposed transaction will give rise to any competition concerns.

### **Competitive Assessment**

24. For a number of reasons, the Authority considers that it is unlikely that the proposed transaction will give rise to any competition concerns in relation to the sale of books to customers in the State.
25. The Book Depository has a minimal presence in the State in the sale of books to final customers. The Book Depository accounted for less than [10] % of all books sold in the State in 2010. According to the results of a report by PriceWaterhouseCoopers,<sup>16</sup> the combined market share of the merged entity post-transaction would not exceed [less than 15] % on the narrower market segment of sales of books to private customers.<sup>17</sup>
26. The Book Depository's sale of e-books accounted for less than [...] % of its total book sales in 2010. This accounts for approximately [less than 10] % of the total sale of books to all customers in the State.
27. There are a number of credible alternative book retailers active in the State who sell similar categories of books to customers as the parties do. Some of these retailers operate both 'brick and mortar' and online bookshops, for example, Easons and Dubray Books. Furthermore, retailers such as Tesco Ireland sell books to customers via their supermarket stores and online. Other 'brick and mortar' bookshops active in the State are Hodges Figgis and Hughes & Hughes.<sup>18</sup>
28. The following Irish and international online retailers are also active in the sale of books to customers in the State: Books Unlimited, Bestsellers.ie, Kenny's Bookshop, Play.com and The Book People.
29. In light of the above, the Authority considers that the proposed transaction does not raise any competition concerns in relation to any market for the sale of books in the State.

### **Ancillary Restraints**

30. As part of the proposed transaction, the [...] individual shareholders, being the Sellers, have entered into non-compete and non-solicitation covenants for a duration of [...] commencing on the completion date of the proposed transaction. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

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<sup>16</sup> PriceWaterhouseCoopers Report: '*Consumer and Educational Book Publishing*' 2009-2013.

<sup>17</sup> The combined market share of the merged entity post-transaction would be approximately [0-10]% in relation to the sale of all books to all customers in the State.

<sup>18</sup>It is noted that Hodges & Figges, owned by Waterstones within the HMV Group, is currently being sold and that Hughes & Hughes sold 7 of its bookshops to Easons in 2010.

## **DETERMINATION**

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Amazon.com, Incorporated would acquire sole control of The Book Depository (International) Limited will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect

**For the Competition Authority**

**Noreen Mackey**

**Member of the Competition Authority**

**Director, Mergers Division**