

Terms of reference and conduct of inquiry

1. On 6 December 2005 the OFT sent to the CC the following reference, as set out below:

1. Whereas in exercise of its duty under section 33(1) of the Enterprise Act 2002 (“the Act”) to make a reference to the Competition Commission (“the Commission”) in relation to an anticipated merger the Office of Fair Trading (“the OFT”) believes that it is or may be the case that—

(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation in that:

(i) enterprises carried on by or under the control of HMV Group plc will cease to be distinct from enterprises carried on by or under the control of Ottakar's plc (“Ottakar's”); and

(ii) the value of the turnover in the United Kingdom of the enterprises carried on by or under the control of Ottakar's exceeds £70 million; and

(b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, namely the retail sale of books to final consumers in the United Kingdom, particularly by retailers who sell a wide range of titles (Large Range Retailers).

2. Now therefore the OFT in exercise of its duty under section 33 of the Act, hereby refers to the Commission, for investigation and report within a period ending on 22 May 2006, the following questions in accordance with section 36 of the Act—

(a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

(b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

3. In relation to the question whether a relevant merger situation will be created, the Commission shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if they find that the other is satisfied.

(signed) **John Fingleton**
Chief Executive
Office of Fair Trading
6 December 2005

Conduct of inquiry

2. We placed notices inviting interested parties to submit evidence to the CC in the *Times Literary Supplement*, *The Guardian* and *The Bookseller*. We also placed an invitation to express views to us on the CC website,¹ together with an administrative timetable for the inquiry.
3. In addition, we sought and received written evidence from authors, publishers, wholesalers, retailers, customers, trade and professional organizations and other interested parties.
4. We received over 120 written submissions from third parties and published non-sensitive versions of many of these on the CC website together with a collation of key arguments and views of third parties. We held 15 third party hearings with a range of authors, publishers, wholesalers, retailers and others including two joint hearings with

¹www.competition-commission.org.uk.

members of the Publishers Association and one joint hearing each with members of the Independent Publishers Guild and the Society of Authors. CC staff also visited a major publisher in London and attended a cross-party meeting with Members of the Scottish Parliament and Scottish publishers and authors in Edinburgh. In addition, we commissioned a survey of Waterstone's and Ottakar's customers from GfK NOP and published GfK NOP's report on the survey on our website.

5. We received written evidence from HMV and Ottakar's. A non-sensitive version of their initial submissions can be found on our website. In addition, the companies each attended two hearings. Members of the Group, accompanied by staff, visited Waterstone's bookstore in Kingston and Ottakar's bookstore in Brentwood as well as a number of other bookstores in and around those towns.
6. In the course of our inquiry, we sent to HMV and Ottakar's a number of working papers (or extracts). We also sent to them, and published on our website at the relevant time: a Statement of issues, a Notice of provisional findings and our provisional findings report.