



DETERMINATION OF MERGER NOTIFICATION M/20/012 - EASON / DUBRAY

Section 21 of the Competition Act 2002

Acquisition by Eason Operations Limited of sole control of Dubray Books Limited.

Dated 10 September 2020

Introduction

1. On 27 March 2020, in accordance with section 18(3) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a transaction whereby Eason Operations Limited (“Eason”) acquired the entire issued share capital, and thus sole control of Dubray Books Limited (“Dubray”) (the “Transaction”).

Background

2. The Commission became aware of the Transaction through its monitoring and compliance activities on 25 February 2020. Information in the possession of the Commission at the time suggested that Eason and Dubray were significant providers in the State with respect to the retail sale of books, through both physical stores and online distance selling.
3. The Commission therefore wrote to Eason on 25 February 2020 to enquire whether the Transaction would be notified to the Commission under Part 3 of the Act. The Commission also requested in its letter that Eason provide it with an overview of the Transaction.
4. Eason provided the Commission with the overview requested by the Commission but advised the Commission that the Transaction was not required to be notified to the Commission under section 18(1)(a) of the Act. Eason submitted that in the financial year ending 31 December 2018, which was its most recent financial year, Dubray’s turnover in the State was €[...].



5. The Commission wrote to Eason on 4 March 2020 to request that Eason provide it with copies of all information, documents and analyses relating to the Transaction.
6. On 11 March 2020 Eason provided the Commission with the information, documents and analyses requested by the Commission.
7. On 12 March 2020, the Commission wrote to Eason seeking further information relating to the Transaction.
8. On 13 March 2020, Eason wrote to the Commission to confirm its intention to notify the Transaction to the Commission on a voluntary basis as provided for by section 18(3) of the Act.
9. On 9 March 2020, Eason notified the Transaction to the Commission under section 18(3) of the Act.

The Transaction

10. The Transaction was implemented pursuant to a share purchase agreement dated 24 February 2020 between Eason, Finbar Investments Limited (acting as the vendor), and Gemma Barry, Cormac Barry and Eoghan Barry (acting as guarantors) (the “SPA”). In a related transaction on the same date, Eason acquired the entire issued share capital of four dormant subsidiaries of Dubray from Gemma Barry.¹ This related transaction was effected pursuant to a share purchase agreement dated 24 February 2020 between Eason, Gemma Barry (acting as the vendor), and Cormac Barry and Eoghan Barry (acting as guarantors).
11. Under the terms of the SPA, Eason acquired from Finbar Investments Limited the entire issued share capital and thus sole control of Dubray.

¹ Pursuant to this transaction Eason acquired the entire issued share capital from Gemma Barry of the following dormant companies which were previously subsidiaries of Dubray: Book Stop Limited; Irish Bookshops Limited; Springhaven Limited and The Bray Book Shop Limited.



The Undertakings Involved

The Acquirer - Eason

12. Eason is engaged in book wholesaling and retailing. Eason purchases its book supplies from book publishers so, in effect, it self-wholesales for its own stores. Eason operates a chain of retail book outlets located throughout the State and Northern Ireland. Eason also sells newspapers, magazines, gifts, games, toys, music, film and stationery items. Eason is also engaged in book and stationary wholesaling and online book retailing.
13. In the State, Eason has 33 retail outlets. A further 21 stores in the State are operated under the Eason brand name on a franchise basis. Eason operated 7 retail outlets in Northern Ireland at the time of notification. On 26 August, a liquidator was appointed to the company that operated the 7 Northern Irish retail outlets.
14. For the financial year ending 27 January 2019, Eason's worldwide turnover was approximately €130 million, of which approximately €116 million was generated in the State.²

The Target - Dubray

15. Dubray also operates in the retail sale of books and has 8 retail book outlets in the State. Dubray is also engaged in the online retail sale of books.
16. In the State, Dubray operates one shop in Dublin City Centre on Grafton Street, 5 stores on the south side of Dublin City (Rathmines, Liffey Valley, Blackrock, Stillorgan and Dun Laoghaire), a shop in Bray, County Wicklow and a shop in Galway City.
17. For the financial year ending 31 August 2019, Dubray's worldwide turnover was approximately €[...], almost all of which was generated in the State.

² Eason submits that for the year ending 27 January 2019, the Eason retail trade was owned and reported by Eason Holdings Plc. On 15 March 2019 the Eason retail trade demerged from Eason Holdings Plc into a standalone entity under the parent company ERPLC, with the Eason Group's property accounts being retained in Eason Holdings Plc.



Rationale for the Proposed Transaction

18. Eason states the following in the notification:

“The Transaction complements Eason’s operations in Ireland, fitting in with its long-term retail strategy of increasing its physical retail presence in Ireland and establishing its credentials as a specialist retailer whilst maintaining the Dubray brand, identity, niche format and customer experience.”

Contacts with the undertakings involved

19. On 8 May 2020, the Commission served a Requirement for Information (“RFI”) on each of Dubray and Eason pursuant to section 20(2) of the Act. This adjusted the deadline by which the Commission had to conclude its assessment of the Transaction in Phase 1.

20. Upon receipt of full responses to the RFIs from Dubray and Eason on 31 July 2020, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 31 July 2020.

21. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the undertakings involved in the Transaction.

Market enquiries

22. During its investigation, the Commission issued questionnaires to the parties’ competitors in the sale of books to consumers and in the wholesale supply of books to retailers. The competitors contacted by the Commission were identified by Eason in the notification. Responses to the Commission’s questionnaires were received from the parties’ competitors in the retail sale of books to consumers and the wholesale supply of books to retailers.

Third Party Submissions

23. No submission was received.



Competitive Analysis

Horizontal Overlap

24. There is a horizontal overlap between the activities of Eason and Dubray in the State with respect to the retail sale of books, through both physical stores and online distance selling.

Market Definition

Product Market Definition

Views of the parties

25. With respect to the relevant product market, in the notification Eason states the following:

“There is strong evidence to support the conclusion that the relevant product market comprises at least physical retail outlets and online book retailers. ... Online retailers exercise a strong competitive constraint on traditional book retailers as consumers can easily compare prices in store with those online.”

Views of the Commission

26. In considering the relevant product market definition, the Commission has examined the approach to market definition taken by other competition authorities and the Commission’s predecessor the Competition Authority (the “Authority”) in respect of the retail sale of books.
27. The Authority, the predecessor to the Commission, assessed the competitive impact of a proposed transaction involving the retailing of books over the internet. In its determination in *M/11/019 – Amazon/The Book Depository*,³ the Authority assessed the

³ See Competition Authority determination *M/11/019 – Amazon/The Book Depository*, which is accessible at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-11-019-Amazon-The-Book-Depository-Determination.pdf>



impact of the relevant proposed transaction with respect to the sale of books to consumers in the State (including both physical store and online sales). In its determination the Authority considered that the market for the retail sale of books to final consumers may be segmented by: the sales channel; the type of book; and the type of consumer. The Authority left open the precise product market definition as the relevant parties accounted for a relatively low share of sales of books to final consumers. The Authority considered that, at the time of its determination, consumers in the State could purchase books from a number of competitors operating 'bricks and mortar' bookshops, such as Hodges Figgis and Hughes & Hughes; competitors that operated both 'bricks and mortar' and online bookshops, such as Eason and Dubray Books; and competitors that operated other retail shops such as Tesco Ireland. The Authority also found that there were a number of other Irish and international online book retailers active in the State which offered books to consumers in the State.

28. The Competition Commission (the "CC"), the predecessor to the Competition and Markets Authority in the United Kingdom, assessed the competitive impact of a proposed transaction involving book retailing. In its final report in *HMV Group plc/Ottakar's plc merger inquiry*,⁴ the CC assessed the competitive impact of the relevant proposed merger on the market for the retail sale of new books to consumers, which included traditional bricks and mortar book retailers, grocery stores selling books and distance sellers such as internet retailers and book clubs. While the CC concluded that there was no separate market for sales of deep-range titles as distinct from sales of best-sellers, it was considered that the competitive effects might differ for these two product categories. The CC therefore assessed the competitive effects of the relevant merger separately for sales of deep-range titles and for sales of best-sellers. Best-sellers were defined as the top-selling 5,000 titles for a particular year and deep-range titles encompassed the remainder. The remainder were defined as deep-range titles.
29. The European Commission assessed the competitive impact of a proposed concentration involving book publishing and retailing. In its decision in *COMP/M.4611*

⁴ See *Proposed acquisition of Ottakar's plc by HMV Group plc through Waterstone's Booksellers Ltd.*, which is accessible at: https://webarchive.nationalarchives.gov.uk/20140402235905/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2006/fulltext/513.pdf



– *Egmont/Bonnier (Books)*,⁵ the European Commission assessed the relevant proposed concentration with respect to the markets for: the acquisition of domestic and foreign publishing rights; the distribution of books; the sale of books to dealers; and the sale of books to final consumers. With respect to the market for the sale of books to final consumers, the relevant parties were active only in the distance selling of books to final consumers through book clubs. The European Commission considered the market for the sale of books to final consumers to include the “distant sale” segment, such as book clubs, mail orders and sales via the internet. The European Commission also considered, within the markets for the acquisition of publishing rights, the sale of books to dealers and the sale of books to final consumers, the sale of books to final consumers by book category.

30. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission considered the evidence provided by the parties and has followed the approach of the CC, the European Commission and the Authority by assessing the likely impact of the Proposed Transaction by reference to the retail sale of books to consumers through both distance selling (i.e. through the internet) and traditional book selling.
31. Both Eason and Dubray sell books to consumers in the State through online and offline channels. Based on information provided by the parties, in 2019 Eason and Dubray sold [...]%, respectively, of their books to consumers through their own online sales channel. During the period from January 2020 to June 2020 Eason experienced a decline in sales from physical retail shops of [...]% due to disruptions arising from the Covid-19 pandemic. This was somewhat offset by an increase in online sales of [...]%, albeit the increase was up from a much lower base. In April and May 2020 bookshops had to close due to Government restrictions arising from the Covid-19 pandemic. Sales through Eason’s (and Dubray’s) physical stores therefore fell [...]% during that period. Increases in Eason’s online sales made up for some of the drop in sales through physical stores so that in April 2020 Eason’s total sales were [...]% below that of April 2019 and in May 2020 Eason’s total sales were [...]% lower than that of May 2019. The shift of sales from

⁵ See European Commission Case No COMP/M.4611 – *Egmont/Bonnier (Books)*, which is accessible at: https://ec.europa.eu/competition/mergers/cases/decisions/m4611_20071015_20212_en.pdf



physical retail outlets to online during the period from January 2020 to June 2020 provides evidence that the online sales of books to consumers can be considered to be in the same product market as the sale of books to consumers through physical retail outlets.

32. In its response to the questionnaire issued by the Commission as part of its market enquiries, an online competitor stated: *“Customers shop by going to numerous stores, looking at the products they offer, and comparing price, selection, and convenience. They also shop in a variety of ways, constantly comparing a wide variety of options and switching amongst stores, including in brick-and-mortar stores, online stores, and omni-channel offerings. For instance, customers compare online offers while physically browsing products in brick-and-mortar stores and look at offers in brick-and-mortar stores before completing a purchase online and vice-versa.”*. This statement by the parties’ competitor further suggests that online sales of books to consumers can be considered to be in the same product market as the sale of books to consumers through physical retail outlets.
33. In relation to the retail sale of books, in this instance, the Commission does not need to come to a definitive view on whether the sale of best-selling books to consumers is a distinct product market to the sale of deep-range books to consumers because the precise product market definition adopted will not alter the Commission’s assessment of the competitive impact of the Proposed Transaction. Both Eason and Dubray, as well as their main competitors through both the online and physical retail channels, supply best-selling books and deep-range books to consumers. Some competitors, such as Tesco, may only stock a range of best-selling book titles but no competitors stock only deep-range titles. For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission assessed the likely impacts of the Transaction by reference to the retail sale of all books to consumers.
34. In light of the above, for the purposes of its review of the competitive effects of the Transaction, the Commission has examined the Transaction by reference to the retail sale of all books to consumers.



Geographic Market Definition

Views of the parties

35. With respect to the relevant geographic market, in the notification Eason states the following:

“Given the importance of online retailing the relevant geographic market would have to be considered to be at least as wide as the State”

and

“While, in Eason’s opinion, the relevant geographic market is State-wide, for completeness we also consider the impact of the Transaction on those few local markets where there is a competitive overlap between the Parties’ retail outlets.”

36. In the notification, Eason informed the Commission that they currently operate a national pricing strategy. In the Compecon Report submitted by the Eason to the Commission, it is stated: *“Eason operates a national commercial strategy. It manages its product Masterfile and pricing centrally. All retail pricing is set at head office and it is then systematically updated to all Eason company stores. The possibility exists to create special prices for individual stores, but this is rarely used [...]”* In its response to the RFI, Eason submitted that between January 2017 and March 2020 [...].

Views of the Commission

37. The Commission does not need to come to a definitive view on the precise relevant geographic market in this instance, since its conclusion on the competitive impact of the Transaction will be unaffected whether the relevant geographic market is defined as local or national. However, for the purposes of its review of the competitive effects of the Transaction, the Commission examined the potential market for the sale of books to consumers by reference to both national and local geographic markets.



38. In order to determine whether the Transaction might result in a substantial lessening of competition in a local area, the Commission analysed its impact by reference to the potential geographic area of 3 kilometres from any Dubray shop⁶. The local geographic markets where the activities of the parties overlap are: Dublin City (within 3 kilometres of Dubray's Grafton Street shop), Galway City (within 3 kilometres of Dubray's Shop Street shop), Dun Laoghaire (within 3 kilometres of Dubray's Dun Laoghaire shopping centre shop) and the Liffey Valley area (within 3 kilometres of Dubray's Liffey Valley shop).

Competitive assessment

The counterfactual

39. In their responses to the RFIs the parties submit that due to recent changes in the market for the sale of books to consumers the appropriate counterfactual is one where Amazon/Book Depository accounts for approximately 30% to 40% of book sales to consumers in the State. The parties submit that this is the appropriate counterfactual because the closure of physical shops as a result of disruptions arising from the Covid-19 pandemic would lead to a further shift to online sales of books to consumers, and Amazon/Book Depository would capture most of this increase in online sales.
40. In its competitive assessment of the Transaction, the Commission used the pre-merger situation as the relevant counterfactual. This was deemed the most appropriate counterfactual as it is uncertain how the market will develop in the future. In addition to this, Eason's estimated market share of [...]. However, in its competitive assessment of the Transaction the Commission did consider that online sales of books to consumers could potentially account for a greater share of the market going forward.

⁶ The Commission has previously identified possible local markets based on a 400 metre distance, 2 kilometre distance, 3 kilometre distance, 3.2 kilometre distance, 8 kilometre and 10 kilometre distance from a relevant target location in previous determinations in various retail sectors, depending on specific characteristics of the relevant markets. Please see, for example, merger determination M/19/047 – DCC (Certas Energy)/Motor Fuel Service Stations of Tesco, available at: <https://www.cccpc.ie/business/wp-content/uploads/sites/3/2019/12/Public-Determination-M-19-047-Certas-Tesco.pdf>, merger determination M/19/032 – BoyleSports/GT Retail (Bruce Betting), available at: <https://www.cccpc.ie/business/wp-content/uploads/sites/3/2019/11/2020.03.10-M-19-032-Public-Determination.pdf>, and merger determination M/19/022 – Dunnes Stores JC Savage, available at: <https://www.cccpc.ie/business/wp-content/uploads/sites/3/2019/07/Public-Determination-M.19.022-Dunnes-Stores-JC-Savage-1.pdf>.



The retail sale of books to consumers on a national basis

41. The estimates of the respective shares of the parties and their competitors in the potential market for the retail sale of books to consumers on a national basis in 2019 are set out in Table 1 below. Following implementation of the Transaction, the merged entity's share of the potential market for the retail sale of books to consumers in the State would be [30-40]%.
42. Eason's company shops and its franchise shops are considered collectively for the purpose of the competitive assessment because they operate under the same brand name and franchise stores receive the same pricing file (i.e. list of retail prices) as Eason company stores. The Commission notes, however, that such prices are not binding on Eason shops operated under franchise, as these shops have the right to set their own prices.
43. Eason (including its franchises) is the market leader with a share of approximately [30-40]% of the potential market for the retail sale of books to consumers in the State in 2019. Dubray had a share of this potential market of approximately [5-10]% in 2019. In 2019 Amazon/Book Depository ([10-20]%), Waterstones ([5-10]%) and Bookstation ([5-10]%) each had a higher share of the potential market for the retail sale of books to consumers in the State than Dubray.



Table 1. Retail sale of books to consumers in the State in 2019

Brand	Market Share
Eason	[20-30]%
Eason Franchises	[0-5]%
Dubray	[5-10]%
Combined	[30-40]%
Waterstones	[5-10]%
Bookstation	[5-10]%
WH Smith	[5-10]%
The Book Centre	[0-5]%
Amazon/Book Depository ⁷	[10-20]%
Other online	[0-5]%
Other	[10-20]%
Total	100%

Note: Market share estimates include sales from physical shops and online sales.

44. Based on the market share estimates set out in Table 1 above, the pre-merger HHI,⁸ when Eason and its franchises are counted collectively is approximately [...]. The post-merger HHI is approximately [...] which indicates a change in the HHI from pre-merger to post-merger of approximately [...]. As set out in paragraph 3.10 of the Commission's *Merger Guidelines*⁹, this indicates that the potential market for the retail sale of books to consumers on a national basis is a concentrated market. The Commission could not conclude, based on HHI screening, that the Transaction is unlikely to raise competition concerns and thus, had to intensify its analysis of the likely impact of the Transaction in the relevant market.
45. The Commission's investigation focussed on the likelihood of unilateral effects occurring following implementation of the Transaction. Unilateral effects occur when a

⁷ Amazon acquired The Book Depository in 2011 but operates it as a separate brand.

⁸ The Herfindahl-Hirschmann Index ("HHI") is commonly used to measure market concentration. The HHI is defined as the sum of the squares of the market shares of all firms participating in the market. The HHI represents both the number of firms in the market and their relative size. Both the absolute level of the HHI and the change in the HHI as a result of a merger provide an indication of whether the merger is likely to raise competition concerns.

⁹ Which is accessible at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines.pdf>.



merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors.

46. The Commission considers that the merged entity would not have the ability to unilaterally raise the retail price of the books it sells to consumers in the State following implementation of the Transaction. This view is based on the analysis set out below.
47. First, as shown in Table 1, following implementation of the Transaction, the merged entity would have a share of [30-40]% in the potential market for the retail sale of books to consumers on a national basis, while the remaining [60-70]% market share would be accounted for by a diverse number of competitors (both online and through physical retail outlets).
48. Second, there are a number of competitors active in the potential market for the retail sale of books to consumers in the State, including WH Smith, Waterstones, The Book Centre, Chapters Bookstore and a significant number of small specialist bookshops. These retailers are likely to continue to pose a competitive constraint on the merged entity following implementation of the Transaction. In addition, Tesco and bargain book retailers such as Bookstation are also likely to continue to pose a competitive constraint on the merged entity following implementation of the Transaction.
49. Third, the merged entity would continue to face strong competition from online book retailers, primarily Amazon/Book Depository. According to estimates provided by the parties, online book retailers account for [20-30]% of all retail sale of books in the State with Amazon/Book Depository accounting for [90-100]% of all online sales.¹⁰ The parties estimate that Amazon/Book Depository is the second largest retailer of books to consumers in the State and would act as the single largest competitive constraint to the merged entity for the retail sale of books to consumers in the State.
50. In light of the above, the Commission considers that the Transaction is not likely to substantially lessen competition in the potential market for the retail sale of books to consumers on a national basis in the State.

¹⁰ Compecon (27 March 2020) *Economic Analysis of Proposed Merger* submitted by the parties (the "Compecon Report").



The potential local markets for the sale of books to consumers

51. There is a geographic overlap in the activities of the parties in relation to the retail sale of books to consumers in 4 local areas: Dublin City, Galway City, Dun Laoghaire and the Liffey Valley area. In assessing the likely competitive impact in each overlap area the Commission considered whether the merged entity would have the incentive and ability to increase the retail price of books to consumers in one or more of the local overlap areas.

The sale of books to consumers in Dublin City (within 3 kilometres of the Dubray shop on Grafton Street)

52. There is a geographic overlap in the activities of the parties in relation to the retail sale of books to consumers in Dublin City since both Dubray and Eason (including Eason franchises) operate book shops in Dublin City. Dubray operates a shop on Grafton Street. Eason operates a shop in St Stephen's Green Shopping Centre (400 metres from Dubray's Grafton Street shop), Nassau Street (450 metres from Dubray's Grafton Street shop), O'Connell Street (900 metres from Dubray's Grafton Street shop) and Busarus (1.3 kilometres from Dubray's Grafton Street shop) and an Eason franchise operates from Connolly Station (1.6 kilometres from Dubray's Grafton Street shop).
53. The Commission considers that, following implementation of the Transaction, the merged entity would not have the incentive and ability to unilaterally raise the retail price of books to consumers in Dublin City because there are a number of competitors which will continue to pose a competitive constraint on the merged entity. These competitors include: Hodges Figgis (290 metres from Dubray's Grafton Street shop), which is owned by Waterstones; Books Upstairs (650 metres from Dubray's Grafton Street shop); Bookstation on Henry Street (1.2 Kilometres from Dubray's Grafton Street shop); and Chapters Bookstore (1.4 Kilometres from Dubray's Grafton Street shop). There are also a number of other rival bookshops within walking distance of Dubray's Grafton Street shop which, due to their more specialised offerings, would continue to pose a more limited competitive constraint on the merged entity. These competitors include Stokes Bookshop (which specialises in Irish historical books) and International Books (which specialises in learning materials and other books in foreign languages). In



total there are 14 competitors in the retail sale of books to consumers located within 3 kilometres of Dubray's Grafton Street shop.

54. The Commission considers that the merged entity would also continue to face competition from online book retailers, primarily Amazon/Book Depository. Nationally, Amazon/Book Depository is the second largest seller of books to consumers. These online retailers will continue to act as a strong competitive constraint to the merged entity for the retail sale of books to consumers in Dublin City.
55. In light of the above, the Commission considers that the competitors identified above are likely to continue to pose a competitive constraint on the merged entity following implementation of the Transaction. Therefore, the Commission is of the view that the Transaction does not raise any horizontal competition concerns in relation to the retail sale of books to consumers in Dublin City.

The sale of books to consumers in Galway City (within 3 kilometres of the Dubray shop on Shop Street)

56. There is a geographic overlap in the activities of the parties in relation to the retail sale of books to consumers in Galway City since both Dubray and Eason operate book shops on Shop Street in Galway City (50 metres apart). There is also an Eason shop in Galway Shopping Centre on Headford Road, which is approximately 1.1 kilometres from Dubray's bookshop in Galway City.
57. The Commission considers that, following implementation of the Transaction, the merged entity would not have the incentive and ability to unilaterally raise the retail price of books to consumers in Galway City because there are a number of competitors which would continue to pose a competitive constraint on the merged entity. Charlie Byrne's Bookshop (240 metres from Dubray's Shop Street shop), Bell, Book and Candle (750 metres from Dubray's Shop Street shop), Paper Chase (1.4 kilometres from Dubray's Shop Street shop) and Kenny's Bookshop & Art Galleries (2.4 kilometres from Dubray's Shop Street shop) would each continue to pose a competitive constraint on the merged entity following implementation of the Transaction. Joyce School Bookstore, which is focused on the sale of school books and has a limited range of non-



school books, would, in the Commission's view, also continue to pose a limited competitive constraint on the merged entity.

58. As discussed in paragraph 54 above, the merged entity would also continue to face competition from online book retailers, primarily Amazon/Book Depository, which would continue to act as a strong competitive constraint to the merged entity for the retail sale of books to consumers in Galway City.
59. In light of the above, the Commission considers that the competitors identified above will continue to pose a competitive constraint on the merged entity following implementation of the Transaction. Therefore, the Commission is of the view that the Transaction does not raise any horizontal competition concerns in relation to the retail sale of books to consumers in Galway City.

The sale of books to consumers in Dun Laoghaire, Co Dublin (within 3 kilometres of the Dubray shop in Dun Laoghaire Shopping Centre)

60. There is a geographic overlap in the activities of the parties in relation to the retail sale of books to consumers in Dun Laoghaire since Dubray operates a book shop in Dun Laoghaire Shopping Centre ("DLSC") and Eason operates a book shop on Marine Road which is 170 metres from Dubray's DLSC shop.
61. The Commission considers that, following implementation of the Proposed Transaction, the merged entity would not have the incentive and ability to unilaterally raise the retail price of books to consumers in Dun Laoghaire because there are a number of competitors which are likely to continue to pose a competitive constraint on the merged entity. Footprints Bookstore (190 metres from Dubray's DLSC shop) is a bookseller that specialises in religious books and would pose a minor competitive constraint on the merged entity following implementation of the Transaction. The Gutter Bookshop in Dalkey (3 kilometres from Dubray's DLSC shop) would continue to pose a competitive constraint to the merged entity.
62. As discussed in paragraph 54 above, the merged entity would also continue to face competition from online retailers, primarily Amazon/Book Depository, which would



continue to act as a strong competitive constraint to the merged entity for the retail sale of books to consumers in Dun Laoghaire.

63. In light of the above, the Commission considers that the competitors identified above are likely to continue to pose a competitive constraint on the merged entity following implementation of the Transaction. Therefore, the Commission is of the view that the Transaction does not raise any horizontal competition concerns in relation to the retail sale of books to consumers in Dun Laoghaire.

The sale of books to consumers in Liffey Valley area, Co. Dublin (within 3 kilometres of the Dubray shop in the Liffey Valley Shopping Centre)

64. There is a geographic overlap in the activities of the parties in relation to the retail sale of books to consumers in the Liffey Valley area since both Dubray and Eason operate a book shop in Liffey Valley Shopping Centre.
65. The Commission is of the view that the Transaction is not likely to result in a significant lessening of competition in relation to the retail sale of books to consumers in the Liffey Valley area. The reasoning for this assessment is outlined below.
66. First, there is a Tesco Extra located in an adjacent retail park in the Liffey Valley area which sells a range of books. The Commission considers that the Tesco Extra would continue to exert a moderate competitive constraint on the merged entity in the retail sale of books to consumers in the Liffey Valley area.
67. Second, as discussed in paragraph 54 above, the merged entity would continue to face competition from online retailers, primarily Amazon/Book Depository, which would continue to act as a strong competitive constraint to the merged entity for the sale of books to consumers in the Liffey Valley area.
68. Third, in a submission to the Commission dated 26 August 2020, Eason stated: *“The parties operate a national pricing policy and do not charge higher prices in locations where there are no rival bookshops in close proximity to their stores.”* The Commission notes that the merged entity generally follows a national pricing policy in all shops, even those that do not have competitors in the local area.



69. [...].
70. [...].
71. [...].
72. The Commission considers that there is evidence that Eason and Dubray place some competitive constraint on each other in the Liffey Valley area, [...]. However, the Commission considers that [...] would not likely lead to a significant lessening of competition in the Liffey Valley area [...].
73. Furthermore, the Commission considers that the potential geographic market for the sale of books to consumers in the Liffey Valley area may be wider than 3 kilometres from the Dubray shop and that the Eason and Dubray shops in the Liffey Valley Shopping Centre may compete with retailers of books outside of the 3 kilometre radius of the Dubray shop. In a submission to the Commission, Eason provided information on the distribution of Eason loyalty card holders making a purchase in the Eason shop in the Liffey Valley Shopping Centre in September and October 2019 based on the customer address. Eason submits that [...] % of loyalty card holders making a purchase at the Eason shop in Liffey Valley had an address in either Dublin 10, Dublin 12, Dublin 20, Dublin 22, Dublin 24, or Lucan, which encompasses the Liffey Valley area and the surrounding areas. A further [...] % of loyalty card holders making a purchase in the Eason shop in Liffey Valley had an address in the rest of Dublin, [...] % had an address in Co. Kildare and the rest were located throughout the State. In addition to this, the characteristics of the Liffey Valley Shopping Centre indicate that the catchment area may be wider than 3 kilometres. The Liffey Valley Shopping Centre is a large shopping centre easily accessible on the M50 by car. Therefore the Commission considers that the Eason and Dubray shops located in the Liffey Valley Shopping Centre may compete with other retailers of located outside the 3 kilometres radius of the Dubray Liffey Valley shop.
74. In light of the above, the Commission is of the view that the Transaction is not likely to raise any horizontal competition concerns in relation to the retail sale of books to consumers in the Liffey Valley area.



Vertical Relationship

75. Eason states in the notification that there is a minimal vertical relationship between Eason and Dubray. Dubray is a previous wholesale customer of Eason. Between January 2015 and February 2018 Dubray bought a total of €[...] of books from Eason, [...].
76. The Commission has not identified any other vertical relationship between Eason and Dubray in the State.
77. The Commission considers that the Transaction would not give the merged entity the ability to foreclose rival suppliers of books to consumers in the State by restricting the wholesale supply of books to book retailers. Following implementation of the Transaction, retail sellers of books to consumers may continue to source books from Argosy Books Limited (“Argosy”), which is the largest competitor of Eason in the wholesale supply of books to book retailers in the State. In addition to this, sellers of books to consumers can also source books directly from the book publishers.
78. The Commission considers that the Transaction is unlikely to give the merged entity the ability to foreclose rival wholesale suppliers of books to retailers in the State by restricting their access to a sufficient customer base (i.e. customer foreclosure). As noted above, Eason also operates as a wholesaler of books to retailers. The Commission understands that prior to the Transaction Dubray made most of its purchases directly from publishers. [...] The Commission considers that, following implementation of the Proposed Transaction, upstream wholesale suppliers of books (e.g. Argosy) may continue to have a sufficient customer base and continue to supply competitors of the merged entity in the State.
79. In light of the above, the Commission considers that the Transaction does not raise any vertical competition concerns in the State.



Conclusion

80. In light of the above, the Commission considers that Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

81. Clause 6 of the SPA contains non-solicitation, no-hire and non-compete obligations on Finbar Investments Limited and the guarantors listed in the SPA. The duration of those non-solicitation, non-compete and no-hire obligations does not exceed the maximum duration acceptable to the Commission. The Commission considers these non-solicitation, no-hire and non-compete obligations to be directly related to and necessary for the implementation of the Transaction insofar as they relate to the State.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the acquisition whereby Eason Operations Limited acquired the entire issued share capital, and thus sole control of Dubray Books Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh
Member
Competition and Consumer Protection Commission