

**PUBLIC VERSION**

**NOTICE SEEKING CLEARANCE OF A BUSINESS ACQUISITION PURSUANT TO SECTION 66 OF  
THE COMMERCE ACT 1986**

29 October 2019

The Registrar  
Business Acquisitions and Authorisations  
Commerce Commission  
PO Box 2351  
WELLINGTON

Pursuant to s 66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

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### 1. EXECUTIVE SUMMARY

1.1 McGraw-Hill Education, Inc. ("**McGraw-Hill**") and Cengage Learning Holdings II, Inc. ("**Cengage**") intend to merge their global education publishing businesses (the "**Transaction**"). The centre of gravity of this matter is in the United States.

1.2 McGraw-Hill and Cengage (together, "**the Parties**") are publishers of educational resources. Cengage publishes primary, secondary and higher education products, while McGraw-Hill publishes primary and higher education (but not secondary) products. Consistent with the approach taken in the Commission's decision in *Bertelsmann SE & Co. KGaA and Pearson plc*, the Parties consider the publishing of education resources to be the relevant market. However, even if the Transaction is assessed more narrowly, no concerns arise:

- (a) The Parties are not each other's closest competitors. McGraw-Hill does not curate titles specifically for New Zealand, whereas Cengage does.<sup>1</sup>
- (b) In the primary sub-segment, the Parties' offerings are complementary (McGraw-Hill offers "teacher led" learning materials, while Cengage's are "student led") and McGraw-Hill has a de-minimis segment share of [ ]%.
- (c) In the higher education ("**HED**") segment, the Parties are only both present in nine (out of approximately 50) subject areas.<sup>2</sup> Where the Parties are both present, they only have a small number of titles that compete. In each case, there are numerous titles from other publishers that compete strongly.
- (d) The industry is highly dynamic and faces significant digital disruption from the digitisation of learning and entry of new digital players. The Parties are constrained by customers bypassing education publishers through the increased use of:
  - (i) "white space", whereby students (who are typically highly price sensitive) source content from a number of alternative sources such as purchasing second hand textbooks or renting textbooks; and
  - (ii) "open education resources" ("**OER**"), whereby education institutions and teachers use (and sometimes develop) openly licenced and freely accessible teaching and learning materials. The constraint from OER has increased over time and continues to do so.
- (e) The ability to parallel import products means that consumers in New Zealand can access the best pricing from around the world.
- (f) There are no material barriers to entry, and international publishers do not need a presence in New Zealand, or New Zealand-specific content to compete ([ ]). The cost of entry into education publishing has been decreasing because of digital disruption.

1.3 Accordingly, the Parties are confident that the Transaction does not give rise to any material lessening of competition in New Zealand, and that the existing vigorously competitive nature of the New Zealand primary sub-segment and HED segment will continue post-Transaction.

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<sup>1</sup> McGraw-Hill ceased curating titles specifically for New Zealand in [ ], although a small number of New Zealand-specific titles produced in or before [ ] remain on sale in New Zealand. McGraw-Hill sells a small number of titles that have been developed for Australian consumers, but which are also relevant to New Zealand. [ ]

<sup>2</sup> Based on the Nielsen classification system.

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### 2. THE APPLICANTS

#### Contact details

2.1 As this is a merger of equals, this notice seeking clearance is given by both Cengage Learning Holdings II, Inc. (defined, as above, as "**Cengage**") and McGraw-Hill Education, Inc. (defined, as above, as "**McGraw-Hill**"). We have set out the details of each in turn.

2.2 The contact details for Cengage are:

Paul Petruilis  
Position: Vice President, Higher Education  
Telephone: [        ]  
Email: [            ]

Cengage Learning Holdings II, Inc.  
20 Channel Center Street  
Boston, MA, USA  
02210  
Telephone: (NZ) 0800 449 725  
Website: <http://www.cengage.com/>

2.3 All correspondence and notices in respect of the application for Cengage should be directed to:

Russell McVeagh  
PO Box 8  
Auckland 1140  
Attention: Sarah Keene (Partner) / Bradley Aburn (Senior Solicitor)  
Telephone: 09 367 8133 / 09 367 8816  
Email: sarah.keene@russellmcveagh.com / bradley.aburn@russellmcveagh.com

2.4 The contact details for McGraw-Hill are:

David Stafford  
Position: Senior Vice President and General Counsel  
Telephone: [        ]  
Email: [            ]

McGraw-Hill Education, Inc  
2 Pennsylvania Plaza  
New York, NY, USA  
10121  
Website: <https://www.mheducation.com>

2.5 All correspondence and notices in respect of the application for McGraw-Hill should be directed to:

Bell Gully  
PO Box 4199  
Auckland 1140

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Attention: Torrin Crowther (Partner) / Michael Tilley (Senior Associate)  
Telephone: 09 916 8621 / 09 916 8827  
Email: [torrin.crowther@bellgully.com](mailto:torrin.crowther@bellgully.com) / [michael.tilley@bellgully.com](mailto:michael.tilley@bellgully.com)

### Description of the Cengage business

- 2.6 Cengage (previously known as Thomson Learning when it was owned by Thomson Corporation)<sup>3</sup> is an education and technology company headquartered in Boston. Cengage has a 150-year history and approximately 5,000 employees worldwide. It has sales in approximately 165 countries and territories around the world.<sup>4</sup> Although Cengage operates internationally, its primary businesses are located in the United States.
- 2.7 Cengage's shareholders include funds managed by KKR Credit Advisors (US) LLC and funds advised by Apax Partners, LLP; Searchlight Capital Partners; Centerbridge Partners, LP; and Oaktree Capital Management LP, none of which have a controlling position, either alone or in combination.
- 2.8 In New Zealand, Cengage supplies products in the following two segments:
- (a) the school segment (including both primary and secondary schools) ("**School**"); and
  - (b) the HED segment (being vocational, university, and postgraduate levels).
- 2.9 The education products supplied are textbooks (in print and digital formats) and accompanying teacher resources, professional development, and instructor materials to support teaching. Cengage also has a library reference list, containing digital archives and subscriptions (a business known as "Gale").
- 2.10 Cengage has an office in Albany, Auckland. Cengage has a local New Zealand schools publishing division specifically building content for the local New Zealand secondary curriculum. For primary, Cengage's publishing team, while based in Melbourne, works closely with the sales team and authors in New Zealand to produce educational products to sell in Australia and New Zealand (and internationally).
- 2.11 Cengage has [ ] sales representatives in the primary sub-segment (including [ ]), [ ] sales representatives in the secondary sub-segment (including [ ]), and [ ] sales representatives in the HED segment. A diagram showing how Cengage organises its educational publishing business in New Zealand is set out in **Appendix 3**.
- (a) [ ].
  - (b) [ ].
  - (c) [ ].
- 2.12 The sales representatives [ ] report to senior managers at Cengage in Australia. [ ].

<sup>3</sup> Cengage, *Thomson Learning announces new name: Cengage Learning*. <https://news.cengage.com/corporate/thomson-learning-announces-new-name-%E2%80%93-cengage-learning/>

<sup>4</sup> Cengage, *About us*. See <https://www.cengage.com/about/>

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- 2.13 Cengage distributes its educational products out of its warehouse in Australia directly to customers in the primary sub-segment (ie schools) and the HED segment (ie bookshops and students):
- (a) In the primary sub-segment, [ ].
  - (b) In the HED segment,
    - (i) [ ].
    - (ii) [ ].
    - (iii) [ ].
- 2.14 [ ].
- 2.15 Cengage also provides some third party distribution services in New Zealand to publishers with smaller content lists. As part of this service, Cengage will liaise with universities on the smaller publisher's behalf, and market and distribute those publisher's products. These third party distribution services are primarily a feature of the HED segment.<sup>5</sup> Cengage's net sales in New Zealand for third party distribution services were [ ] for FY2018, and [ ] for FY2019.<sup>67</sup>
- 2.16 Cengage's turnover in New Zealand was [ ] for FY2018, and [ ] for FY2019.<sup>8</sup>
- 2.17 Cengage's top five publisher customers for FY2019 in the HED segment and primary sub-segment (including relevant contact details) are provided at **Appendix 2**.

### Description of the McGraw-Hill business

- 2.18 McGraw-Hill is a learning science company headquartered in New York. McGraw-Hill has a 130-year history and approximately 4,100 employees worldwide. McGraw-Hill has offices in 53 countries.<sup>9</sup> McGraw-Hill is owned by investment funds managed by affiliates of Apollo Global Management. Although McGraw-Hill operates internationally, its primary businesses are located in the United States.
- 2.19 In New Zealand, McGraw-Hill supplies products predominantly in the HED segment, including a professional list, and to a small degree to primary schools within the School segment (a segment which includes both primary and secondary schools).<sup>10</sup> It sold its secondary school list to Cengage in 2010 and it does not make sales in this sub-segment. McGraw-Hill does not have a subscription research and reference business division.

<sup>5</sup> Cengage offers third party services for [ ] publishers in the Schools segment..

<sup>6</sup> Cengage fiscal year runs from 1<sup>st</sup> April to 31<sup>st</sup> March.

<sup>7</sup> Converted from [ ] at an exchange rate of 0.934075 for FY2019 and 0.923783333 for FY2018. Annual exchange rates are calculated as the average of the monthly exchange rates provided by RBNZ for the relevant FY period. See <https://www.rbnz.govt.nz/statistics/b1>

<sup>8</sup> Converted from [ ] at an exchange rate of 0.681441667 for FY2019 and 0.71475 for FY2018. Annual exchange rates are calculated as the average of the monthly exchange rates provided by RBNZ for the relevant FY period. See <https://www.rbnz.govt.nz/statistics/b1>

<sup>9</sup> McGraw-Hill Education, *Global Sites*. See <https://www.mheducation.com/global-sites.html>

<sup>10</sup> Note that in the United States where Cengage and McGraw-Hill are headquartered and have the vast majority of their sales, the School segment is referred to as the K-12 segment, meaning the 12 years of publicly supported primary and secondary educational grades that students complete in the United States.

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- 2.20 McGraw-Hill has a very small presence in New Zealand, employing just [ ] focussed on the HED segment. [ ].
- 2.21 [ ].
- 2.22 [ ].
- 2.23 [ ].
- 2.24 [ ].
- 2.25 McGraw-Hill uses Brisbane based [ ] as its exclusive third-party warehousing and logistics provider for New Zealand. Aside from distributing the codes for its digital products, McGraw-Hill does not provide any distribution services itself in New Zealand (for itself or third parties). McGraw-Hill does not develop New Zealand specific titles.
- 2.26 McGraw-Hill's New Zealand turnover was [ ] in FY2017 and [ ] in FY2018.<sup>1112</sup>
- 2.27 McGraw-Hill's top five publisher customers for FY2019 in the HED segment and primary sub-segment (including relevant contact details) are provided at **Appendix 2**.

### 3. THE TRANSACTION DETAILS

#### Details of the Transaction

- 3.1 The Transaction involves the combination of Cengage's and McGraw-Hill's global publishing businesses, for higher education and K-12 (i.e. the School segment, which includes both primary and secondary schools) content into a new, yet to be incorporated entity, which is anticipated to be called McGraw-Hill.
- 3.2 Cengage and McGraw-Hill have entered into a merger agreement to create a leading provider of curated educational content and digital learning solutions. The merger will be structured as a merger of equals, in which existing Cengage shareholders and existing McGraw-Hill shareholders will each retain 50% of the pro forma corporate entity. Each of Cengage and McGraw-Hill are applying for clearance as purchaser of their respective interests in the new corporate entity.
- 3.3 At this stage, the Parties are targeting completion of the Transaction before the end of 2019 for commercial reasons, particularly due to the need to prepare for the following academic year's selling season (which occurs during the spring semester in North America).
- 3.4 A diagram showing the proposed ownership structure for the merged entity, including the names of the relevant entities, is set out in **Appendix 3**.

#### Rationale for the Transaction

- 3.5 The Transaction aims to enable the merged entity to continue to provide students, instructors, and institutions with more affordable access to superior course materials and platforms. The

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<sup>11</sup> McGraw-Hill fiscal year runs from 1 January to 31 December.

<sup>12</sup> Converted from [ ] at an exchange rate of 0.710841667 for the 2017 calendar year and 0.69295 for the 2018 calendar year. Annual exchange rates are calculated as the average of the monthly exchange rates provided by RBNZ for the relevant FY period. See <https://www.rbnz.govt.nz/statistics/b1>

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expected cost synergies, and the complementary nature of McGraw-Hill's and Cengage's business divisions will provide opportunity for superior experience and value through:

- (a) **Expanding access to best-in-class curated content:** A broader range of high-quality learning materials and technology platforms. Students and educators globally will gain access to a wider array of learning materials, including adaptive tools, through a single provider. The merged entity will feature over 44,000 titles from leading academics and experts, representing proven approaches to teach a wide variety of subjects.
- (b) **Enhancing learning experiences through proven digital platforms and learning tools:** The merged entity will build on McGraw-Hill's and Cengage's individual success in creating industry-leading technologies through digital transformation, application of advanced learning science, and seamless integration with other platforms, tools and applications. This means a better user experience for both students, enabling them to reach their full potential, and educators, who will be better equipped with advanced analytics.
- (c) **Strengthening commitment to more affordable options:** Creating operational scale will increase the Parties' ability to commit to high quality affordable solutions. The US\$285-370 million in estimated cost synergies over the next 3 years will enable increased investment in next-generation resources and services for growth. These in turn can enhance the student's experience and improve student achievement in an affordable way.<sup>13</sup>

### **Copies of the most recent version of documents bringing about the Transaction (including the ancillary agreements)**

- 3.6 A copy of the Merger Agreement is available at **Appendix 8**.<sup>14</sup>
- 3.7 Copies of the ancillary agreements are available at **Appendix 8**. The ancillary agreements associated with the Transaction include:
  - (a) Exhibit A of the Merger Agreement – Summary of Proposed Governance Arrangements of the Combined Corporation; and
  - (b) Exhibit B of the Merger Agreement – Written Consent of Stockholders in Lieu of a Meeting.

### **Counterfactual**

- 3.8 The Parties consider that the most appropriate counterfactual is the status quo.

#### *McGraw-Hill*

- 3.9 [ ]. Globally, McGraw-Hill is focused on increasing the sales in particular via its digital offerings, and it will continue to identify opportunities to grow this business. [ ].

<sup>13</sup> Deal website, *Better Learning Together*: <https://betterlearningtogether.com/>; Books+Publishing website, *International news*: <https://www.booksandpublishing.com.au/articles/2019/05/09/132790/mcgraw-hill-reports-up-to-529m-in-annual-savings-after-cengage-merger/>

<sup>14</sup> [ ].

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*Cengage*

3.10 [ ].

**4. NOTIFICATION TO OTHER COMPETITION AGENCIES**

4.1 The Transaction has been or is being notified to antitrust regulators in a number of jurisdictions. Where the notification dates and status for the regulators is known, this has been detailed below:

Jurisdiction	When filed	Status
Austria	30 August 2019	Unconditional clearance received <sup>15</sup>
Australia	31 July 2019	[ ] <sup>16</sup>
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

**5. INDUSTRY OVERVIEW**

**The supply chain model**

5.1 There are two content procurement models for education publishers in New Zealand: local content creation (either from scratch or by adapting existing international texts) and the utilisation of existing international texts. In New Zealand, McGraw-Hill predominantly sells content prepared for international markets as it does not tailor or create titles for New Zealand. Cengage uses both models depending on the subject.

*Process for creating a title in a new subject area*

5.2 A publisher undertakes market research to understand opportunities and strengths in the various educational segments, including the size of the segment, the publisher's strengths and how the publisher can invest in the segment to get a return. [ ].

5.3 Once a publisher has identified an opportunity or strength, the publisher conducts research and surveys academics/teachers and students to understand their requirements and needs (e.g. whether the need is for print, digital resources for students or digital resources for

<sup>15</sup> [https://www.bwb.gv.at/en/merger\\_control/merger/id/4583/](https://www.bwb.gv.at/en/merger_control/merger/id/4583/)

<sup>16</sup> <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/proposed-merger-between-cengage-learning-and-mcgraw-hill-education>



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academics/teachers to engage students and to assess them). The publisher will also search for potential authors to create the required content.

- 5.4 When an author is identified, the publisher enters into a contract with the author, which would typically include payment by royalty (or, occasionally, a flat fee). Authors are contracted, typically for the length of time that the product in question is viable (i.e. over multiple editions with a new edition every few years). A new contract is signed each edition. The author remains free to write books for other publishers on other topics even in the same subject area. For example, Judith Dwyer is the author of Pearson's title "Communication for Business and the Professions" as well as the co-author of McGraw-Hill's "Management Strategies and Skills".

### *Pre-existing international texts*

- 5.5 A publisher assesses what content from its existing offerings in other markets is relevant to New Zealand students and markets these products to education institutions, bookstores and students.
- 5.6 Publishers that use this model may service demand through a third party distributor and may either have an on the ground sales presence or undertake sales and marketing out of its Australian office, with trips to New Zealand as required. For example, McGraw-Hill uses an exclusive third party logistics distributor for New Zealand and has [ ]. McGraw-Hill does not commission editors or writers to adapt existing titles or create titles from scratch specifically for the New Zealand market.

### *Local content creation*

- 5.7 A publisher using this model undertakes market research to understand opportunities / strengths, and then looks for authors interested in creating content for proposed titles. [ ].
- 5.8 Once found, the process follows that outlined above: the publisher enters into a contract with the author, which would typically include payment by royalty (or, occasionally, a flat fee). The publisher will work collaboratively with the author to create content. For a publisher based outside of New Zealand (such as Cengage), the content itself is either adapted from the publisher's home market (e.g. the United States) to fit the New Zealand context, or otherwise is worked up from scratch.
- 5.9 As above, although authors are contracted exclusively to a publisher with respect to a specific title, authors are typically free to develop other titles with other publishers in other (including similar) subject areas.

### *Design & production*

- 5.10 The design and production phase includes the following activities:
- (a) **Editing, design, layout and programming:** The publisher arranges for the editing, design, layout and (in the case of digital materials) any programming required to produce the product. This typically requires working with a copy-editor and artists / designers to assist with the editing, layout and design of the product. In relation to digital products, the publisher would also need to work with programmers and digital design specialists to assist with developing the look and usability of the product.

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- (b) **Piloting the education materials with teachers and students:** Before the product is finalised, it will be piloted with teachers and students to obtain feedback so that the publisher can implement any final changes to the product.
- (c) **Printing and ePublication:** Once the product has been finalised, it is published either in hard copy (i.e. printed and bound), or digitally (e.g. made available on a wide variety of eBook platforms).

### *Pre-release, sales and marketing*

5.11 Pre-release sales and marketing activities include the following:

- (a) **Distribution of sample chapters and sample materials:** to complement their design and production processes, publishers often produce sample print and online materials. They provide these to any customers on their databases that have expressed an interest in their products. Their customers are generally teachers and / or academics from institutional education providers.
- (b) **Discussions with representatives:** Publishers will have direct communications with representatives from all educational segments. The communications are generally directly with teachers and / or academics around the promotion of the product.
- (c) **Communicating with customer base:** Publisher communications with their customers happen across many channels and can include emails, surveys, questionnaires and quizzes. These communications occur for the purposes of general marketing and promotional activities, such as discounts. The publisher usually works off the contacts in their customer database (as mentioned above, generally teachers and academics from institutional education providers), rather than students. However, publishers are increasingly also communicating directly with students through social media (e.g. Facebook). These channels provide a new way to build relationships with students.

### *Distribution*

- 5.12 Distribution is not impacted by whether a publisher's products are curated specifically for New Zealand or not.
- 5.13 A publisher's products can be distributed via print channels (e.g. hard copies sold from bookstores and co-ops) or digital (e.g. digital versions of books that can be downloaded via online stores (such as Amazon) or products delivered through online courses). Approximately [ ] of distribution occurs digitally; [ ] occurs via print.<sup>17</sup> In a dynamic with which the Commission is familiar, print is being displaced by digital quickly – [ ].
- 5.14 Distribution and warehousing can be in-sourced or out-sourced, with most major publishers operating in New Zealand outsourcing their own distribution and warehousing services.
- 5.15 Cengage and a number of other publishers (but not McGraw-Hill) provide sales and marketing services for third party (typically smaller) publishers. This involves liaising with universities and other distributors on behalf of the publisher and distributing and marketing the title for them. A number of non-traditional publishers also supply these third-party sales and marketing

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<sup>17</sup> For the primary sub-segment, less than [ ] of content is distributed via digital channels.

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distribution services for smaller publishers (e.g. Edify<sup>18</sup> is particularly strong in distribution services in New Zealand).

- (a) In the HED segment, the provision of third party distribution services (in Cengage's experience) [ ].
- (b) However, in the primary sub-segment, in Cengage's experience the provision of third-party distribution services tends to operate [ ].

5.16 The large majority of sales in the primary sub-segment occur through print channels. Customers are generally individual schools, as well as some booksellers. Typically, primary schools will purchase the textbook in question and then lend it to students (meaning that only the workbooks students write in are sold through booksellers).

### **The open market in New Zealand**

5.17 As the Commission is aware, the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998 amended the Copyright Act 1994 to expressly legalise parallel importing in New Zealand. This has had a number of significant consequences for New Zealand competitive dynamics:

- (a) There are low barriers to entry for distributors to set up, aggregate a list of titles, often from a number of upstream content creators, and go to market in New Zealand with a compelling product mix. A number of competitors choose to supply titles into New Zealand through third party distributors.
- (b) Global pricing is particularly relevant in the New Zealand context, and Cengage views New Zealand, by global standards, as a particularly price sensitive region. If any supplier is not sufficiently "sharp" in its pricing, a customer can get that supplier's titles (or, of course, any competing title) from anyone else, anywhere else in the world.

5.18 Cengage would estimate that since the 'opening' of the market in New Zealand, between [ ] and [ ] of revenue has moved offshore, as customers have taken advantage of the global pricing mentioned above, to source materials elsewhere..

### **Industry trends and competitive dynamics**

5.19 The education landscape has changed materially in the last 10 years. The significant disruption in book publishing globally, including through the emergence of digital technologies, has affected the entire supply chain. Budgetary restrictions for students and academic institutions have driven an ever-greater demand for alternative access models and materials, and the disruptive impact of digital technology has ensured that such alternative models have proliferated.

5.20 Two alternative models in particular have emerged as threats to the traditional business model:

- (a) Open Educational Resources: Traditionally the education publishing industry was predominantly focussed on print textbooks with limited sourcing alternatives. The internet introduced new ways for customers to purchase, access and consume educational materials, which has in turn enabled new dynamic entrants to take share from traditional print publishers. OER (which refers to openly licenced and freely

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<sup>18</sup> <https://www.edify.co.nz/>

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accessible teaching and learning materials) has arguably had the largest impact on the market, with many institutional, teacher and student customers increasingly choosing OER. In Cengage's experience, institutions are increasingly intervening in course material adoption decisions [ ]. In McGraw-Hill's experience, [ ].

- (b) The effect of digital disruption on the industry is illustrated by examples of disruptors that are now established industry players, such as 3P Learning<sup>19</sup> and Education Perfect.<sup>20</sup> Both examples provide online learning resources to primary and secondary schools in Australia and New Zealand.
- (c) "White space": Students are highly price sensitive, and seek content from a number of alternative sources (these sources are known cumulatively as the "white space"). In the United States, Cengage estimates that it receives no revenue from about [ ] of students enrolled in courses where the faculty adopts Cengage materials. In McGraw-Hill's experience, [ ]. Students have a number of viable alternatives that they can choose, including:
  - (i) purchasing second hand used textbooks;
  - (ii) renting textbooks;
  - (iii) borrowing textbooks from libraries;
  - (iv) sharing textbooks with friends in their course;
  - (v) downloading content illegally;
  - (vi) purchasing counterfeit textbooks; and/or
  - (vii) not purchasing some or any materials for the course.
- (d) None of these alternatives result in revenue for the Parties.

5.21 Many of the changes in education publishing relate to shifts in the way that students expect to consume information in terms of both (i) the format in which it is presented to them; and (ii) their willingness to pay for it (particularly in HED). Disruption in education publishing can be observed through a number of trends (in addition to the above), including:

- (a) falling sales in print, and an increasing demand for blended offerings which combine print and digital content;
- (b) demand for more interactivity and analytics, allowing for individual students' progress to be tracked, in the context of increased emphasis on customisation;
- (c) partnerships with education providers, which are resulting in shifts in buying models;
- (d) enormous growth in the availability of free content, such as 'Massive Open Online Courses';

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<sup>19</sup> <http://www.3plearning.com/nz/training/>

<sup>20</sup> <https://www.educationperfect.com/about/>

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- (e) new, non-traditional business models, which correspond with the diminishing role of bricks and mortar bookstores, including:
  - (i) education textbook rentals, which allows students to rent a textbook by paying a fee to the rental company and for which the education publisher receives no revenues;
  - (ii) subscription models, which are typically via a third-party provider that offers students or educational institutions access to content from participating education publishers on a subscription basis; and
- (f) changes in the way people search for and find content, as these activities increasingly move online.

5.22 Another trend in education publishing is the influx of recent new entrants. New digital and educational technology ("**EdTech**") entrants are founded each year, often with impressive growth trajectories. Although they were initially concentrated overseas, many solution providers have entered the New Zealand market. For example, companies such as VitalSource Technologies LLC (which supplies digital content from most publishers into all HED campuses)<sup>21</sup> and Kortext (which was founded in 2013 and is now the UK's leading personal learning platform and supplier of digital textbooks).<sup>22</sup> In response to the influx of EdTech competitors, McGraw-Hill provides content in a range of formats for individual students and institutions, including e-books and its Connect platform.<sup>23</sup>

5.23 New entrants span smaller-scale EdTech entrants to large digital players (such as Amazon, Microsoft, Apple and Google). Although the role that large digital players will take in this industry is still unclear, they have already commenced offering products.<sup>24</sup> There are also examples that show new entry / expansion into education print publishing is possible and a likely competitive constraint. (See paragraph 7.26 below).

5.24 The HED segment in particular is in the midst of a significant transformation, which is resulting in an ever-increasing number of competitors and alternative channels of consumption. The Parties compete for faculty adoptions with a large number of competitors, including traditional publishers and alternative sources of HED content, such as OER and EdTech. Even once they have won an adoption, the Parties must compete for a share of student spend against the "white space". As a result of these changes, competition between traditional textbook publishers – including Cengage and McGraw-Hill – now occurs in a larger pool including emerging new suppliers and in an environment where fewer students are choosing to purchase "new" products in favour of cheaper or even free alternatives.

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<sup>21</sup> <https://www.vitalsource.com/>

<sup>22</sup> <https://www.kortext.com/about-us>

<sup>23</sup> The Connect platform is an open learning environment for higher education. Connect allows instructors to create customised learning environments by integrating digital content into their programmes.

<sup>24</sup> For example, see Kindle Direct Publishing, *How to publish a textbook and other educational content on KDP* (accessed 2019): [https://kdp.amazon.com/en\\_US/how-to-publish-educational-content](https://kdp.amazon.com/en_US/how-to-publish-educational-content)

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### 6. RELEVANT MARKETS

- 6.1 The Parties submit that the market relevant to the Commission's assessment of the Transaction is the supply of education publishing in New Zealand, which includes primary, secondary and HED.<sup>25</sup>
- 6.2 In New Zealand, Cengage and McGraw-Hill are each active in education publishing in the following:
- (a) higher education; and
  - (b) primary education.
- 6.3 Cengage also publishes in secondary education, and supplies distribution services to third party education publishers. However, the Parties do not overlap in these segments because McGraw-Hill does not publish secondary education materials, nor does it supply third party distribution services.
- 6.4 The section below discusses the reasons why the Parties consider the supply of education publishing in New Zealand to be the relevant market, including because:
- (a) that market is consistent with the Commission's findings in the analogous *Bertelsmann/ Pearson*<sup>26</sup> decision;
  - (b) that market is consistent with the Australian Competition & Consumer Commission's ("ACCC") previous decisions relating to publishing in Australia; and
  - (c) the key infrastructure associated with education publishing can be used across all educational segments.
- 6.5 In any event, the Parties do not believe it is necessary to reach a firm view on market definition because the Transaction raises no competition concerns, irrespective of the market definition adopted.

#### Supply of education publishing in New Zealand

- 6.6 The Commission has previously found markets for the "acquisition of trade book publishing rights from New Zealand authors", "supply of printed trade book distribution services provided to third party New Zealand publishers", and "the supply of trade books to retailers".<sup>27</sup>

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<sup>25</sup> In *Bertelsmann/Pearson* at [49], the Commission considered whether it was appropriate to segregate markets by different book genres, but decided not to, *inter alia*, because publishers all publish books across various genres. In the same vein, education publishers publish titles across multiple subject areas, and this reasoning applies by analogy in the present case.

<sup>26</sup> Although the Commission had in its assessment of the merger found a separate functional market for "third-party distribution services", it was in circumstances where both Parties undertook these functions in-house and on behalf of third-party publishers.

<sup>27</sup> *Bertelsmann SE & Co. KGaA and Pearson plc* [2013] NZCC 6.

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6.7 The ACCC has previously found national markets for “the supply of books by publishers”,<sup>28</sup> “education publishing”<sup>29</sup> and “wholesale supply of books to retailers (by publishers and distributors)”.<sup>30</sup>

### **Product dimension**

6.8 The publishing industry in New Zealand is generally segmented into the trade and education segments. Both Parties are active in education publishing only. Therefore, in the Parties’ view, the relevant product market in which the Commission should assess the Transaction involves the supply of education publishing. That said, there are few barriers for a publisher to expand from trade into the education segment, and the Parties contend that publishers in the trade segment could do so in response to a small but significant increase in price. The Parties have not given detailed analysis of the trade publishing sector, however, for the purposes of this application.

6.9 The Parties do not consider it necessary to adopt a narrower definition of the product market for the following reasons:

(a) Most of the major publishers in New Zealand operate in more than one educational segment (i.e. primary, secondary and HED), and it is relatively easy to switch between supplying between segments because the key infrastructure associated with publishing can be used across all segments; and

(b) Although major publishers may be stronger in particular subject(s) within an education segment, it is relatively easy to switch between subjects by sourcing a relevant author (although it is slightly less easy to do so in the case of highly specialised subjects, such as law and medicine, which may require specialised referencing systems), including because there is no goodwill or brand recognition attributed to education publishers. Publishers can also easily switch between subjects because the distribution and publishing processes, as well as the process for acquiring content and sourcing authors, are the same for all subjects.

6.10 This view is consistent with the Commission's previous decision in the publishing sector, and with the ACCC's previous public decisions in the education and/or book publishing sector.<sup>31</sup>

6.11 However, even within each educational segment (i.e. primary, secondary and HED) and/or further by subject area, the Transaction will not have the effect or likely effect of substantially lessening competition for the reasons set out below.

6.12 Although there are some differences in the development and publication of materials in print and digital formats (and some publishers operate purely in the digital segment, at least to begin

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<sup>28</sup> ACCC, *Bertelsmann SE and Co KGaA and Pearson Plc - proposed combination of global book publishing businesses (Random House & Penguin)* (11 January 2013): <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/bertelsmann-se-and-co-kgaa-and-pearson-plc-proposed-combination-of-global-book-publishing-businesses-random-house-penguin>.

<sup>29</sup> ACCC, *Pearson Australia Group Pty Ltd - proposed acquisition of Harcourt Assessment* (15 May 2007): <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/pearson-australia-group-pty-ltd-proposed-acquisition-of-harcourt-assessment>.

<sup>30</sup> ACCC, *Pearson Australia Group Pty Ltd - completed acquisition of certain assets of REDgroup Retail Pty Ltd (Administrators appointed)* (11 August 2011): <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/pearson-australia-group-pty-ltd-completed-acquisition-of-certain-assets-of-redgroup-retail-pty-ltd-administrators-appointed>.

<sup>31</sup> *Bertelsmann SE & Co. KGaA and Pearson plc* [2013] NZCC 6; ACCC, *Pearson Australia Group Pty Ltd - proposed acquisition of Harcourt Assessment* (15 May 2007): <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/pearson-australia-group-pty-ltd-proposed-acquisition-of-harcourt-assessment>.

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with), the Parties also do not consider it necessary to find a separate product market for digital and print publications because these media are increasingly being used interchangeably (e.g. a student can opt to purchase a print version, an electronic version, or both versions of the same textbook). Finally, for HED, instructors are increasingly combining print and digital materials and often it is up to the individual student whether they use a print book or an e-book (or both).

### ***Geographic dimension***

- 6.13 The Parties submit that the appropriate geographic scope of this market is at least national, if not global. All major education publishers operating in New Zealand, including Cengage and McGraw-Hill, supply education publishing nationally. Further:
- (a) education publishers tend to provide content and materials to primary, secondary, and HED institutions throughout New Zealand; and
  - (b) end users may purchase materials from distributors located anywhere in New Zealand given the prevalence of online stores and ease of shipping content across the country and delivering digital material over the internet.
- 6.14 This view is consistent with the Commission's and ACCC's<sup>32</sup> previous decisions in education publishing and book publishing, which found national markets.

### ***Functional dimension***

- 6.15 The Parties main businesses are at the wholesale level of the supply chain. However, the Parties also make a small number of incidental sales direct to customers via their websites. This is a minor part of the Parties' annual revenue:
- (a) Cengage retails products through its website and it estimates that its revenue from the retailing of educational publishing materials in New Zealand is approximately NZ\$[     ],<sup>33</sup> and
  - (b) McGraw-Hill retails products through its website and its revenue from the retailing of educational publishing materials in New Zealand in 2018 was NZ\$[     ].
- 6.16 Given the incidental nature of retail sales made by the Parties and the presence of large dedicated retailers, the Parties do not consider the retail level of the supply chain further in this application.

## **7. NO SUBSTANTIAL LESSENING OF COMPETITION**

- 7.1 The Transaction will not substantially lessen competition in New Zealand. As set out in greater detail below, actual overlaps are minimal, and where they occur, the merged entity will be constrained by a large existing competitive set, and a number of other significant competitive dynamics.

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<sup>32</sup> *Bertelsmann SE & Co. KGaA and Pearson plc* [2013] NZCC 6; ACCC, *Pearson Australia Group Pty Ltd - proposed acquisition of Harcourt Assessment* (15 May 2007): <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/pearson-australia-group-pty-ltd-proposed-acquisition-of-harcourt-assessment>.

<sup>33</sup> Converted from [     ] at an exchange rate of 0.934075 for FY2019. Annual exchange rates are calculated as the average of the monthly exchange rates provided by RBNZ for the relevant FY period. See <https://www.rbnz.govt.nz/statistics/b1>



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**Market shares**

- 7.2 The Parties are not aware of any reliable market share data sources for New Zealand, in particular since Nielsen ceased aggregating relevant New Zealand-specific market data over five years ago.<sup>34</sup> The Parties are minor players in the total educational publishing market and have no visibility on what their market shares would be in the total market. The Parties have slightly better visibility into what their segment shares might be in the segments for HED and primary. Further, due to the 'opening' of the market in New Zealand (detailed above at 5.17), the Parties consider it difficult to estimate with any accuracy the shares of the other parties within the market.
- 7.3 The Parties "best guesses" for the HED segment are detailed in Table 1. Cengage's "best guess" is that its New Zealand share is [ ] and McGraw-Hill's "best guess" is that its share is [ ], amounting to a combined share of [ ].

**TABLE 1: HED SEGMENT**

<b>Parties</b>	<b>Sales for 2018 calendar year (NZD)</b>	<b>HED<sup>35</sup></b>
Cengage	[ ] <sup>36</sup>	[ ]
McGraw-Hill	[ ] <sup>37</sup>	[ ]
<i>Merged entity</i>	[ ]	[ ]
Pearson (distributed by Edify)	-	[ ]
Wiley	-	[ ]
Oxford University Press (distributed by Edify)	-	[ ]
Elsevier	-	[ ]
Wolters Kluwer	-	[ ]
Others <sup>38</sup>	-	[ ]
<b>Total</b>	[ ]	100%

- 7.4 A summary of how the Parties calculated the estimated total market size is detailed as follows:

<b>Summary of calculation</b>	<b>Amount</b>
[ ] <sup>39</sup>	[ ]
[ ] <sup>40</sup>	[ ]
[ ] <sup>41</sup>	[ ]
[ ]	[ ]

<sup>34</sup> Furthermore, Cengage does not consider this Nielsen data to be an accurate reflection of the competitive dynamics in New Zealand, in particular because it excludes significant sales channels (such as the online channel) in HED.

<sup>35</sup> Source: Parties "best guesses".

<sup>36</sup> Converted from [ ] at an exchange rate of 0.926108333 for 2018. Annual exchange rates are calculated as the average of the monthly exchange rates provided by RBNZ for the relevant calendar year. See <https://www.rbnz.govt.nz/statistics/b1>

<sup>37</sup> Converted from [ ] at an exchange rate of 0.926108333 for 2018. Annual exchange rates are calculated as the average of the monthly exchange rates provided by RBNZ for the relevant calendar year. See <https://www.rbnz.govt.nz/statistics/b1>

<sup>38</sup> Others include Cambridge University Press, Macmillan, ESA Publications, ABA Resources Ltd, Essential Resources, Allen & Unwin, LexisNexis, New Holland Publishers, Penguin Random House, RIC Publications, Sage Publications, Taylor and Francis, Thames and Hudson, Thomson Reuters, and W. W. Norton & Company. While the Parties are aware of other competitors in the HED segment, they have no accurate way to determine their shares.

<sup>39</sup> APA has only recently started collecting data with respect to the New Zealand tertiary market.

<sup>40</sup> [ ].

<sup>41</sup> [ ].

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The APA data underlying the "Summary of calculation" table and the methodology used by APA to collect that data is set out in detail in **Appendix 11**.

7.5 For the HED segment,

- (a) [ ];
- (b) [ ].

7.6 Cengage notes that the market shares above are likely to be overstated due to:

- (a) the dynamics of the 'open market' discussed below. [ ]; and
- (b) the exclusion of trade publishers from the list of competitors.

7.7 In the School segment (i.e. secondary and primary):

- (a) Cengage's "best guess" is that its New Zealand share is [ ]; and
- (b) McGraw-Hill's "best guess" is that its share is [ ].

7.8 In the primary sub-segment, Cengage's "best guess" is that its New Zealand share is [ ]. The Parties "best guesses" for the primary sub-segment are detailed in Table 2.

**TABLE 2: PRIMARY SUB-SEGMENT**

Parties	Primary <sup>42</sup>
Cengage	[ ]
McGraw-Hill	[ ]
<i>Merged entity</i>	[ ]
Pearson (distributed by Edify)	[ ]
Scholastic New Zealand Limited	[ ]
Sunshine Books	[ ]
Lioncrest Education	[ ]
Oxford University Press (distributed by Edify)	[ ]
Eleanor Curtain Publishing (distributed by Edify)	[ ]
Others <sup>43</sup>	[ ]
<b>Total</b>	100%

7.9 The Parties are not close competitors in the School segment (including the primary sub-segment) for the reasons detailed at 7.13(b) below. For the avoidance of doubt, McGraw-Hill does not operate in the secondary sub-segment.

7.10 [ ].

7.11 Cengage notes that the market shares above are likely to be overstated due to:

- (a) the dynamics of the 'open market' discussed below. [ ]; and
- (b) the exclusion of trade publishers from the list of competitors.

<sup>42</sup> Source: Parties "best guesses".

<sup>43</sup> Others include ESA Publications, Clean Slate Press, Gilt Edge, and Essential Resources. While the Parties are aware of other competitors in the primary sub-segment, they have no accurate way to determine their shares.

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### The Parties are not each other's closest competitor

- 7.12 The Parties are not each other's closest competitor in any relevant market or in any educational segment, including by subject area. Each party has a different product mix, and their products in New Zealand are largely complementary, with McGraw-Hill not producing titles specifically for New Zealand.
- 7.13 Actual overlaps are minimal. Where there is an overlap, there are other publishers that each party considers to be a closer competitor:
- (a) the Parties do not overlap in the supply of any products to the **secondary sub-segment**, as McGraw-Hill is not active in this space at all in New Zealand;
  - (b) in the **primary sub-segment**, McGraw-Hill is only a minor player and its products do not directly compete with those supplied by Cengage as the Parties in the primary sub-segment are largely complementary because:
    - (i) Cengage mainly supplies readers with some assessments in this sub-segment (i.e. the products sold by Cengage in the primary education segment are mostly “student led”); whereas
    - (ii) McGraw-Hill only offers its ‘Direct Instruction’ teaching method<sup>44</sup> (i.e. the products sold by McGraw-Hill in the primary sub-segment are all “teacher led”);
  - (c) in addition, Cengage has a strong active local New Zealand publishing program, whereas McGraw-Hill does not; and
  - (d) the Parties overlap in just nine of the 50 subject areas in the **HED segment**.<sup>45</sup> For example, both Cengage and McGraw-Hill supply titles in childcare offerings, electrical, automotive, psychology and business.<sup>46</sup>
- 7.14 As noted above, consistent with the Commission’s decision in *Bertelsmann/Pearson*, the Parties contend that the relevant market is for education publishing. Nevertheless, even if separate markets are designated on the basis of HED sub-segments, concerns would not arise. Cengage and McGraw-Hill are not each other's closest competitor in any of these subject areas and the Parties' titles in these subject areas are differentiated. Cengage and McGraw-Hill do not compete in subject areas where New Zealand specific content is required as only Cengage produces New Zealand-specific content. Moreover, this segment is very competitive, as set out in greater detail below.

### Numerous vigorous and effective competitors

- 7.15 The Parties compete with many international and local publishers across the HED segment and primary sub-segment. After completion, the merged entity will continue to be constrained by these publishers, including (but not limited to):

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<sup>44</sup> Direct Instruction is McGraw-Hill’s intensive instructional method with common instructional planning and consistent classroom routines.

<sup>45</sup> Based on the Nielsen classifications described in **Appendix 7**.

<sup>46</sup> Other subject areas include language studies (other than English language teaching), psychology, education and teaching, business, economics, finance and accounting, medicine, science and mathematics, and engineering and technology. Further detail is provided in **Appendix 7**.

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- (a) **Pearson.** Pearson is one of the largest publishers of educational resources in the world, headquartered in London, and with 24,000 staff in nearly 60 countries.<sup>47</sup> It delivers content, assessment, and services, powered by technology, in order to drive personalised learning at scale.<sup>48</sup> It owns 25% of Penguin Random House.

In New Zealand, Pearson products are distributed by Edify, an Auckland-based educational publishing and distribution company that publishes its own list of educational materials, as well as distributing for Pearson, Eleanor Curtain, Macmillan, and Oxford University Press.<sup>49</sup>

- (b) **Wiley.** John Wiley & Sons, Inc. ("**Wiley**"), founded in 1807, specialises in academic publishing and instructional materials. Wiley produces digital and print scientific, technical, medical and scholarly journals, reference works, books, database services, and advertising. It also provides education content and services for undergraduate and graduate students, and lifelong learners.<sup>50</sup> It partners with educators and institutions globally, and delivers both print and digital solutions.

- (c) **Oxford University Press.** Since its foundation in 1586, Oxford University Press ("**OUP**") now publishes more than 6,000 titles per year including dictionaries, English language teaching materials, children's books, journals, scholarly monographs, higher education textbooks and schoolbooks.<sup>51</sup> OUP's journals cover Arts & Humanities, Law, Medicine & Health, Science & Mathematics and Social Sciences.<sup>52</sup> Beyond traditional publishing, OUP also offers support to teachers, delivers digital learning and assessment tools and creates online research tools.<sup>53</sup> OUP is the largest university press in the world, with offices in 50 countries.<sup>54</sup>

- (d) **Cambridge University Press.** Cambridge University Press ("**CUP**") is the oldest publishing house in the world. It currently has over 50 offices worldwide, over 2,000 employees and publishes over 50,000 titles by authors from over 100 countries. CUP is made up of three market facing publishing groups: Academic, Cambridge English and Education. It publishes over 2,500 books per year and distributes them in more than 200 countries. Cambridge Journals publishes over 250 peer-reviewed academic journals in a variety of subject areas both in print and online.

- (e) **Macmillan.** Macmillan Publishers Ltd is one of the largest international publishing groups in the world, with over 7,000 staff operating in more than 80 countries. It is wholly owned by Verlagsgruppe Georg von Holtzbrinck GmbH, a German publishing company.<sup>55</sup> The Macmillan group includes a publishing arm, as well as Macmillan Learning (which partners with researchers, educators, administrators and developers to develop content and education tools), and Macmillan Education (which supports students, instructors and institutions in 50 countries with content including

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<sup>47</sup> <https://www.pearson.com/corporate>

<sup>48</sup> <https://www.pearson.com/content/dam/one-dot-com/one-dot-com/global/Files/cosec/2019/701312-20-F-Web-Version.pdf> at p 14.

<sup>49</sup> <https://www.edify.co.nz/>

<sup>50</sup> Wiley, *Corporate Information* (accessed 1 May 2019). <https://www.wiley.com/WileyCDA/Section/id-301454.html>.

<sup>51</sup> Oxford University Press, *Our Publishing*. See <https://global.oup.com/about/publishing?cc=nz&selected=nz>

<sup>52</sup> Oxford Academic, *Journals* (accessed 1 May 2019): <https://academic.oup.com/journals/>.

<sup>53</sup> Oxford University Press, *Our Publishing*. <https://global.oup.com/about/publishing?cc=nz&selected=nz>

<sup>54</sup> Oxford University Press, *About Oxford University Press*. <https://www.oup.com.au/about>.

<sup>55</sup> Holtzbrinck Publishing Group, *About Us* (accessed 5 June 2019): <https://www.holtzbrinck.com/>. Holtzbrinck's activities are focused on book publishing, scientific, technical and medical magazines and journals, business publications, economic research and consulting, newspapers and multimedia; see Macmillan Education Australia, *About Us* (accessed 2019): <https://www.macmillaneducation.com.au/pages/about-us>.

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language learning, schools curriculum publishing,<sup>56</sup> and higher education training and support).

- (f) **ESA Publications.** ESA Publications is an educational publisher with over 300 study guides and workbooks for the primary and secondary school levels. It publishes in-house, with the support of outside editors and illustrators. It is a subsidiary of The Open Polytechnic of New Zealand.<sup>57</sup>
- (g) **ABA Resources Ltd.** ABA is a New Zealand publisher of educational materials, producing content across a range of subject areas and education levels. It offers workbooks, online revision, and eLearning products.<sup>58</sup>
- (h) **Essential Resources.** Essential Resources is a New Zealand publisher of educational resources predominantly for the primary and secondary school segments.<sup>59</sup> It offers products as physical textbooks or as eBooks.
- (i) **Scholastic New Zealand Limited.** Scholastic New Zealand is one of New Zealand's largest publishers and distributors of children's books. Scholastic New Zealand is part of Scholastic Inc, the world's largest publisher and distributor of books, magazines, educational and multimedia materials for children. Scholastic Inc has operations in 13 countries and exports to nearly every country in the world. In New Zealand, it offers a significant range of educational materials, across a range of subjects.<sup>60</sup>
- (j) **Eleanor Curtain Publishing.** Eleanor Curtain Publishing is an independently owned, Australian educational publisher, specialising in early literacy programmes and teacher reference. Established in 1990, Eleanor Curtain has more than 1,000 titles in print "used in schools not just in Australia and New Zealand, but in most countries where English is spoken or taught."<sup>61</sup>

7.16 There are a number of other publishers that the Parties compete with in the HED and School segments, including Allen & Unwin,<sup>62</sup> Elsevier,<sup>63</sup> LexisNexis,<sup>64</sup> New Holland Publishers,<sup>65</sup> Penguin Random House,<sup>66</sup> RIC Publications,<sup>67</sup> Sage Publications,<sup>68</sup> Taylor and Francis,<sup>69</sup> Thames and Hudson,<sup>70</sup> Thomson Reuters,<sup>71</sup> W. W. Norton & Company,<sup>72</sup> and Wolters Kluwer.<sup>73</sup> There are also over 60 members of the Publishers Association of New Zealand,

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<sup>56</sup> In August, Macmillan announced its intention to review its local operations in Australia with the intention of withdrawing from the Australian market in due course. Macmillan is currently represented by Edify in New Zealand. [ ].

<https://www.macmillaneducation.com.au/pages/recent-news>

<sup>57</sup> <https://esa.co.nz/pages/about-us>

<sup>58</sup> <https://abaresources.co.nz/about/our-story>

<sup>59</sup> <https://www.essentialresources.co.nz/Er/AboutUs/Index>

<sup>60</sup> <https://www.scholastic.co.nz/schools/education/>

<sup>61</sup> <https://ecpublishing.com.au/about-us>

<sup>62</sup> <http://www.allenandunwin.co.nz/>

<sup>63</sup> <https://www.elsevierhealth.com.au/about-us>

<sup>64</sup> <https://www.lexisnexis.co.nz/en-nz/home.page>

<sup>65</sup> <http://nz.newhollandpublishers.com/>

<sup>66</sup> <https://www.penguinrandomhouse.co.nz/>

<sup>67</sup> <https://www.ricpublications.co.nz/>

<sup>68</sup> <https://au.sagepub.com/en-gb/oce/company-information>

<sup>69</sup> <https://taylorandfrancis.com/contact/global-offices/>

<sup>70</sup> <https://thamesandhudson.com.au/>

<sup>71</sup> <https://www.thomsonreuters.co.nz/>

<sup>72</sup> <https://www.norton.com/find-your-rep/international-representatives>

<sup>73</sup> <https://www.wolterskluwer.co.nz/about-us/>

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many of which are not included in the above list, that compete with the Parties and will continue to compete with the merged entity post-Transaction.<sup>74</sup>

- 7.17 The names and contact details for the Parties' main competitors are detailed at **Appendix 1**. Competition within the HED segment is detailed further at **Appendix 7**.

### **No material barriers to entry**

- 7.18 There are no material barriers to entry in education publishing, including as a result of the digital, and other types, of disruption the industry is experiencing.

#### *Highly dynamic market*

- 7.19 The industry is highly dynamic and faces significant digital disruption from the digitisation of learning and entry of new digital players. Disruption of the education publishing industry can be seen in the decline of traditional print sales and the growing demand for interactivity, analytics and blended offerings. Customer consumption patterns are also changing as teachers and students increasingly demand educational publications in digital formats (such as through iPads). Pressure has also increased on educational institutions to decrease textbook costs which has resulted in the increased attractiveness and uptake of digital options. The Parties consider that the digitisation of learning will continue to significantly disrupt the education publishing industry given the rapid pace and breadth of new digital entrants. In addition to the existing competition from traditional educational publishers that will constrain the merged entity, it will also continue to face competitive constraints from digital players.
- 7.20 Large digital platform operators such as Amazon also have major potential to enter and disrupt the market, including by increasing the capacity of authors to self-publish. Pearson has recently announced the release of its first higher education courseware skill for Amazon Alexa.<sup>75</sup> Other well-resourced digital platform operators have also been experimenting with disruptive technology in the industry (e.g. Apple's iTunes U, Google's Classrooms and Microsoft's LinkedIn Learning).
- 7.21 Changes in consumption patterns among students have also disrupted the education publishing industry, with education publishers required to compete for a share of student spend against the "white space":
- (a) **Rental or outright purchase of second hand books:** A wide range of different marketplaces for second hand textbooks have proliferated enabling students to bypass education publishers, for which the publisher receives no revenue. University bookstores buy and sell second hand textbooks. Specialist online services such as UBook.co.nz have extensive databases of textbooks for rental.<sup>76</sup> Most New Zealand universities also have well-established "peer to peer" textbook exchange groups, which can be operated easily and efficiently through social media such as Facebook (by way of example, around the time of semester two beginning at the University of

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<sup>74</sup> <http://www.publishers.org.nz/members/>

<sup>75</sup> Pearson, *Pearson Releases First Higher Education Courseware Skill for Amazon Alexa* (10 July 2019): <https://www.pearson.com/corporate/news/media/news-announcements/2019/07/pearson-releases-first-higher-education-courseware-skill-for-ama.html>

<sup>76</sup> <http://ubook.co.nz/>

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Auckland,<sup>77</sup> the Auckland University second hand book Facebook page had 7,488 items for sale, and over 27,700 members).<sup>78</sup>

- (b) **Piracy:** Piracy is becoming increasingly prevalent particularly in the HED segment, allowing students to completely bypass education publishers.
- (c) **Sharing:** Students can completely bypass education publishers by sharing resources amongst themselves, rather than individual textbook purchases. There has been an increasing trend towards sharing education materials.

7.22 New entry into HED occurs continuously due to a large number of traditional textbooks being introduced every academic year and OER, EdTech, and new forms of alternative content continuing to expand. Such entry would likely accelerate in response to an incumbent increasing prices in any particular course. Entry into most courses could occur rapidly and with low sunk costs as courses often involve overlapping subject matter.

### *Low cost of entry and/or expansion*

7.23 There is a low cost of entry and/or expansion stemming from the digitalisation of the education publishing industry. As detailed above, the increasing pressures from consumers (including students, institutions and schools) to cut textbook costs has increased the attractiveness of digital over print products, particularly in HED. This has reduced the barriers to entry that existed when the education publishing industry consisted predominantly of traditional print products.

7.24 The digitalisation of the education publishing industry has also meant lower barriers to entry and expansion for numerous publishers now offering technological capabilities such as eBooks, interactive assessing and grade calculating / storing capabilities. Digitisation has reduced costs of repositioning and repurposing content, particularly for HED. It has also provided several ways for digital players to enter the education publishing market and determine investment levels based on how sophisticated the segment is.

7.25 As evidenced by McGraw-Hill, local content creation is not required to compete in the HED segment.

### *Scale is not important for entry into the education publishing industry*

7.26 The creation and publishing of educational resources is a scalable business model. Firms can enter the market with a limited series of titles (perhaps confined to a single subject or year level), and expand incrementally as they build relationships with creators of quality content. There is a large tail of smaller niche publishers in New Zealand that could expand their range of titles if the merged entity attempted to increase prices or reduce quality, including:

- (a) in the HED segment, competitors such as Huia Publishers,<sup>79</sup> NZCER Press,<sup>80</sup> and RSNZ Publishing;<sup>81</sup> and

<sup>77</sup> Data collected on 24 July 2019. Semester two began on 22 July 2019.

<sup>78</sup> <https://www.facebook.com/groups/113962292028305/>

<sup>79</sup> <https://www.huia.co.nz/huia-bookshop/bookshop/>

<sup>80</sup> <https://www.nzcer.org.nz/about-nzcer-press>

<sup>81</sup> <https://royalsociety.org.nz/what-we-do/our-journals/>

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- (b) in the primary sub-segment, competitors such as Toi Publishing,<sup>82</sup> Gilt Edge,<sup>83</sup> Flying Start,<sup>84</sup> Liz Kane Literacy.<sup>85</sup>

*Distribution presents only minimal obstacles to new entry or expansion*

- 7.27 In terms of distribution, as has been set out above, the open market in New Zealand makes distribution particularly straightforward. There are minimal obstacles to a distributor aggregating titles from a number of global publishers into a single compelling offering.

*Low brand loyalty and switching costs*

- 7.28 Relationships with customers do not represent a barrier to entry in educational publishing. The people responsible for selecting the titles to be taught are not the corporate officers of the academic institutions in question, but rather the teachers / lecturers themselves. Teachers / lecturers are generally much less concerned with preserving relationships with suppliers, and more interested in the quality, affordability and relevance of the material in question. In the Parties' experience, these are the criteria used when decision makers choose products for a particular course. Indeed, in Cengage's experience:

- (a) in the primary sub-segment, customers (such as schools) consider their book room and look to fill any gaps in it when selecting between different forms of published materials. Customers also consider the quality of the product and their budgets; and
- (b) in the HED segment, customers consider the subjects / papers being taught for the semester and recent publications (eg within the last 1-3 years).

- 7.29 The contact details of a sample of representatives in the primary sub-segment and HED segment are provided in **Appendix 10**.

- 7.30 Additionally, there are low switching costs associated with an educational institution switching providers.

- 7.31 Although authors are contracted exclusively to a publisher with respect to a specific title, authors are typically free to develop other titles with other publishers in other (including similar) subject areas. There have also been instances where Cengage has reverted the rights in a textbook to its author, who has gone on to have the text published by another publisher. For example, Andrew Terry's "Business and the Law", which was published by Cengage, is now published by Thomson Reuters. In these circumstances, there is no cost to the author in having rights in a text reverted to them. Furthermore, McGraw-Hill does not produce titles specifically for the New Zealand market.

### **Consumers can (and do) completely bypass the Parties**

- 7.32 In addition to competition from other major publishers, niche publishers and digital EdTech players, customers and/or end users will continue to have the ability to completely bypass the merged entity by acquiring education materials from the "white space", which has been discussed in detail elsewhere in this application.

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<sup>82</sup> <https://www.toitoi.nz/about/>

<sup>83</sup> <https://www.giltedgepublishing.co.nz/>

<sup>84</sup> <https://flyingstartbooks.com/>

<sup>85</sup> <https://lizkaneliteracy.co.nz/>



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7.33 Students / education providers can also completely bypass the merged entity by relying more on OER resources. Cengage is aware of an increasing proportion of faculty members incorporating OER materials into their courses as a cost-saving measure. Educational institutions also typically have internal printing capabilities for their own courses. Bookstores (such as Vic Books & Café<sup>86</sup>) also facilitate bypass by students and educational institutions because they distribute both university-created course materials and second-hand textbooks.

### **No anti-competitive vertical or portfolio effects**

7.34 The merged entity will not have the ability or incentive to foreclose or discriminate against any authors or third-party publishers because any attempt to do so would be defeated by the competitive constraints that will continue to prevail after completion of the Transaction.

7.35 Further, the merged entity will not have any “must have” products and/or unique bundles which could be leveraged. For every product and/or bundle of products currently offered by the Parties, there are competing alternatives in each educational segment.

### **No coordinated effects**

7.36 The Transaction will not increase the likelihood of coordination in the education publishing industry, because:

- (a) there are a variety of different models of operation such that costs are likely to vary greatly between each player (including due to differences between print and digital publishing models and the variety in the size of players, from small boutique publishers to large global players);
- (b) pricing can also be complex as discounts may be offered with additional terms or restrictions (e.g. limits on resales) and supplementary materials may be offered as part of bundles (e.g. free or discounted study guides);
- (c) generally, educational products are highly differentiated products which are rarely direct, close substitutes for one another. There are many different potential reasons for adoption of particular texts (such as course level, pedagogy, topics covered or emphasised and in what order, supplementary materials and use of technology), which would make it more difficult for publishers to coordinate pricing or terms, etc.;
- (d) the industry is dynamic with new texts and new editions of existing texts coming out frequently;
- (e) the demand for books varies through the revision cycle (and across cycles depending on the nature of the revision) and revision cycles vary across books in a course; and
- (f) the existing players in the industry are subject to a high degree of competitive constraint, including low barriers to entry and general disruption in a highly dynamic industry.

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<sup>86</sup> <https://www.vicbooksandcafe.co.nz/>

## **PUBLIC VERSION**

### **8. CONCLUSION**

- 8.1 For all the reasons set out above, McGraw-Hill and Cengage are confident that the Transaction does not give rise to any substantial lessening of competition in any market.

### **9. CONFIDENTIALITY**

- 9.1 Confidentiality is sought in respect of the information in this application that is contained in square brackets (with confidentiality indicated by the coloured highlighting). Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the grounds that:

- (a) the information is commercially sensitive and valuable information which is confidential to the participants; and
- (b) disclosure would be likely unreasonably to prejudice the commercial position of the participants, as the parties providing the information.

- 9.2 McGraw-Hill and Cengage request that they are notified of any request made to the Commission under the Official Information Act 1982 for release of the confidential information. McGraw-Hill and Cengage also request that the Commission seek and consider McGraw-Hill and Cengage's views as to whether the information remains confidential and commercially sensitive at the time responses to such requests are being considered.

- 9.3 The foregoing equally applies in respect of any additional information provided to the Commission that is expressed to be confidential.

**PUBLIC VERSION**

**DECLARATION**

I, **Paul Petrusis**, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director / officer of Cengage and am duly authorised to submit this notice.

**Name and title of person authorised to sign:**

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**Signature**

**Date**

**PUBLIC VERSION**

**DECLARATION**

I, **David Stafford**, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director / officer of McGraw-Hill and am duly authorised to submit this notice.

**Name and title of person authorised to sign:**

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**Signature**

**Date**

**APPENDIX 1 - CONTACT DETAILS FOR MAIN COMPETITORS AND TRADE AND INDUSTRY ASSOCIATIONS**

**Competitors**

Name of entity	Contact Person	Contact details
Edify (Pearson, Eleanor Curtin Publishing, Oxford University Press, Macmillan)	[ ]	[ ]
Wiley		Telephone: 07 38599755 Email: brisbane@wiley.com
Cambridge University Press	[ ]	[ ]
Sunshine Books		Telephone: 09 525 3575 Email: sales@sunshine.co.nz
Lioncrest Education	[ ]	[ ]
Scholastic New Zealand Limited	[ ]	[ ]
Elsevier	[ ]	[ ]
Wolters Kluwer	[ ]	[ ]

**Industry Associations (Cengage only)**

Name of entity	Contact Person	Contact details
Publishers Association of New Zealand	[ ]	[ ]

**APPENDIX 2 - CUSTOMERS**  
**TOP CUSTOMERS OF CENGAGE**

*Figure 1 - Cengage's top 5 publisher customers by revenue in HED (FY2019) and their contact details*

NAME	REVENUE FOR FY2019 (AUD)	Contact person(s)	Telephone	Email	Position
[ ]	[ ] <sup>87</sup>	[ ]	[ ]	[ ]	[ ]
[ ]	[ ] <sup>88</sup>	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

*Figure 2 - Cengage's top 5 publisher customers by revenue in the primary sub-segment (FY2019) and their contact details*

NAME	REVENUE FOR FY2019 (AUD)	Contact person(s)	Telephone	Email	Position
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

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<sup>87</sup> [ ].  
<sup>88</sup> [ ].

**TOP CUSTOMERS OF MCGRAW-HILL**

*Figure 3 – McGraw-Hill's top 5 publisher customers by revenue in HED (YTD August 2019) and their contact details*

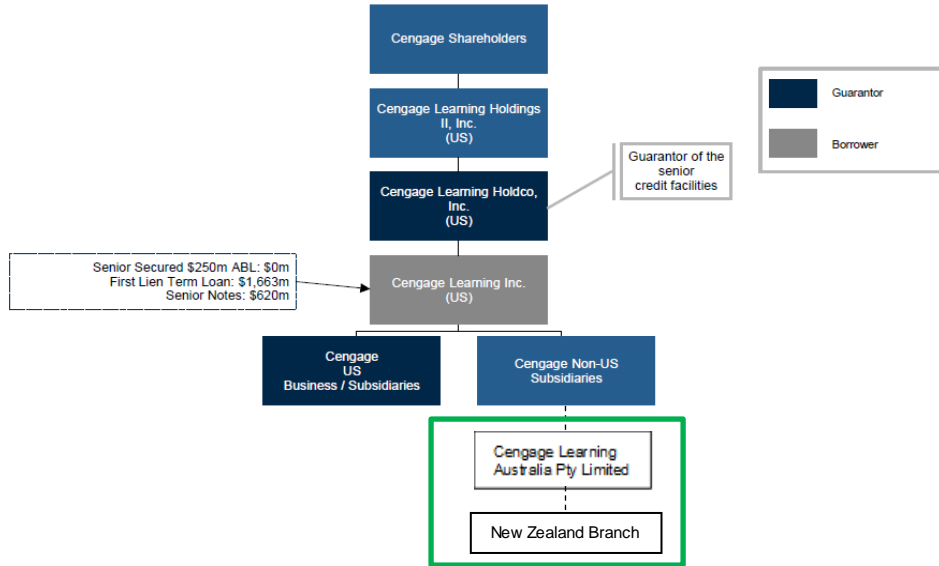
NAME	REVENUE (AUD)	CONTACT PERSON(S)	TELEPHONE	EMAIL	POSITION
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	

*Figure 4 – McGraw-Hill's top 5 publisher customers by revenue in the primary sub-segment (YTD August 2019) and their contact details*

NAME	REVENUE (AUD)	CONTACT PERSON(S)	TELEPHONE	EMAIL	POSITION
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

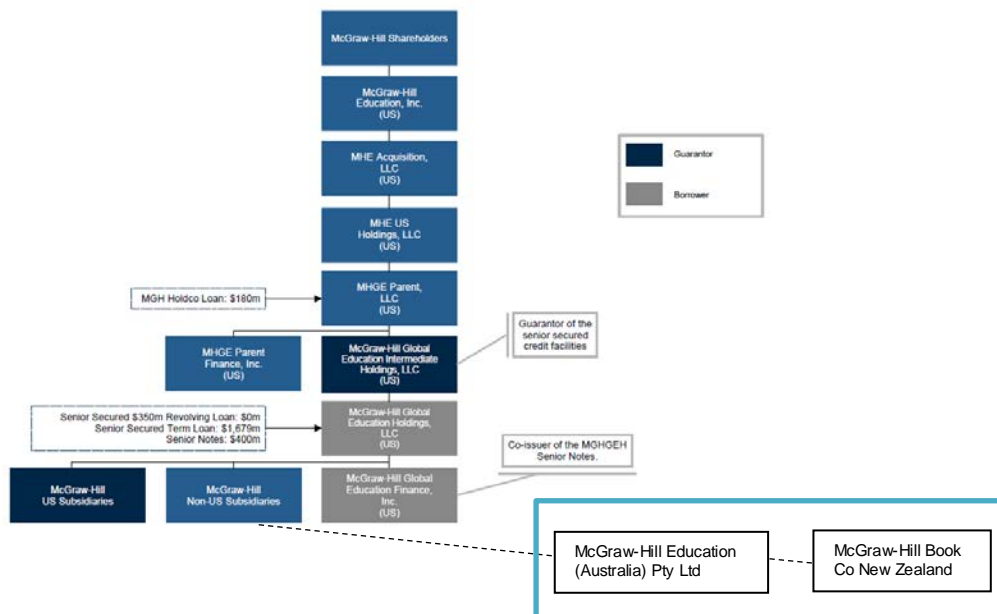
APPENDIX 3 – CORPORATE STRUCTURE CHARTS (INCLUDING PROPOSED OWNERSHIP STRUCTURE)

Image 1: Existing Cengage Corporate Structure (as relevant to New Zealand)<sup>89</sup>



[ ]

Image 2: Existing McGraw-Hill Corporate Structure (as relevant to New Zealand)<sup>90</sup>

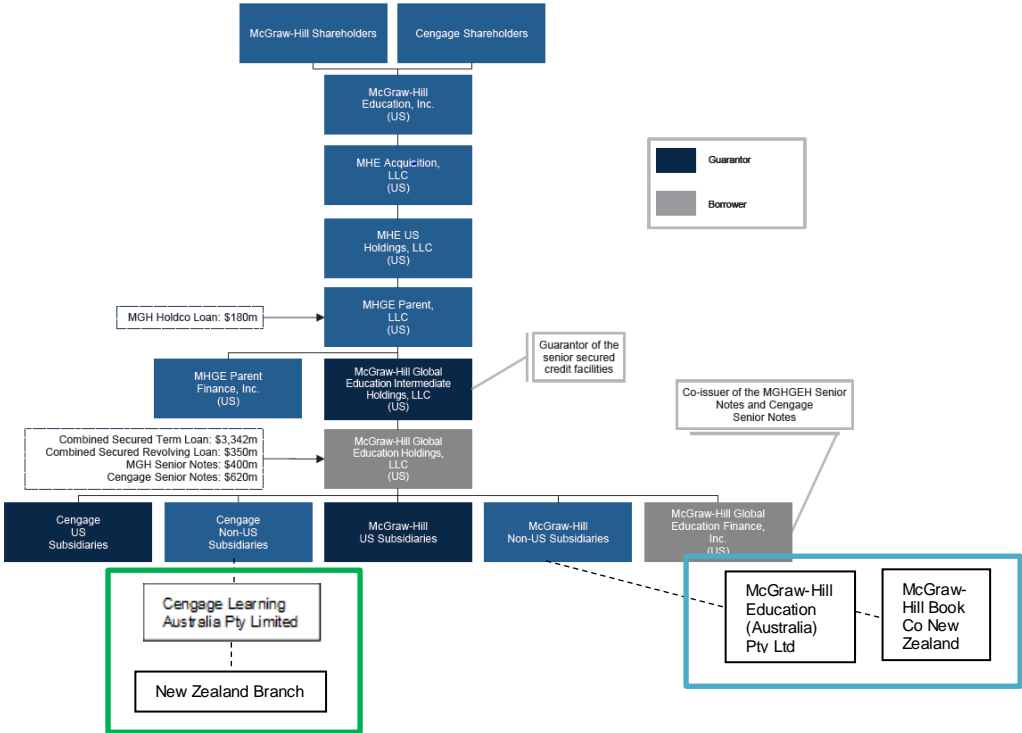


<sup>89</sup> May 6, 2019: Cengage Enters into Merger Agreement with McGraw-Hill and Announces Proposed Amendment of Senior Secured Credit Facilities

<sup>90</sup> May 6, 2019: Cengage Enters into Merger Agreement with McGraw-Hill and Announces Proposed Amendment of Senior Secured Credit Facilities



Image 3: Merged Entity Corporate Structure (as relevant to New Zealand)<sup>91</sup>



<sup>91</sup> As above.

## **PUBLIC VERSION**

### **APPENDIX 4 - ANNUAL REPORTS, AUDITED FINANCIAL STATEMENTS, AND MANAGEMENT ACCOUNTS**

McGraw-Hill's annual reports (including the Annual Report as of December 31, 2018) are available at <https://investors.mheducation.com/financial-information/annual-reports/default.aspx>

Cengage's annual reports (including Annual Report for the fiscal year ended March 31, 2019) are available at <https://www.cengage.com/investor/#reports>

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### **APPENDIX 5 – COPIES OF DOCUMENTS RELEVANT TO THE TRANSACTION**

See the list of Cengage's relevant documents details under the heading "Appendix 5(a)" in the *Index of Documents*. Please note that certain information has been redacted to protect legally privileged attorney-client communications. The specific basis of each claim for legal privilege is detailed in "Appendix 5(a)".

See "Appendix 5(b)" for McGraw-Hill's relevant documents. Please note that certain information has been redacted to protect legally privileged attorney-client communications. The specific basis of each claim for legal privilege is detailed in "Appendix 5(b)".

**APPENDIX 6 – TOTAL SALES REVENUES AND VOLUMES FOR THE PRIMARY SUB-SEGMENT AND HED SEGMENT**

**Cengage's total sales revenues and volumes for the past three financial years**

<b>Cengage (total NZ sales revenues and volumes)</b>				
<b>Segment</b>	<b>Primary</b>		<b>HED (HED+ELT)</b>	
	Turnover (USD)	Volumes	Turnover (USD)	Volumes
<i>Financial Year<sup>92</sup></i>				
<i>FY17</i>	[ ]	[ ]	[ ]	[ ]
<i>FY18</i>	[ ]	[ ]	[ ]	[ ]
<i>FY19</i>	[ ]	[ ]	[ ]	[ ]

**McGraw-Hill's total sales revenues and volumes for the past three calendar years**

<b>McGraw-Hill (total NZ sales revenues and volumes)</b>				
<b>Segment</b>	<b>Primary</b>		<b>HED (HED+ELT)</b>	
	Turnover (USD)	Volumes	Turnover (USD)	Volumes
<i>Calendar Year<sup>93</sup></i>				
<i>2016</i>	[ ]	[ ]	[ ]	[ ]
<i>2017</i>	[ ]	[ ]	[ ]	[ ]
<i>2018</i>	[ ]	[ ]	[ ]	[ ]

<sup>92</sup> Cengage fiscal year runs from 1<sup>st</sup> April to 31<sup>st</sup> March.

<sup>93</sup> McGraw-Hill fiscal year runs from 1 January to 31 December.

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**APPENDIX 7 - COMPETITION IN THE HED SEGMENT**

The Parties consider the market relevant to the Commission’s assessment of the Transaction to be the supply of education publishing in New Zealand, including in the primary sub-segment and HED segment. The Parties do not believe it is necessary to reach a firm view on market definition because the Transaction raises no competition concerns, irrespective of the market definition adopted. Nevertheless, to further illustrate the point, the Parties provide further information about the HED categories where there is relevant overlap based on the Nielsen classification system.<sup>94</sup> The Parties are both present in nine of approximately 50 subject areas in which education publishers operate.<sup>95</sup> Within these areas, the Parties only have a very small number of titles that could be considered to directly compete (and, for those titles, there are titles by other publishers that compete strongly). McGraw-Hill curates none, and Cengage produces very few specific New Zealand products due to the small size of the New Zealand market, with many publishers moving out of that space in New Zealand. Indeed, there is no specific publishing program for HED in New Zealand from either Cengage or McGraw-Hill.

SUBJECT	CENGAGE	MCGRAW-HILL	OTHER COMPETITORS IN THAT SUBJECT AREA
<b>Language Studies (other than English Language Teaching)</b>	Publishes one Spanish language title.	Publishes one Spanish language title, and a portfolio of Spanish language resources for introductory and intermediate tertiary students [ ].	<p>There are other competing Spanish language titles offered by other publishers in this segment, such as Difusion Centro de Publicacion y Publicaciones de Idiomas and Edelsa.</p> <p>In general, smaller publishers specialising in a particular language tend to be strong in this subject area (for example, Edilingua, Cheng &amp; Tsui, University of Hawai'i Press, Hueber Verlag, and The Japan Times).</p> <p>Pearson is also a strong publisher of language studies titles, including titles in Spanish, Arabic, Chinese, French, German, Italian, Japanese, Latin, Portuguese and Russian.</p>
<b>Science and mathematics</b>	Offers mathematics, physics and chemistry texts.	<p>Publishes texts in biology, zoology and life sciences.</p> <p>Publishes introductory chemistry titles, as well as engineering and other physical science print and digital products.</p>	<p>Wiley, Pearson, Cambridge University Press, Oxford University Press and Routledge are all among major publishers that publish multiple titles in this sub-segment.</p> <p>Wiley and Pearson are Cengage’s closest competitors in chemistry, each publishing a popular textbook.</p> <p>Pearson also publishes a biology text which competes strongly with McGraw-Hill.</p>

<sup>94</sup> As detailed at paragraph 7.2 above, Nielsen ceased aggregating relevant New Zealand-specific market data over five years ago.

<sup>95</sup> The Parties have used Nielsen’s classification system because each of Cengage and McGraw-Hill (and likely every other education publisher) will have different definitions of “subject areas” within their own businesses (i.e. there is no industry standard of how subjects are classified nor which titles fall into each subject area). The Nielsen data contains scan data for titles that fall within the top 1,000 books by volume sold in Australia between 2016 and 2018. Each title is allocated a subject area by Nielsen.

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SUBJECT	CENGAGE	MCGRAW-HILL	OTHER COMPETITORS IN THAT SUBJECT AREA
<b>Education and teaching</b>	Relatively established player in this subject area.	A minor player and does not have a local education and teaching list. [ ].	[ ]. Oxford University Press is by far the most significant player in this segment, having grown rapidly and enjoying international brand strength as a hub of educational learning. New Zealand universities also recommend titles from other competitors, such as Pearson.
<b>Psychology</b>	Publishes introductory psychology texts.  Publishes titles in second and third year psychology titles, such as abnormal cognitive and social psychology and statistics.	Publishes introductory psychology texts.  Publishes titles in second and third year psychology, such as abnormal, cognitive and social psychology and statistics.	Wiley and Pearson are the segment leaders for introductory psychology texts, although the major publishers all have offers in all major subject areas: Pearson, Wiley, Oxford University Press and Macmillan. [ ].  There are several other significant, leading publishers of titles in second and third year psychology, such as abnormal, cognitive and social psychology and statistics, including Pearson, Oxford University Press, Macmillan, and Wiley.  New Zealand universities also recommend titles from Psychology Press, Sage Publications and other publishers in their second and third year psychology courses.  Pearson will be introducing new editions of its psychology titles in 2019 and 2020, which will likely grow its share significantly in this subject area.
<b>Business</b>	Offers multiple titles.	Offers multiple titles.	Wiley, Pearson, Cambridge, Oxford University Press and Routledge are all among major publishers that publish multiple titles in this sub-segment.  Cengage considers its closest competitors in this subject area to be Pearson and Wiley.  [ ].
<b>Economics</b>	Publishes an introductory title.	Publishes multiple titles, including introductory and intermediate.	Pearson and Wiley compete with Cengage's and McGraw-Hill's introductory titles. New Zealand universities also recommend titles published by W.W. Norton and Co and Oxford University Press.  Pearson is considered to be the leading supplier in this subject area, with a strong history of growth, while Cambridge University Press and Routledge are also among major publishers that publish multiple titles in this sub-segment.

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<b>SUBJECT</b>	<b>CENGAGE</b>	<b>MCGRAW-HILL</b>	<b>OTHER COMPETITORS IN THAT SUBJECT AREA</b>
<p><b>Finance and accounting</b></p>	<p>Publishes limited titles in New Zealand which have had limited success compared to McGraw-Hill's titles.</p> <p>[ ].</p>	<p>Strong in this subject area.</p>	<p>[ ].</p> <p>Pearson publishes global and local titles recommended by New Zealand universities.</p> <p>Wiley will continue to be a significant competitor to the merged entity in business texts post-Transaction, especially in accounting, where it publishes a number of local titles.</p> <p>Cambridge University Press, Oxford University Press and Routledge are also among major publishers that publish multiple titles in this sub-segment.</p>
<p><b>Medicine (including nursing and medical sciences)</b></p>	<p>Cengage focusses on nursing and allied health.</p> <p>Publishes titles in anatomy and physiology.</p>	<p>McGraw-Hill focuses on clinical medicine, general practice and sports medicine.</p> <p>McGraw-Hill publishes a list of anatomy and physiology texts for the allied health, nursing and medical sciences ([ ]).</p> <p>McGraw-Hill does not focus on nursing.</p>	<p>Cengage's strongest competitors in nursing are Oxford University Press, Pearson, Elsevier, and Wolters Kluwer Health (Lippincott Williams &amp; Wilkins) while Elsevier and Pearson are the largest competitors (and closest competitors) to McGraw-Hill, along with Wolters Kluwer Health (Lippincott Williams &amp; Wilkins) and Oxford University Press) in the supply of medical texts.</p> <p>Churchill Livingstone and Saunders also publish a number of books recommended by New Zealand universities for medicine courses.</p> <p>Further, the overlap between the Parties in this subject area is limited due to the industry's view that nursing and allied health are distinct from medical sciences, and that anatomy and physiology titles for nursing have minimal demand-side substitutability for anatomy and physiology titles for medical sciences.</p>
<p><b>Engineering and technology</b></p>	<p>Focusses on its highly popular vocational plumbing titles.</p> <p>Sells very little engineering and technology titles into New Zealand.</p>	<p>Focusses on traditional university courses supported by international products only. McGraw-Hill's key titles in this category are in fluid mechanics and thermodynamics.</p> <p>Offers a plumbing series that is a relatively small proportion of sales in this subject area.</p>	<p>Pearson is a significant competitor in engineering with its titles by Russell Hibbeler. [ ].</p> <p>Cambridge University Press, Oxford University Press and Routledge are also among major publishers that publish multiple titles in this sub-segment.</p>

**PUBLIC VERSION**

**APPENDIX 8 – TRANSACTION DOCUMENTS, INCLUDING THE MERGER AND ANCILLARY AGREEMENTS**

See further details under the heading "Appendix 8" in the enclosed *Index of Documents*.



**APPENDIX 9 – COPIES OF RECENT SALES REPRESENTATIVE REPORTS**

[       ]

[       ]

**APPENDIX 10 – SAMPLE OF CONTACTS**

*Table 1 – Cengage's sample of contacts in the primary sub-segment*

School name	Contact person(s)	Telephone	Email	Position
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]

*Table 2 – Cengage's sample of contacts in the HED segment*

School Name	Contact	Phone	Email	Position
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]		[ ]	[ ]

**APPENDIX 11 – APA DATA UNDERLYING THE SUMMARY OF CALCULATION TABLE**

[        ].

[        ].