

PUBLIC VERSION

**COMMERCE ACT 1986: BUSINESS ACQUISITION SECTION 66: NOTICE SEEKING
CLEARANCE**

19 December 2012

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

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

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SUMMARY OF APPLICATION

1. Bertelsmann SE & Co. KGaA ("**Bertelsmann**") and Pearson plc ("**Pearson**") seek clearance for a yet to be incorporated entity/ies ("**Penguin Random House**") (collectively "**the Applicants**"), to acquire the consumer book publishing businesses of Bertelsmann and Pearson ("**the Acquisition**").
2. The global rationale of the Acquisition is to create a more efficient publishing business able to invest in new and richer content, innovative publishing models and emerging geographies.
3. The Acquisition will not substantially lessen competition in the New Zealand book publishing market as:
 - (a) The market is not concentrated and is characterised by a large number of international and local competitors. Penguin Random House's post-Acquisition market share across the market will be only approximately []% by value.
 - (b) Technological advances have lowered barriers to entry to the publishing market, facilitating the entry of smaller publishers operating at lower scale, new market opportunities (such as Amazon), and business models that bypass traditional publishers (eg self-publishing). These advances include digital print-on-demand ("**POD**") technology and the increased popularity of e-books, which allow both authors or publishers to get books to consumers with minimal upfront costs, and the growth of internet book retailing, particularly by overseas online retailers such as Amazon, which enables retailers and consumers to purchase books from anywhere in the world.
 - (c) Distribution through the three major bricks and mortar retailers is essential for the success of any given title, so those customers, as well as the major online retailers, have a significant degree of countervailing power.
 - (d) In respect of distribution services, a large number of local and international publishers offer distribution services to third parties based out of either New Zealand or the East Coast of Australia (where Penguin NZ's distribution is operated from).
4. Similarly, the Acquisition will not substantially lessen competition in the market for the acquisition of publishing rights from authors as:
 - (a) Penguin Random House will continue to compete in a highly fragmented market with low market concentration.
 - (b) The number of titles that are self-published is increasing and a number of companies offer these services to authors in New Zealand for print books through POD technology, for example through The Copy Press. Authors can also self-publish e-books through websites such as Kindle Direct Publishing (Amazon), Smashwords, Lulu and MeBooks.co.nz, or establish their own publishing houses and distribution networks (for example, Craig Potton).
5. Accordingly, the Acquisition is not likely to substantially lessen competition in any relevant market in New Zealand.

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PART 1: TRANSACTION DETAILS**1. Provide the name of the acquirer (person giving notice), and the name and position of the individual responsible for the notice.**

1.1 This notice is given by Bertelsmann and Pearson in respect of an acquisition by Penguin Random House or a nominee of the Applicants.

1.2 All correspondence and notices in respect of the application be directed in the first instance to:

Russell McVeagh
Barristers & Solicitors
PO Box 8
AUCKLAND 1140

Attention: Sarah Keene / Troy Pilkington
Telephone: 09 367 8133 / 09 367 8108
Fax: 09 367 8595
Email: sarah.keene@russellmcveagh.com /
troy.pilkington@russellmcveagh.com

2. Provide the name of the other merger parties, and the name/position of the relevant individual within the relevant merger parties.

2.1 The contact details of the parties contributing assets to Penguin Random House are as follows:

Ulrich Koch
General Counsel
Bertelsmann SE & Co KGa
Carl-Bertelsmann Strasse 270
33311 Gutersloh
Germany

Graeme Baldwin
Senior Counsel
Corporate Finance & Strategy
Pearson plc
80 Strand
London WC2R ORL
United Kingdom

Telephone: +49(0) 52 41 80 70 78
Fax: +49(0) 52 41 80 66 70
Email: Ulrich.Koch@bertelsmann.de

Telephone: +44(0) 20 7010 2412
Mobile: +44(0) 7725 213 793
Email: Graeme.baldwin@pearson.com

2.2 As above, all correspondence and notices in respect of the application should be directed in the first instance to Russell McVeagh.

3. With respect to the merger parties, list the relevant companies and the person or persons controlling these directly or indirectly. Please use organisational charts or diagrams to show the structure of the ownership and control of the acquirer and participant(s) to the acquisition.**Bertelsmann**

3.1 The organisational chart at **Confidential Appendix 1** sets out the structure of the relevant ownership and control of Bertelsmann.

3.2 Bertelsmann is an international media company whose core divisions encompass television and television production (RTL Group), book publishing (Random House),

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magazine publishing (Gruner + Jahr), music rights management (BMG) and services (arvato) in 50 countries.

3.3 Bertelsmann's book publishing business is contained within the Random House division of companies. The Random House division is headquartered in New York, through Random House Inc., and comprises nearly 200 editorially independent imprints in 15 countries including New Zealand through Random House New Zealand Ltd ("**RHNZ**").

3.4 RHNZ is a book publishing, importing and distribution business.

Pearson

3.5 Pearson is a public company listed on both the London and New York Stock Exchanges. The organisational chart at **Confidential Appendix 2** sets out the structure of the relevant ownership and control of the Pearson Group.

3.6 Pearson is organised into three main business groupings:

- (a) Pearson Education (digital learning, education publishing and services);
- (b) Financial Times Group (business information, including the *Financial Times* newspaper); and
- (c) Penguin Group (book publishing).

3.7 Pearson has offices in 15 countries and operates in New Zealand through Pearson New Zealand Limited ("**PNZL**") and Pearson Australia Group Pty Ltd's ("**Pearson Australia**") United Book Distributors ("**UBD**") division.

3.8 Within PNZL there are two business units:

- (a) *Penguin Books NZ*:¹ which is PNZL's book publishing, importing and distribution business unit ("**Penguin NZ**"); and
- (b) *Pearson Education NZ*:² which is PNZL's business unit that publishes educational books and provides educational materials and learning technologies. Pearson Education NZ will not be included within the Acquisition ("**Pearson Education NZ**").

3.9 Pearson Australia operates in New Zealand through UBD which supplies the distribution and warehousing functions for Penguin Books NZ, Pearson Education NZ and a number of other third party book publishers. UBD is located in Scoresby, Melbourne.

Penguin Random House

3.10 Penguin Random House will be formed as a result of the transaction, and will combine Bertelsmann's and Pearson's respective international book publishing businesses: Random House and Penguin.

3.11 It is intended that Penguin Random House will operate through two entities:

- (a) A Delaware incorporated Penguin Random House entity that will own Bertelsmann's and Pearson's consumer publishing businesses that operate in the USA; and

¹ <http://www.penguin.co.nz/>

² <http://www.pearsoned.co.nz/>

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- (b) A UK incorporated Penguin Random House entity that will own Bertelsmann's and Pearson's consumer publishing businesses that operate in the rest of the world, including New Zealand.
- 3.12 Bertelsmann will own 53% of Penguin Random House, contributing five directors. Pearson will own 47% of Penguin Random House, contributing four directors, one of which will be the Chairman. Bertelsmann will appoint the CEO and COO, and Pearson will appoint the CFO for Penguin Random House.
- 4. Provide details on what is to be acquired.**
- 4.1 Bertelsmann and Pearson seek clearance for Penguin Random House, or other nominee, to acquire the book publishing businesses of Bertelsmann and Pearson.³
- 4.2 Relevant to New Zealand, the acquisition will involve Penguin Random House, or other nominee, acquiring direct or indirect control of the following entities that operate in New Zealand:
- (a) RHNZ;
- (b) the Penguin NZ business unit of PNZL;⁴ and
- (c) the UBD book distribution unit of Pearson Australia.
- 4.3 As noted at paragraph 3.8(b) above, Pearson's education publishing businesses are excluded from the Acquisition and, therefore, Pearson Education NZ will not be acquired by Penguin Random House.
- 4.4 Figure 1 below broadly illustrates the business units included within the Acquisition by Penguin Random House.

Figure 1- the business units to be acquired by Penguin Random House



³ Note that Penguin Random House will not acquire:

- Bertelsmann's or Pearson's publishing businesses that operate in the USA - these US book publishing businesses will be transferred to a different Delaware entity ("USCO"). As the entities that will be owned by USCO do not operate in New Zealand clearance is not sought in relation to the acquisitions by USCO;
- Bertelsmann's German language trade publishing division, Verlagsgruppe Random House;
- Pearson's education publishing business.

⁴ PNZL's Pearson Education New Zealand business unit is excluded from the Acquisition.

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4.5 As part of the Acquisition, Penguin Random House will:

(a) [];

(b) [].

5. Explain the commercial rationale for the proposed merger.

5.1 The Acquisition is part of an international transaction.

5.2 The primary global rationale of the Acquisition is [] enable investment in new digital publishing models, channels to market, products and services and high-growth emerging markets, thus providing a better service to authors, booksellers and readers.

5.3 The transaction will also combine the Applicants' activities and complementary geographic footprint to enable Bertelsmann to expand its activities into growth markets, as part of its international business strategy. Pearson has a stronger presence in the three emerging markets that Bertelsmann is targeting: Brazil, China and India.

5.4 Against the backdrop of dynamic change in the industry, the transaction will provide a platform for Penguin Random House to invest in new geographies, new products and services and new channels. It will be well placed to offer market leading editorial and creative services to authors, and to ensure that consumers continue to enjoy a wide range of quality content. The primary aim of Penguin Random House will continue to be to discover and nurture talent and to publish the best books in whatever format the consumer wants to access them.

6. Provide copies of the final or most recent versions of any document bringing about the proposed merger.

6.1 Attached in **Confidential Appendix Three** are copies of:

(a) the Contribution Agreement, which provides for the establishment of Penguin Random House and each Party's contribution; and

(b) the Framework Agreement, which sets out the management and running of Penguin Random House.

7. If any other jurisdiction's competition agency has been (or will be) notified of the proposed merger, please list each competition agency notified (or to be notified) and the date of the notification.

7.1 The Applicants are currently assessing the notification of the transaction in a variety of jurisdictions. Of those, the Parties expect to notify in at least the jurisdictions identified in Figure 2 below (with certain others still possible and to be confirmed).

Figure 2 - Overseas regulators notified of the transaction

Agency	Jurisdiction	Date notified
Australian Competition & Consumer Commission	Australia	19 December 2012
European Commission	European Union	Pre-notification, 4 December 2012
Federal Trade Commission	USA	16 - 19 November 2012
Canadian Competition Bureau	Canada	23 November 2012
MOFCOM	China	TBC

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8. Describe the relevant goods or services supplied by the merger parties (it is sufficient to refer in general terms to activities in which there will be no aggregation).

Bertelsmann

8.1 RHNZ is part of the Random House division of Bertelsmann. However, it retains full editorial discretion to choose what to publish and import.

8.2 RHNZ is based in Wairau Valley, Auckland and its business includes:

- (a) Publishing the works of local authors in both print and digital format and selling such books to retailers:
 - (i) RHNZ publishes in a number of different genres, including fiction, art and design, architecture, food, social and natural history, biography, and business;
 - (ii) Authors published by RHNZ include Gavin Bishop, Al Brown, Martin Bosley, Janet Frame, Fiona Kidman, Owen Marshall, Witi Ihimaera, Lauraine Jacobs, Gareth Morgan and Jo Seager.
- (b) Importing print books that have been published by Random House companies overseas where it considers that the title will generate sales in New Zealand and selling such books to retailers;
- (c) Distributing print books to book retailers from its distribution centre in Glenfield. RHNZ distributes both its own titles and on the behalf of other local publishers including Huia (NZ) Ltd, Gecko Press Ltd, Victoria University Press, Te Papa Press, New Holland Publishers (NZ) Ltd, Auckland Art Gallery, Hyndman Publishing Ltd, Hardie Grant Publishing Pty Ltd, and Melbourne University Publishing.

Pearson

8.3 Penguin NZ is based in Rosedale, Auckland and its business includes:

- (a) Publishing the works of local authors in both print and digital format and selling such books to retailers:
 - (i) Penguin NZ publishes in a number of different genres including fiction, children's, and non-fiction including natural history, gardening, cookery, kiwiana, travel and leisure;
 - (ii) Authors published by Penguin NZ include Lynley Dodd, Joy Cowley, Anne Salmond, Patricia Grace, Maurice Gee, Glynne MacLean, Maxine Alterio, Greg McGee and Paula Morris.
- (b) Importing print books that have been published by Penguin companies overseas if it considers that the title will generate sales in New Zealand and selling such books to retailers;

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- (c) Selling to retailers in New Zealand on behalf of Simon & Schuster Australia, Text Publishing Australia, Working Title Australia, Hay House Australia, Norton US and Awa Press New Zealand.
- 8.4 Penguin NZ's distribution and warehousing services are performed on its behalf by UBD, a division of Pearson Australia, from its distribution centre in Melbourne. UBD also performs distribution on behalf of the publishers referred to at paragraph 8.3(c).
- 8.5 As noted at 3.8(b) above, Pearson's education publishing businesses are excluded from the Acquisition, including PNZL's Pearson Education NZ business unit.

9. Describe the industry or industries affected by the proposed acquisition. Where relevant, describe how sales are made, the supply chain(s) of any product(s) or service(s) involved, and the manufacturing process. If relevant, provide a glossary of terms and acronyms.

Publication

- 9.1 A publisher's role is to transform a manuscript into a marketable book and then to promote and sell the book to retailers. This includes:
- (a) Providing funding to authors to allow them to create content;
 - (b) Editorial input;
 - (c) Design services, including typeface, layout, cover, images;
 - (d) Pre-publication legal advice;
 - (e) Book production, which includes printing and book binding. Book production is often outsourced to third party printers under the direction of the publisher - print books published by RHNZ []⁵ and Penguin NZ's print books [].⁶ A number of book printing companies in New Zealand offer printing/binding directly to authors, including The Caxton Press, Bookprint Consultants Ltd, Printabook, Ligare Book Printers, The Copy Press, Limited Edition Books, Zenith Publishing Group Ltd and Wakefields Digital; and
 - (f) Promotion, marketing and sale of the book.
- 9.2 While certain publishers may have well-recognised brands, customers are loyal to authors rather than publishers. For example, if an author changes publishing houses customers do not stop purchasing that author's books. To sell books, publishers devote marketing and advertising resources to developing brand loyalty for their particular authors, which in turn allows the authors to exercise greater countervailing power.
- 9.3 Publishers may publish works in a range of formats, including mass-market paperback, trade paperback, hardback and, increasingly, digital. Traditionally, first editions of books were printed in hardback with a delay of a couple of months before a paperback edition was released. In New Zealand, it is now rare for books to be printed in hardback and books are often printed first as trade paperback, also commonly referred to as 'C Format'. Trade paperback books are of a higher quality than mass-market paperbacks (referred to as 'A' or 'B Format'), are printed on acid free paper and are the same size and layout as hardback books but the hardcover is replaced with a soft cover.

⁵ []
⁶ []

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- 9.4 The book industry is characterised by popular or bestselling titles which change constantly and may be unpredictable.⁷ Bestsellers can be one-off books such as *Steve Jobs: The Exclusive Biography* by Walter Isaacson; by a popular author such as Michael Connelly or Stephen King, who have had multiple titles reach bestseller status, or popular series such as the *Harry Potter* series by J.K. Rowling, or the *Fifty Shades* series by E.L. James.
- 9.5 Bestsellers, particularly bestselling series, can dramatically increase sales of a publisher in a particular year (ie for as long as the title is popular). For example, Annabel Langbein's *The Free Range Cook* was the second bestselling book in New Zealand in 2011.⁸

Rights acquisition

- 9.6 Domestic publishing rights may be acquired either:
- (a) through publishers collaborating with an author on the basis of a synopsis or manuscript presented by the author (or through an agent). The majority of unsolicited manuscripts sent to publishers are not published, and typically only manuscripts that are submitted by a renowned author or literary agent are published;
 - (b) through a publisher commissioning an author to write a particular work. For non-fiction works the publisher usually creates a concept and commissions an author to write the work.
- 9.7 A publisher may acquire rights from authors through auctions, in which a number of publishers participate and bid for the author's rights, or through bilateral negotiations.
- 9.8 Authors may be paid through a combination of an advance and/or royalties. An advance is a fixed amount agreed between the author and the publisher that may be paid: (i) on the signing of the contract, (ii) on delivery of the manuscript, (iii) on publication of the book; and (iv) 6 or 12 months after publication. The size of the advance offered to an author will reflect the editor and publisher's estimate of the book's earning potential (assessing its sales potential and the costs of bringing it to market and its quality (including chances of winning major prizes)). Most titles will be acquired for a relatively small advance. The payment of an advance provides the author with an income while he/she writes the book, and typically royalties are only paid once the advance has been recovered through sales of the author's title. Increasingly lower advances are becoming more common as a result of lower forecast revenues from book sales.
- 9.9 Authors may negotiate (or through their agent)⁹ with a number of publishers to find the highest bidder, although sometimes non-price factors may influence the author's decision. These non-price factors include:
- (a) Relationship/rapport with the publisher (and, more specifically, an editor);
 - (b) the "passion" of a publisher for an author's title and the level of care and attention that the publisher is perceived to be able to provide to the author;
 - (c) the marketing plan presented by the publisher; and

⁷ There is no industry standard definition of "bestsellers". There are, for example, sources that report chart positions or weekly charts (e.g. Nielsen "Bestseller Lists"), but there is no agreed "cut-off" between bestsellers and non-bestsellers.

⁸ Nielsen. Available at: <http://www.booksellers.co.nz/book-news/nzs-bestsellers/nielsen-2011-bestsellers-list>

⁹ Literary agents typically receive a commission based on the author's earnings. The Applicants note that compared to other countries the use of literary agents is relatively uncommon in New Zealand.

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(d) the reputation of the publisher.

9.10 Typically authors sign with publishers on a book-by-book basis. Authors do switch publishers from time to time, for example, if they are given a better financial offer or if they have a relationship with an editor that moves publishing houses. Publishers are therefore constantly competing not only to win new authors, but also to retain their existing stable of authors.

Distribution of print books

9.11 Traditionally, once a book has been printed it will be stored in a warehouse with a number of other titles and then sent to retailers, as required, to fulfil orders. Distribution encompasses all processes required to get the book to the retailer including both tangible flows (stocking and dispatching works) and intangible flows (invoicing, debt management, returns processing).

9.12 Two of the largest retailers of print books in New Zealand, The Warehouse and Whitcoulls, operate centralised distribution centres so that publishers can be distributed through those chains nationwide simply by delivering stock to their centralised distribution centres.

9.13 If POD Technology¹⁰ is used, a digital copy can be provided to a POD service provider (for example The Copy Press, Limited Edition Books, Zenith Publishing Group Ltd, Wakefields Digital) who will then commence printing the specified number of copies, which may be as few as one copy. Once printing is complete, the titles can be delivered directly to retailers or to end-consumers, which removes the need for inventory and warehousing.

9.14 If traditional printing processes are used, a publisher can choose to perform the sales and distribution function in-house or outsource to a third party. Many publishers in New Zealand offer sales and distribution services to other publishers.

9.15 Third-party distribution is typically carried out under an agency agreement with the distributor receiving a commission based on the publisher's total sales. The distributor may either provide:

- (a) Distribution services only, in which case the publisher handles its own sales and sends the orders to the distributor for processing; or
- (b) Distribution, sales, marketing and promotional services, in which case the publisher's list of titles is effectively merged with the distributor's list and presented to retailers as a single list.

Wholesaling of print books

9.16 Publishers sell books to retailers by sending their list of titles to retailers. Retailers select which titles they wish to purchase. Books are sold to retailers either on "firm sale" or "sale or return":

- (a) Under a firm sale, title passes immediately to the retailer.
- (b) When books are sold on sale or return, the retailer is invoiced for the book upon dispatch but may return the book for a full refund if it does not sell. Thus, the risk of the book not selling remains with the publisher.

¹⁰ POD or Print-on-Demand is a digital printing technology in which new copies of a book are not printed until an order has been received, which means books can be printed one at a time.

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9.17 Titles are almost always sold on a sale or return basis. This is to encourage retailers to display as many books as possible, which promotes the books to the public and increases the chance of the books being sold. Physical displays of books also increase sales of books sold through other channels (see paragraph 24.1(a) below). The main exceptions where firm sales are made are:

- (a) [] [];
- (b) []; and
- (c) []

9.18 Publishers typically set a recommended retail price ("**RRP**") for each title on their list. The RRP is merely a guide and often retailers discount popular books below the RRP.

9.19 Wholesale prices are typically calculated by deducting a negotiated discount from the RRP. The level of discount, and thus wholesale price, varies across publishers and across retailers. Additional pricing components may include:

- (a) A rebate if the retailer sells a certain volume of stock;
- (b) A promotional discount to support a particular sale; or
- (c) A co-op spend to obtain a better location for the book to be displayed in due to the importance of shelf space for publishers.

E-book publishing

9.20 The rights for e-books are usually acquired at the same time as the rights for the print books.

9.21 To publish e-books the text is converted into a digital e-book file. The digital e-book files are then sold to consumers by companies such as Amazon. Consumers then download the e-book directly from the retailer's website. Consumers can read e-books on an e-reader (eg Amazon's "Kindle" or Whitcoulls' and Paper Plus' "Kobo"),¹¹ personal computer, tablet (eg Apple's "iPad") or smart phone (provided that the relevant device supports the digital e-book format in which the online retailer sells the e-book.

9.22 Publishers provide e-books to online retailers under either an agency or a wholesaler/reseller model. It is estimated that 2% to 3% of books sold in New Zealand are now e-books,¹² and that Amazon/Kindle accounts for more than 50% of e-book sales in New Zealand.¹³

Retailing

9.23 Retailers may be bricks and mortar speciality bookstores,¹⁴ online print book retailers,¹⁵ online e-book retailers,¹⁶ bricks and mortar general merchandise stores,¹⁷ or online general merchandise retailers.¹⁸

¹¹ The Kobo eReader is an e-book reader produced by Toronto based company Kobo Inc. In 2010 Whitcoulls launched sales of e-books for Kobo devices. Paper Plus also announced a partnership with Kobo in October 2012.

¹² (2012, October 24). Book sales hold up in New Zealand against worldwide decline. Retrieved from: <http://www.booksellers.co.nz/book-news/book-sales-hold-new-zealand-against-worldwide-decline>

¹³ According to the Applicants' estimates. See also: Global eBook Monitor (September 2012). Available at: <http://activitypress.com/wp-content/uploads/2012/10/wpid-Photo-9102012-911-AM.jpg>

¹⁴ For example Whitcoulls, Paper Plus and multiple independent bookstores.

¹⁵ For example Amazon, Fishpond, The Nile, Mighty Eight and Ziwi.

¹⁶ For example Amazon, Apple and Whitcoulls.

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10. Describe the current industry trends and developments including the role of imports and exports, emerging technologies, and/or changes in supply and demand dynamics.

10.1 The book publishing industry has experienced significant changes in the last decade, primarily due to the emergence of digital technologies. This has affected the entire industry from book production, publishing, printing, marketing and promotions through to online retailing. These changes have significantly altered the traditional book supply chain by decreasing the costs of publication and distribution, and increasing the methods and forms of publication.

10.2 These trends include:

- (a) *Online retailing of print books:* Approximately [] of print books sold in New Zealand are now purchased online, and this is increasing each year.¹⁹ Online retailers of print books such as Amazon, Fishpond, The Nile, Mighty Ape and Zivi are often able to offer lower prices than their bricks and mortar competitors by having no physical retail presence, in some cases being able to avoid charging GST through being situated overseas and the decreasing costs of international postage. Consumers also enjoy the convenience of having books delivered to their door. Fishpond alone accounts for [] of Penguin NZ's annual sales of print books. This has exposed New Zealand bricks and mortar book retailers to increased competitive pressure as consumers have access to overseas prices, and New Zealand retailers are now in direct competition with international online retailers such as Amazon.
- (b) *E-books:* It is estimated that 2% to 3% of books sold in New Zealand are now e-books.²⁰ Although New Zealanders have been slower than consumers in other OECD countries to embrace e-books (for example, in the UK e-book sales are now estimated to account for between 8%²¹ and 14% of book sales),²² industry analysts predict that e-book sales in New Zealand will increase significantly in the next few years,²³ particularly as ultra-fast broadband is rolled-out across the country and there is further proliferation of devices on which books can be accessed (for example, tablets, smartphones, notebooks etc). For example, Nielsen's Computer and Media Insights (CMI) from Q1 2011 showed that 85,000 New Zealanders have an iPad or e-book reader and that 192,000 wanted to buy an iPad, tablet or e-book reader in the next 12 months.²⁴
- (c) *Competing media:* Book reading now competes with a number of other media including television, music and films. This competition has increased with the increasing use, and capabilities, of the internet, which makes audio/visual content increasingly accessible. Other new technologies are also impacting on the popularity of books; as smartphones and tablets have become more popular they have started to fulfil roles traditionally occupied by books, for example providing people with information on gardening and cooking.²⁵

¹⁷ For example The Warehouse, Kmart.

¹⁸ For example www.thewarehouse.co.nz

¹⁹ This is based on RHNZ's estimates. []. []

²⁰ (2012, October 24). Book sales hold up in New Zealand against worldwide decline. Retrieved from: <http://www.booksellers.co.nz/book-news/book-sales-hold-new-zealand-against-worldwide-decline>

²¹ PA Statistics Yearbook 2011, The Publishers Association 2012.

²² Ibid. The Applicants believe that New Zealand is two years behind other OECD economies in this regard.

²³ (2012, August 1). E-book retailer for Booksellers. Retrieved from: <http://booksellers.co.nz/book-news/e-book-retailing-booksellers-part-two>

²⁴ Nielsen. Available at: <http://www.booksellers.co.nz/sites/default/files/Booksellers-NZ-Renewal.pdf>

²⁵ As found by Mike Shatzkin, the founder and CEO of The Idea Logical Company and a widely-acknowledged thought leader about digital change in the book publishing industry. <http://www.idealogy.com/blog/2012/11/>

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- (d) *Self-publishing*: Technological changes have significantly decreased the costs of publishing and distribution making self-publishing viable enabling authors to bypass third-party publishers.²⁶ These changes are the ability to publish straight to e-book format, POD technology and the ease of distribution through online channels such as Amazon.²⁷ There are a large number of self-publishing companies online that offer a range of services for as little as \$1,000, including POD printers such as The Copy Press and e-book self publishers such as Createspace (owned by Amazon), Smashwords, Lulu and Mebooks.co.nz. Self-publishing allows the author to maintain control over the content and design of the book, and retain all rights to the book including foreign language rights and film and television rights. A number of now well-established authors who have signed with traditional publishing houses began their careers as self publishers, for example, E.L. James (*Fifty Shades* trilogy), Sylvia Day (*Bared to You*) and Amada Hocking (*Torn*).
- (e) *Revenue trends*: According to Nielsen scandata, the number of print units sold decreased by 5.0% between 2011 and 2012 (to August), while the value of book sales decreased by even more (at -8.1%) from 2011.²⁸ This is likely due to discounting by retailers in response to competition from e-books, overseas and online retailers of print books, and the other forms of media available to consumers. This downward trend in revenue is also reflected in falling author advances and RRP's.

11. Please highlight any relevant mergers that have occurred in this industry over the past three years.

- 11.1 The parties are unaware of any mergers that have occurred in the industry over the past three years in New Zealand.
- 11.2 However, as the Commission is aware in the book retailing industry it cleared A&R Whitcoulls Holding Group Pty Ltd to acquire Borders New Zealand Ltd in 2007.²⁹ The Whitcoulls / Borders chain was subsequently sold to The James Pascoe Group in 2011, and the Bennetts chain was sold to the Spong family.

²⁶ At its most basic, the author is responsible for all content, layout and design choices, with the service provider merely offering a printing service or digital distribution service. Some service providers offer additional services such as editing or marketing.

²⁷ For examples of New Zealand authors that have self-published print books or e-books see: Seel, B. (2012, July 27). Fiction Addiction: How to make a fortune from self-publishing. The New Zealand Herald. http://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=10821725

²⁸ (2012, August 2). Conference looks at the Business of Bookselling. Available at: <http://booksellers.co.nz/book-news/conference-looks-business-bookselling>

²⁹ Decision No. 630 *A&R Whitcoulls Holdings Group Pty Limited and Borders New Zealand Limited* (20 November 2007)

PART 3: MARKET DEFINITION**Horizontal Aggregation****12. For each area of aggregation of market shares, please define the relevant market(s).**

12.1 The relevant markets affected by this transaction are the national markets for:

- (a) the publishing and supply of books to retailers (the "**book publishing market**"); and
- (b) the acquisition of authors' rights.

The book publishing market

12.2 As the Commission found in *Whitcoulls / Borders* in respect of the publishing and wholesale supply of books, although market participants may vary in terms of corporate structure, size, genres and titles published, the extent of substitutability means that all different types of publishers and suppliers are within the same book publishing market.³⁰ Factors that support that market definition include the following:

- (a) It is difficult to make any meaningful distinction between larger publishers, medium sized publishers and smaller publishers given all sizes of publisher compete effectively across a range of genres, and niche publishers that may not have a large range of titles are still successful in their respective genres (for example, Scholastic in children's books).
- (b) There is supply-side substitutability. Almost all competing publishing houses in New Zealand publish and supply a full range of different book categories. While smaller publishers may specialise in particular categories, very little additional investment is required for a publisher to switch categories (switching would only involve hiring, or contracting, an editor with experience in the category).³¹
- (c) While the Commission did not need to consider e-books in the context of *Whitcoulls / Borders*, print books and e-books ought to also be considered within a single market for similar reasons as the Commission considered the wholesale supply of physical and digital music together in *Universal / EMI*.³²

³⁰ Decision No. 630 A&R *Whitcoulls Holdings Group Pty Limited and Borders New Zealand Limited* (20 November 2007) at [62].

³¹ Supply-side substitutability exists between categories of book because:

- Publishing decisions usually centre around the quality of the book and its commercial viability as opposed to its genre; and
- The technology used for publishing all categories of book is identical.

Demand-side substitutability also exists between categories of book because:

- The same retailers (and ultimately readers) purchase books across a range of sub-categories.
- Substitution occurs between categories because of a consumer's demand is simply for "something to read" - frequently when a consumer enters a bookstore (be it online or bricks and mortar), he/she does not have a particular title or category in mind, and the book he/she ultimately chooses could be a biography, bestseller or motivational self-help text.
- Books may be both complementary and substitutable within and across narrow genre categories. A successful publication may divert demand away from other books in the same category or it may increase demand for the category relative to others. []
- Retailers do not display fiction titles by genre instead they tend to be displayed alphabetically.
- Retailers commonly substitute books across genres for a limited number of promotional slots.

³² *Universal Music Holdings Limited and EMI Group Global Limited* [2012] NZCC 14 at [72].

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- (i) the same suppliers are present in both the print and digital markets (with the one exception being that self-supply is more prevalent for e-books);
- (ii) the content of print and e-books are the same, and the rights to that content is typically purchased at the same time by the same publisher;
- (iii) the same factors influence a consumer's purchase of print books as of e-books;
- (iv) consumers are likely to only buy a single title in one format; and
- (v) the overall decline in print sales internationally corresponds with growth in the sale of e-books.

12.3 The book publishing market also includes the separate functional level of agency distribution arrangements. In the ACCC's consideration of Pearson Australia's acquisition of REDGroup Retail in 2011 it took the view that publishers and distributors were in the same market.³³ While it does not make a significant difference to the competitive effects assessment whether distribution is treated as a separate market or not, the Applicants note the factors which support the ACCC's market definition as applied to this case include:

- (a) All the larger publishing houses, apart from Allen & Unwin and Simon & Schuster, are vertically integrated and self-supply their own sales distribution services, as well as most offering these to third parties.
- (b) A number of the smaller publishers also carry out their own sales and/or distribution, as well as some also offering such services to third parties (for example, Craig Potton Publishing and David Bateman Ltd).
- (c) In light of the exponential growth of online print book and e-book sales a publisher could simply decide to publish through online retailers.
- (d) The prices that end-consumers will pay (increasingly less in light of online and digital distribution) constrains the prices that publishers providing third party sales and/or distribution services can charge for their services.

12.4 In terms of the geographic dimension of the market, the Commission found in *Whitcoulls / Borders* the book publishing market is national in scope as typically all publishers distribute books to retailers located throughout New Zealand.³⁴ This continues to be the case.

³³ ACCC, Pearson Australia Group Pty Ltd's completed acquisition of the online book retailing assets of REDgroup Retail Pty Ltd, completed 11 August 2011.

³⁴ Pearson Australia Group Pty Ltd's completed acquisition of the online book retailing assets of REDGroup Retail Pty Ltd, completed 11 August 2011; Pearson Australia Pty Ltd's proposed acquisition of Harcourt Assessment, completed 15 June 2007.

PUBLIC VERSION*Acquisition of authors' rights*

- 12.5 Typically publishers acquire both the right to publish a book in print and the right to publish a book in digital form. The acquisition of print and digital rights appears, therefore, to be in the same market. This is consistent with the Commission's approach in defining a market for "artist discovery services" in the music industry, with no distinction between print and digital rights.³⁵
- 12.6 Local authors and/or agents typically choose between all publishers in New Zealand when they are considering who to approach with a synopsis or manuscript as all publishers will typically consider authors from all over New Zealand. Occasionally a local author/agent may also approach overseas publishers, not present in New Zealand, as well. However, typically it is New Zealand publishers that engage in the bidding processes to acquire rights from an author.
- 12.7 Therefore, the area of competition between publishers in the acquisition of authors' rights is national, with some constraint from overseas based publishers.

13. Where relevant, please explain how products or services are differentiated within the market(s).

- 13.1 A publisher will acquire the exclusive rights to publish and sell the book in a particular language and/or territory.
- 13.2 Books are differentiated by their content, authorship and perceived or actual quality of publication. Content differentiation is reflected in different genres of book although there are no clear delineations as to where the line is drawn between genres.

VERTICAL INTEGRATION**14. Provide details of any creation or strengthening of vertical integration that would result from the proposed merger. Please use organisational charts or diagrams to illustrate the structure of the ownership and/or control of the participants and the vertical relationships in question.**

- 14.1 Both RHNZ and PNZL are vertically integrated in that they self-provide their own distribution services, and offer distribution services to competing publishers,³⁶ although only RHNZ undertakes this function in New Zealand. PNZL distributes out of Australia.
- 14.2 As noted at Figure 3, a number of other parties also offer third party book distribution services including Alliance Distribution Services (Hachette), Harper Collins, Macmillan, David Bateman Ltd, and Craig Potton Publishing Ltd.

³⁵ *Universal Music Holdings Limited and EMI Group Global Limited* [2012] NZCC 14.

³⁶ In the case of PNZL this is done through UBD.

PUBLIC VERSION**PART 4: COUNTERFACTUAL**

- 15. In the event that the proposed merger does not take place, describe what is likely to happen to the business operations of the merger parties and the market/industry.**
- 15.1 The Applicants consider the most appropriate counterfactual is the status quo. However, even if an alternative bidder were a possible counterfactual, it would not materially alter the competitive effects assessment for the reasons set out below.

PART 5: COMPETITION ANALYSIS**EXISTING COMPETITORS**

16. Identify all of the relevant competitors in the market(s), including near competitors and importers in the market(s), and describe how they all compete in the market(s).
- 16.1 There are hundreds of publishers competing in New Zealand, although thirty publishers account for most of the turnover.³⁷ New Zealand publishers publish approximately 2,000 new titles each year.³⁸
- 16.2 Including RHNZ and PNZL there are currently seven larger international publishing houses operating in New Zealand, and a number of smaller and medium-sized publishers that all place competitive constraint on RHNZ and PNZL.
- 16.3 Figure 3 below sets out the main competitors in the acquisition of authors' rights and the book publishing markets.

Figure 3 - Examples of competitors in the relevant New Zealand markets

Publisher	Description	Distribution
Hachette New Zealand Limited	Part of the Hachette Book Group, a large international publishing house owned by Lagardère SCA. It has affiliate companies in Australia, the UK and USA. In NZ it publishes under the Hodder Moa imprint and is based in Mairangi Bay, Auckland.	Distributed by Alliance Distribution Services (which is owned by Hachette Australia) who also offers distribution services to third parties.
Harper Collins Publishers (New Zealand) Ltd	Part of the Harper Collins Group, a large international publishing house owned by News Corporation Ltd. It has affiliate companies in the US, UK, Canada, Australia and India. In NZ it publishes under a number of imprints including Harper, HarperOne and Ecco. It is based in central Auckland.	Self-distributor and offers distribution services. ³⁹
Scholastic New Zealand Ltd	Part of Scholastic Inc, the world's largest publisher and distributor of books, magazines, and educational and multimedia materials for children. It has offices located in the US, Canada, the UK, Mexico and India. In NZ it publishes under the Graphix and Arthur A. Levine Books imprints and is based in East Tamaki, Auckland.	Self-distributes. ⁴⁰

³⁷ Publishers Association of New Zealand *An Introduction to New Zealand publishing: including the directory of PANZ members* (3rd ed, Auckland, 2012) at 13.

³⁸ Ibid.

³⁹ Harper Collins distributes on behalf of Bridget Williams Books, Cape Catley, and Hurricane Press.

⁴⁰ Scholastic New Zealand Ltd operates a slightly different supply chain. As well as selling to traditional retailers scholastics also sell books via catalogues distributed to schools. The books are then sent to the schools to pass onto the consumer.

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Publisher	Description	Distribution
Macmillan Publishers New Zealand Ltd	Macmillan Publishers Australia is a wholly owned subsidiary of Macmillan Publishers Ltd, which is owned by Verlagsgruppe Georg von Holtzbrinck, a German publishing company. Books are published under Macmillan and Pan imprints, and Macmillan New Zealand is based in Northcote, Auckland.	Self-distributes and offers distribution services. ⁴¹
Allen & Unwin New Zealand Ltd	Allen & Unwin NZ is owned by Allen & Unwin Pty Ltd, Australia's leading independent publisher. It has won "Publisher of the Year" in Australia eleven times including nine times since 2000. It has offices in Australia, NZ and the UK and works with distributors in North America and Asia. In NZ it publishes under its Allen & Unwin imprint and is based in central Auckland.	Distributed by UBD.
David Bateman Ltd	David Bateman Ltd is an independent New Zealand-owned company. For over thirty years they have been providing publishing, sales, promotion and distribution services to the New Zealand market. They publish books under the Bateman imprint, and produce co-editions for overseas publishing. David Bateman is based in Albany, Auckland.	Self-distributes and offers distribution services. ⁴²
Craig Potton Publishing Ltd	Craig Potton Publishing is new Zealand's largest independent publishing house. The company publishes 15-20 new titles per year. The company was set up in 1989 by Craig Potton and has grown steadily since then. It publishes under the Craig Potton Publishing imprint, and is based in Nelson.	Self-distributes and offers distribution services. ⁴³
Annabel Langbein Media Ltd	Annabel Langbein Media Ltd is a New Zealand company that provides food and lifestyle media services, including book publishing and TV and video production. The books published have won international awards and have been sold throughout Europe, North America and Australasia. The publishing business is based in Newmarket, Auckland.	Distributed by David Bateman.

⁴¹ Macmillan also distribute on behalf of Exisle Publishing and Taylor & Francis.

⁴² David Bateman also distributes on behalf of Annabel Langbein, David Ling Publishing and Trio Books.

⁴³ Craig Potton Publishing also distributes on behalf of Lonely Planet and Hema.

Publisher	Description	Distribution
David Ling Publishing	David Ling Publishing is an independent New Zealand book publishing company established in 1992. Up to ten new titles are published each year, and the company provides editorial, design and printing solutions and services for institutions, companies and individuals wishing to publish privately. It publishes under the David Ling and Duck Creek Press imprints and is based in Birkenhead, Auckland.	Distributed by David Bateman.
New Holland Publishers	New Holland was established in 1998 and has become one of the biggest publishers of illustrated non-fiction in New Zealand. It has associate companies in Sydney, London and Cape Town. Books are published under New Holland and Reed New Holland imprints and the company is based in Northcote, Auckland.	Distributed by RHNZ.
Trio Books Ltd	Trio Books Ltd was established in 2003 and aims to publish popular, informative, entertaining books on a range of subjects, including New Zealand recent history and sport. Trio Books is located in The Terrace, Wellington.	Distributed by David Bateman.
Hardie Grant Publishing	Hardie Grant Publishing is one of Australia's leading independent publishing companies. Hardie Grant publishes under a number of imprints, including Explore Australia and Hardie Grant Books. Its head office is in Victoria, Australia, and in New Zealand it is based in Bayview, Auckland.	Distributed by RHNZ.
Harlequin Enterprises (Australia) Pty Ltd	Harlequin Enterprises Australia, part of the international company Harlequin Enterprises, is a wholly owned subsidiary of the Canadian communications company Torstar Corporation. Harlequin Enterprises has offices in Toronto, New York, London, Tokyo, Sydney and Paris, along with a number of other countries. Its most famous imprint is the Mills & Book imprint. In New Zealand it is based in Campbells Bay, Auckland.	Distributed in New Zealand by Harlequin Enterprises (NZ) Limited.
Bloomsbury Publishing Pty Ltd	Bloomsbury Publishing is a leading independent publishing house. It has offices in London, New York, Sydney and Delhi. Imprints include Bloomsbury Press and Corsair.	Sold in New Zealand by Allen & Unwin but distributed out of Australia.
Awa Press Ltd	Awa Press is an independent, and wholly New Zealand-owned publisher founded in 2003. Awa Press is based in Wellington.	Distributed by UBD.

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17. Outline the estimated market shares in terms of sales, and, where relevant, volume and productive capacity, of the merger parties and competitors identified above. Please include the estimated total value of the domestic market; and the source of the data provided.

Book publishing market

- 17.1 The market shares of the New Zealand publishers are set out below at Figure 4.

Figure 4 - Sales of all titles year-on-year 2010 to 2012⁴⁴

Competitor	2012 Estimated Share by Value	2011 Estimated Share by Value	2010 Estimated Shared by Value
RHNZ	[]	[]	[]
Penguin NZ	[]	[]	[]
Penguin Random House	[]	[]	[]
Pearson Education NZ ⁴⁵	[]	[]	[]
Hachette	[]	[]	[]
Harper Collins	[]	[]	[]
Scholastic	[]	[]	[]
Macmillan	[]	[]	[]
Allen & Unwin	[]	[]	[]
Others	[]	[]	[]
TOTAL	100.0%	100.0%	100.0%

Acquisition of authors' rights market

- 17.2 The market shares for the acquisition of authors' rights broadly mirrors the sales of all titles as set out at Figure 4 above. There is no reliable measure for calculating market shares in the market for the acquisition of publishing rights. There is no publicly available reliable data on the value of rights purchased nor a consistent method of calculating the value of those rights (typically composed of a combination of advance payments and future royalty payments, the value of which is necessarily unknown) and, therefore, sales of all titles is considered a general proxy for market shares in this market.

18. **To what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?**

- 18.1 There is unlikely to be a substantial lessening of competition in the factual for any of the identified markets for the reasons set out below.

The book publishing market

- 18.2 The Acquisition will not enable Penguin Random House to increase the wholesale prices for books or distribution services or otherwise reduce service levels in the book publishing market for the following reasons:

⁴⁴ The sales data is produced from Nielsen data. The Neilson data for 2012 is for the year ending 20 October 2012 and excludes data sales by Whitcoulls (Whitcoulls withdrew from participating in Nielsen data after being acquired by the James Pascoe Group). The Applicants however believe that the market shares would not be materially different if sales to Whitcoulls were included in the raw data. The shares shown are for the sale of books to final consumers. This is an accurate proxy for the market for sales of print and e-books to booksellers due to the prevalence of sale or return terms in the industry.

⁴⁵ RHNZ's 2012 market share estimates did not include a separate figure for Pearson Education NZ, so PNZL's 2011 and 2010 Nielsen data has been used as a proxy for Pearson Education NZ's 2012 share. []

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- (a) *The market is highly fragmented with low levels of concentration, and numerous competitors will remain in the market post-Acquisition:* The share data at Figure 4 indicates the book publishing market is characterised by a large number of competitors. Post-Acquisition Penguin Random House's market shares will be approximately []% by value, which is within the Commission's safe harbour guidelines. There will be a number of major international publishers with a significant presence, including Hachette, Harper Collins, Macmillan, Allen & Unwin, Simon & Schuster, along with a number of strong local publishers such as Trio Books Ltd, David Bateman and Craig Potton.

The presence of large number of competitors will constrain Penguin Random House's ability to increase prices or reduce service levels below competitive levels because doing so would divert wholesale book sales to one of its number of competitors.

- (b) *Penguin NZ and RHNZ are not uniquely close competitors:* RHNZ and Penguin NZ are not uniquely close competitors. A number of publishers, like Penguin NZ and RHNZ, publish across a range of genres and Penguin NZ and RHNZ do not necessarily have particular strengths in the same genres as each other []. Books are highly differentiated products and so the level of substitution between them will be both title and customer specific. The success of one publisher's titles is likely to vary over time given the evolving nature of a publisher's available titles. Therefore Penguin Random House will continue to be constrained by a number of competitors.

- (c) *Barriers to entry and expansion are low and reducing:* Technological advances have lowered barriers to entry to the publishing market, facilitating the entry of smaller publishers operating at lower scale, and business models that bypass traditional publishers (eg self-publishing) for example:

- (i) Technological advances such as digital POD technology which has eliminated one of the key risks for new entrants in the production of print books, namely the risk of being left with unsold volumes;
- (ii) Digital printing enables cost-effective print runs at low scale;
- (iii) The increased popularity of e-books allows publishers to distribute e-books with minimal upfront costs, and eliminates physical production costs;
- (iv) Sales through online platforms allows publishers to bypass the traditional supply chain, significantly reducing physical distribution costs (distribution can be effected by mailing or couriering a book to the consumer once it has been purchased online); and
- (v) Self-publishing, either print books or e-books, allows authors to bypass publishers and access the market directly (particularly through digital distribution).

New entry is attractive as a publisher can use such low cost publishing methods to enter the market, and then significantly increase its presence if it obtains the rights to a title that turns out to be popular with consumers.

- (d) *Retailers / consumers can purchase books from anywhere in the world:* The growth of internet retailing, particularly by overseas online retailers such as Amazon and its expansion along the supply chain, from retailer to publisher,

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provides a significant constraint on Penguin Random House by enabling retailers and consumers to purchase books from anywhere in the world.

- (e) *Online retailers are well placed to vertically integrate into publishing:* Companies such as Amazon, Google or Apple could easily enter the market as demonstrated by Amazon's entry into publishing in the US in 2009. While Amazon does not currently operate a publishing business in New Zealand, it recently announced its intention to launch an English language publisher in Europe, has recently acquired the assets of a US publisher (Dorchester Books) and has hired Andrew Rosenheim (previously the Managing Director of Penguin Press).⁴⁶
- (f) *Customers have a high degree of countervailing power:* For the reasons set out at paragraph 24.1 below Penguin Random House will continue to be constrained by retailers who have a large degree of countervailing power.
- (g) *No likelihood of coordinated effects:* For the reasons set out at paragraph 26.1 below there is no likelihood of coordinated effects arising as a result of the Acquisition.
- (h) *There are a number of alternative suppliers of distribution services:* There are a number of other publishers, including Hachette, HarperCollins, Macmillan and Craig Potton that self-supply their own distribution services, as well as offering their distribution services to third parties. The number of alternative suppliers of distribution services will act as a competitive constraint on Penguin Random House as publishers can switch to alternative providers if the prices were to increase, or service levels to decrease, to non-competitive levels.
- (i) *Independent publishers are able to distribute themselves:* Publishers that are not currently vertically integrated can engage their own sales and distribution services rather than acquire these services from third parties. Such publishers/distributors could provide their own distribution services by having warehousing facilities located in New Zealand or alternatively the East Coast of Australia, and by using third party courier services. Furthermore, as two of the largest retailers of print books in New Zealand, The Warehouse and Whitcoulls, operate centralised distribution centres publishers can be distributed through those chains nationwide simply by delivering stock to their centralised distribution centres. The model of distributing out of an Australian warehouse has proven to be economically viable for Penguin NZ.⁴⁷
- Independent publishers that currently distribute themselves include Scholastic, David Bateman and Craig Potton. Alternatively publishers can enter into a joint venture with other publishers to collectively distribute their lists.⁴⁸
- (j) *Increasing importance of online channels and e-books:* Publishers that are not currently vertically integrated can credibly threaten to switch to selling e-books or print books through online channels (by POD printing and then couriering the title) if Penguin Random House was to increase distribution prices, or decrease service levels, to non-competitive levels.

⁴⁶ Amazon wrote to literary agents on 28 November 2012 announcing the launch of Amazon Publishing in the EU "early next year", based in Luxembourg. See <http://paidcontent.org/2012/11/28/amazon-publishing-will-expand-to-europe-larry-kirshbaum-to-head-u-s-operations/>

⁴⁷ UBD currently distribute books in New Zealand despite being located in Melbourne, Australia.

⁴⁸ Prior to being distributed by UBD, PNZL used to be a member of a joint venture with Hachette that distributed its books.

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The market for acquisition of authors' rights

18.3 The Acquisition will not enable Penguin Random House to decrease the price paid for authors' rights, foreclose its competitors by bidding for rights at non-competitive levels or otherwise reduce service levels in the market for the acquisition of authors' rights for the following reasons:

- (a) *The market is highly fragmented with low levels of concentration:* While the Applicants do not have data for levels of royalties and advances that competing publishers provide to authors, the share data for the sale of all titles set out above at Figure 4 provides a broad proxy. This data demonstrates that Penguin Random House will have a modest share in a highly fragmented market with low levels of concentration and, therefore, fall within the Commission's safe harbour guidelines;
- (b) *Authors have a wide range of competing publishers to choose from:* There are a large number of competing publishers that will remain in the market post-Acquisition that are viable alternatives for authors and will place vigorous competitive constraint on Penguin Random House in the auctions or bilateral negotiations for authors' rights. All publishers interested in the synopsis or manuscript participate in the process and the author chooses the publishing house based on a range of factors, including the royalties/advances offered as well as non-price factors such as rapport/relationship with the editor, marketing plans and the perceived culture and "passion" of the publisher (as set out at paragraph 9.9 above). Even if the scale of the advance were the prime motivator behind an author selecting a particular publisher, there are many publishers in New Zealand that can afford the necessary expenditure, including a number of publishers that will have similar international operations to Penguin Random House, such as Hachette, HarperCollins, Macmillan and Simon & Schuster.
- (c) *Smaller publishers can compete vigorously with larger publishers:* As the success of a title cannot be guaranteed (even for established authors) large publishers are no more likely than competing smaller publishers to identify or acquire the most promising title.⁴⁹ The secret to success is not scale, or financial backing, but rather a skilled team that picks the right titles, makes the right publishing decisions, and markets those titles well. As a result even smaller publishers will constrain the actions of Penguin Random House. Furthermore, as set out at paragraph 9.8 above, most titles are acquired for a relatively small advance, and increasingly lower advances are becoming more common as a result of lower forecast revenues from book sales.
- (d) *Ease of switching:* Authors can and do switch between a range of publishers, and publishers do try to encourage such switching. The most common reasons for switching are that the author is offered a better financial offer or has a pre-existing relationship with an editor that moves to another publisher. For example Simon Gault recently switched from RHNZ to Penguin NZ, Nigel Latta recently switched from Harper Collins to RHNZ, Allyson Gofton switched from Hachette to Penguin NZ and Peter Gordon switched from Penguin NZ to Harper Collins. []. Authors typically contract with publishers on a book-by-book basis, and the threat of an author switching will ensure that Penguin Random House's prices and service levels remain competitive.
- (e) *Overseas publishers can publish New Zealand authors:* Given that no physical presence is required in New Zealand to acquire the rights of a New Zealand

⁴⁹ J K Rowling's first book *Harry Potter and the Philosophers Stone* was reportedly rejected by twelve publishers prior to being accepted for publication by Bloomsbury.

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author, publishers in other countries can compete for the rights to a manuscript that they consider will generate sales. Although New Zealand authors are typically published by New Zealand based publishers, this possibility will continue to place competitive constraint on Penguin Random House.

- (f) *Authors have countervailing power.* Authors have countervailing power given the number of other options available to them that will continue to place competitive constraint on Penguin Random House:
- (i) as discussed at paragraph 10.2(d) above, the number of titles that are self-published is increasing dramatically and there a number of companies that offer self-publishing services to authors in New Zealand for print books;
 - (ii) authors can also self-publish e-books through websites such as Kindle Direct Publishing (Amazon), Smashwords, Lulu and Mebooks.co.nz;
 - (iii) authors can establish their own publishing houses and distribution networks. New Zealand examples include Annabel Langbein and Craig Potton; and
 - (iv) as consumers are loyal to authors, rather than to publishing houses, authors have countervailing power in their negotiations given the number of alternative publishing houses available to them. Ultimately a publisher's business relies on having access to content that is considered appealing to consumers, therefore, any author that submits content that is considered commercially viable will have a degree of countervailing power as publishers will not want to lose that content to a rival publisher. According to a recent US survey 70% of books are unprofitable.⁵⁰ Although not any guarantee of future success, an author that is well-known, or has won a literary award, or is a celebrity is more likely to produce a profitable book. Such authors are likely to receive offers from multiple publishers and, therefore, have a particularly strong degree of countervailing power in negotiations with publishing houses.

POTENTIAL COMPETITION

Conditions of Entry

19. Please explain the requirements for new entry and/or importers in the relevant market(s).

The book publishing market

19.1 As set out at paragraph 18.2(c), the barriers to entry in the book publishing market are low and reducing. A publisher could enter the market with a relatively low level of start-up costs given a publisher can:

- (a) use low cost POD technology to publish a short run of print books, effectively minimising the start-up costs and risks of publishing a particular title;

⁵⁰ See Publishers Association of New Zealand, *An introduction to New Zealand publishing: including the directory of PANZ members* (3rd ed, Auckland, 2012) at 20.

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- (b) use digital printing to publish e-books with effectively no risk of unsold inventory, and no distribution costs;
- (c) engage one of the range of third party printers to print books, rather than investing in its own printing presses;
- (d) engage one of the range of third party book distributors for the distribution of print books to retailers; and/or
- (e) sell through the range of online book retailers, such as Amazon, to reach consumers, rather than invest in relationships with bricks and mortar retailers.

19.2 Effectively a publisher could establish its presence in the New Zealand market with an editor and an ability to identify a manuscript that will appeal to consumers. For example, Trio Books Ltd was established in 2003 by three Wellington journalists, Joseph Romanos, Gael Woods and Phil Murray, and has since gone on to publish a number of books across different genres including *My Property World* by Sir Robert Jones and *A Life in Sport* by Brendan Telfer.

The market for the acquisition of authors' rights

19.3 There are no significant barriers to entry into the market for the acquisition of authors' rights. A firm with even limited financial resources can submit a winning bid to and obtain the rights of an author. As set out at paragraph 18.3(b) above, authors do not base their decision solely on price and are also influenced by a range of non-price factors.⁵¹ As set out at paragraph 18.3(c) above, the secret to success is not scale, or financial backing, but rather a skilled team that picks the right titles, makes the right publishing decisions, and markets those titles well. Further, as lower advances are becoming more common in the industry, and a certain proportion of royalties do not need to be paid until sales are made to consumers, the upfront costs to win an author are becoming increasingly low enabling a larger number of publishers to participate in the acquisition of authors' rights.

20. Include a full discussion on any factors that could impede entry; and what might prompt new entry post-merger.

20.1 Given the number of existing competitors in the relevant markets, the primary source of vigorous competitive constraint post-merger will be from existing competitors who would be able to readily react to any attempts by Penguin Random House to price above the competitive level of pricing, or drop service/quality levels below competitive levels. However, if Penguin Random House were to increase prices above, or reduce service levels below, competitive levels new entrants may be incentivised to enter the markets.

20.2 Given the advances in technology (such as digital POD printing and the ability to sell titles directly to consumers through online platforms) a publishing house can be established simply by a person with editorial experience establishing a business and attracting authors to work with him or her. The establishment of Trio Books Ltd in 2003 is an example of a publishing house being established simply through a person with editorial experience looking to establish their own business.

⁵¹ Such non-price factors include relationships with publishers/editors, a publisher's passion for the title, the marketing plan presented, the publisher's ability to promote the book to retailers and the reputation of a publisher in a particular genre.

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LIKELIHOOD, EXTENT AND TIMELINESS OF ENTRY (THE LET TEST)

21. Please name any likely businesses (including overseas businesses) you are aware of that do not currently supply the market but which you consider could supply each of the relevant market(s). Discuss the likelihood of such entry.
- 21.1 As set out above, given the competitive nature of the New Zealand markets in question, the primary source of vigorous competitive constraint post-merger will be from existing competitors.
- 21.2 However, as technological advances have lowered barriers to entry, as set out at 18.2(c), facilitating the entry of smaller publishers that can operate at lower scale, using business models that bypass traditional publishers, it is now possible for any person with experience in content creation, publishing or editing to establish their own publishing business (for example, such a person could replicate the entry of Trio Books Ltd).
- 21.3 Furthermore, were any Australian based publishers, not currently present in New Zealand, to identify opportunities they could easily enter the New Zealand market. This is particularly so given the viability of distributing books from facilities on the East Coast of Australia into New Zealand. Publishers with an Australian presence that are not currently present in New Zealand are outlined in Figure 5 below:

Figure 5 - Australian publishers not currently present in New Zealand

Publisher	Description	Current New Zealand presence
Black Inc	Black Inc is an independent publisher of non-fiction, fiction and poetry. Black Inc is owned by Morry Schwartz of Schwartz Publishing. Black Inc publishes using several imprints including Black Inc, Black Inc Agenda, Nero and Quarterly Essay. Black Inc is based in Collingwood, Victoria.	Currently publish Craig Sherborne (a New Zealand expat now living in Australia). Distributed in New Zealand by UBD.
The Five Mile Press Pty Ltd	The Five Mile Press is an Australian publisher, whose parent company, Bonnier Publishing UK, is part of the Swedish media giant Bonnier AB, wholly owned by the Bonnier family. It has sales offices in the US and the UK. In Australia it publishes under the The Five Mile Press imprint and is based in Scoresby, Victoria.	Understood to be distributed in New Zealand by Books R Us
Hinkler Books Pty Ltd	Hinkler Books is a privately-owned, mass-market publisher and distributor. It has headquarters in Melbourne, Australia and offices in the UK, and distributes its products globally. Approximately 300 titles are published each year.	Understood to be distributed in New Zealand by Bookreps NZ Ltd.
Scribe Publications Pty Ltd	Scribe Publications is an independent trade publishing house and publishes around 60 non-fiction books a year. Scribe has rights agents all over the world and strong international connections with agents and publishers. It publishes under the Scribe Publications imprint and is based in Melbourne, Victoria.	Currently publishes a handful of authors with a connection to New Zealand. Distributed in New Zealand by UBD.

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Publisher	Description	Current New Zealand presence
Simon & Schuster	Simon & Schuster Australia is part of the CBS Corporation and is one of the four largest English-language publishers in the world. It has affiliates in Canada, the UK, Asia and the USA. In NZ it publishes under its Free Press and Simon & Schuster imprints and is based in Cammeray, NSW in Australia.	Distributed by UBD
Quercus Publishing Ltd	Quercus Publishing was established in 2004. Quercus has offices in London and sales representatives in Australia, Singapore, South Africa, New Delhi, the Netherlands and Romania. Quercus publishes under the imprints Quercus, MacLehose Press and Quercus Children's.	Distributed in New Zealand by Macmillan

22. To what extent do you consider that potential entry would be sufficient to constrain the merged entity in the markets affected?

22.1 As set out above, given the competitive nature of the current market the primary source of vigorous competitive constraint post-merger in the relevant markets will be from existing competitors.

23. How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential entrants named in question 21 above?

23.1 Once an established publisher makes the decision to sell its titles in New Zealand entry could occur immediately.

COUNTERVAILING POWER OF BUYERS

24. To what extent do you consider that the merged entity would be constrained in its actions by the conduct of buyers in the markets affected?

The book publishing market

24.1 Post-Acquisition Penguin Random House will continue to be constrained by retailers that have a high degree of countervailing power for the following reasons:

- (a) *Bricks and mortar stores are an important gateway to consumers, and publishers rely on positioning of their titles in-store and online to drive sales: Bricks and mortar stores act as a showroom for titles, facilitate the consumer's browsing and selection experience and are, therefore, a publisher's key means of marketing their products. Publishers need their titles in as many bricks and mortar stores as possible to maximise sales through all channels (including e-books).⁵² Furthermore, the retailer can decide where to display a publisher's titles. While some elements of positioning may be contractually agreed between the retailer and the publisher much of the positioning decision is within the retailer's discretion. Publishers that do not offer competitive terms will face adverse reactions from retailers, such as the retailer only displaying the stock in the back of store, running down the level of stock without reordering, returning the stock to the publisher, or not offering the same promotional*

⁵² It is not uncommon for consumers purchasing books to browse bricks and mortar stores to make their purchasing decision before going online to complete the transaction.

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opportunities afforded to compliant publishers. Such threats are credible given that a retailer can always fill the vacant space with another title and sales are unlikely to be affected. However, the effect on a publisher's revenue is likely to be significant. These factors all give bricks and mortar retail stores, particularly the larger chains, a significant degree of countervailing power in their negotiations with publishers - including Penguin Random House.

- (b) *Penguin Random House's largest bricks and mortar customers account for a large proportion of sales:* As set out Figure 6 below, RHNZ's three largest bricks and mortar customers account for more than []% of its sales to bricks and mortar outlets, while these same three customers account for []% of Penguin NZ's sales to bricks and mortar outlets. These customers are sophisticated buyers who can and do exercise considerable buyer power in their negotiations with publishers.

The fact that these customers will account for such a large proportion of Penguin Random House's sales gives them a significant degree of countervailing power in their negotiations with publishers []. These retail chains that have a network of stores across the country are []. A successful negotiation with these large retailers results in a publisher's titles being displayed across the country. []. [] Any threat that these retailers could make against Penguin Random House would be credible because:

- (i) [];
- (ii) other than a few notable exceptions,⁵³ particular books are rarely a "must have" product such that the absence, or adverse placement or promotion, of these titles will be likely to preclude customers from visiting these retailers as the majority of books are impulse purchases and highly substitutable with books from competing publishers;
- (iii) there are no long term contracts in place requiring minimum purchases thus retailers can easily switch at minimal cost; and
- (iv) general merchandise retailers consider books and other consumer goods to be substitutable. Any attempt to increase the cost of a book may be met with retail space that was once devoted to books being reallocated to other consumer products.⁵⁴

Adverse product placement, lower promotion or even delisting would [] and, therefore, Penguin Random House could not price above, or drop service levels below, competitive levels to these customers.

- (c) *Smaller independent bricks and mortar customers are also important:* the small independent bookstores offer customers a unique browsing experience that allows the readers to try before they buy. Such stores are important to engage with readers and affect their ultimate purchasing decision, irrespective of which channel the purchase is conducted through. []
- (d) *Retailers can threaten to parallel import:* As noted by the Commission in *Whitcoulls / Borders*, parallel importing is a feature of the New Zealand book industry.⁵⁵ Retailers can credibly threaten to parallel import the very same

⁵³ Such as, say, the Harry Potter titles.

⁵⁴ Although this effect is particularly pertinent with general merchandisers it is also prevalent amongst speciality bookstores who increasingly sell DVDs, toys, puzzles, games, stationery, greeting cards, wrapping paper and giftware.

⁵⁵ *A&R Whitcoulls Holdings Group Pty Limited and Borders New Zealand Limited*, above n 29, at [56].

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titles if they are not happy with prices or services levels they are receiving from New Zealand based publishers. In particular, online retailers regularly parallel import books as they will purchase titles from the lowest priced international supplier, as do independent bookstores.

- (e) *Retailers have the ability to enter the publishing market.* Retailers have the ability to enter the upstream market, as has occurred in the US and Europe by Amazon. The threat of this is a direct competitive constraint on publishers.

Market for the acquisition of author's rights

24.2 For the reasons set out at paragraph 18.3(f)(iv), authors, particularly well-known authors, will have a significant degree of countervailing power in their negotiations with publishing houses.

25. If you consider that there is a constraint from buyers, identify the top five buyers by sale and/or volume (including overseas companies/importers) in the relevant market(s). Where there are significant differences in the size of buyers please provide details for five medium and five small buyers.

25.1 The three largest booksellers in New Zealand are Whitcoulls, PaperPlus and The Warehouse.

25.2 The James Pascoe Group purchased Whitcoulls from the REDGroup when it went into voluntary administration in 2011. Whitcoulls is a corporate bookseller with a centralised stock management centre. Whitcoulls has 59 stores around the country. The James Pascoe Group also owns The Farmers general merchandiser chain that could easily enter the retailing of books if it wished to.

25.3 Paper Plus New Zealand Limited is a co-operative company with its shareholders being its franchisees that individually own and operate the Paper Plus outlets. There are over 100 Paper Plus stores across the country. Each store makes autonomous buying decisions.

25.4 The Warehouse Group Ltd, trading as The Warehouse, is a general merchandiser with 89 stores across New Zealand. The Warehouse receives its books from a wholesaler which sells only to The Warehouse. Publishers negotiate the terms of sale with the wholesaler. []

25.5 Figure 6 below demonstrates the percentage of RHNZ's and PNZL's total sales that are made to the three largest booksellers:

Figure 6 - The Applicants' largest purchasers

	RHNZ	PNZL
Whitcoulls	□	□
Paper Plus	□	□
The Warehouse	□	□
Top 3 Combined	□	□
Others	□	□

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25.6 In New Zealand the greatest exposure a publisher can achieve is through being displayed and sold in these three key booksellers. Furthermore, as noted at paragraph 10.2(a) above, the online retailer Fishpond accounts for [] of Penguin NZ's annual sales of print books.

COORDINATED MARKET POWER**26. Identify and discuss the various characteristics of the market that, post-merger, you consider would either facilitate or impede coordination.**

26.1 The risk of coordinated effects post-Acquisition is low. The book publishing industry is characterised by a number of features which condition against prospects for coordinated effects. Consistent with the approach taken by the High Court in *Brambles New Zealand Ltd v Commerce Commission*,⁵⁶ the conditions for concluding that there would be effective and sustainable coordinated behaviour as a result of the acquisition simply do not exist in the book publishing industry. The book publishing industry is characterised by:

- (a) *No price transparency*: The prices of print books to retailers vary depending on the retailer and the particular titles based on promotional discounts, volume rebates, and co-op spend. The levels of discounts, rebates and co-op spend are negotiated between individual publishers and retailers and are not known to the market. Publishers could not use retail prices to infer wholesale prices as a number of factors make up retail pricing, including rent, salaries, marketing costs, and other overheads. The price of e-books is similarly not transparent - e-books are sold at a large number of different price points. Any coordinated agreement would be inherently unstable due to it being impossible to detect deviation from the coordinated outcome.
- (b) *Large number of competitors with asymmetric market shares and costs, and a large number of fringe competitors*: there are at least five other international publishers that operate in the New Zealand market in addition to a significant number of smaller local and international publishers. The size of each publisher and the amount of titles each publisher releases each year varies, some publishers self-supply distribution services while others acquire such services from third parties. This means that all publishers have asymmetric costs. Furthermore, as set out in Figure 5, the competitors all have varying markets shares that tend to fluctuate significantly from year to year (due to the impact of a small number of high selling titles). This would make any coordination, and detection of cheating, inherently difficult.
- (c) *Differentiated product, including uncertainty of demand by title*: books are by their nature differentiated products such that the popularity of a particular title is difficult to predict, and will vary widely with other titles of that publisher and other publishers. This unpredictability of demand disincentivises coordination because publishers will have a strong incentive to deviate from any coordinated agreement to maximise revenue in response to changes in demand for its, and others', titles.
- (d) *The dynamic nature of the industry*: although the New Zealand publishers have so far not experienced the full effect of the growth of e-books it is inevitable that the New Zealand industry will be forced to adjust in response to technology. This period of change means that prices and products will be moving in

⁵⁶ *Brambles New Zealand Ltd v Commerce Commission* (2003) 10 TCLR 868 (HC).

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response to the new dynamics in the industry, which will make any coordination even more inherently unstable.

(e) *The countervailing power of acquirers:* as discussed above at 24.1, retailers have significant countervailing power, which undermines any potential for co-ordinated market power.

(f) *Low barriers to entry and expansion:* as discussed above at 18.2(c).

26.2 Neither of the Applicants is aware of any past or current co-ordination of activities with any other competitors in the New Zealand industry. The industry does not show evidence of price coordination.

EFFICIENCIES

27. If applicable, provide a description of any efficiencies that you believe the acquisition could bring. Would such efficiencies enhance rivalry, or offset the impact of a lessening of competition?

27.1 Given that the Acquisition will not substantially lessen competition in any affected market, an analysis of offsetting efficiencies is not required.

OTHER FACTORS

28. Where relevant, provide a description of any other features of the market(s) that should be taken into account in considering the effect of the proposed merger.

28.1 Not applicable.

PART 6: FURTHER INFORMATION AND SUPPORTING DOCUMENTATION

29. Provide the contact details of relevant competitors, buyers and suppliers and any other relevant market participants in the form of the example table shown below.

Name of Company (both legal and trading names)	Contact details (postal and physical address, telephone, fax and website)	Relevant contact person (name, position, and contact details)
PUBLISHERS		
Allen & Unwin New Zealand Limited	PO Box 7230 Wellesley Street Auckland 1141 Suite 3, Level 3 HB Building 228 Queen Street Auckland 1010 Ph: 09 377 3800 Fax: 09 377 3811 www.allenandunwin.com/	Melanie Laville-Moore (New Zealand Director) auckland@allenandunwin.com
Annabel Langbein Media Limited	PO Box 99 068 Newmarket Auckland 1149 Ph: 09 522 2790 Fax: 09 522 4184 www.annabel-langbein.com	Christine Arden (General Manager) admin@annabel-langbein.com
Awa Press	PO Box 11-416 Wellington 6142 Level 3 11 Vivian Street Te Aro Wellington 6011 New Zealand Ph: 04 471 1834 info@awapress.co.nz www.awapress.com	Mary Varnham (Publishing Director and Editor-in-Chief) editorial@awapress.co.nz
Black Inc.	37-39 Langridge Street Collingwood, VIC 3066, Australia Ph: +61 3 9486 0288 Fax: +61 3 9486 0244 enquiries@blackincbooks.com www.blackincbooks.com	enquiries@blackincbooks.com

PUBLIC VERSION

Bloomsbury Publishing Pty Ltd	<p>Level 4 387 George St Sydney NSW 2000 Australia</p> <p>Ph: +61 2 8820 4900</p> <p>csmanz@bloomsbury.com</p> <p>www.bloomsbury.com/uk/</p>	
Bookprint Consultants Ltd	<p>69 Wilkinson Street Oriental Bay Wellington City Wellington</p> <p>Ph: 04 381 3071 Fax: 04 381 3067</p>	
Bridget Williams Books Ltd	<p>PO Box 12 474 Thorndon Wellington 6144</p> <p>32 Mulgrave Street Thorndon Wellington 6011</p> <p>Ph: 04 473 8128</p> <p>www.bwb.co.nz</p>	<p>Bridget Williams (Director and Publisher)</p> <p>bridget@bwb.co.nz</p>
Calico Publishing Ltd	<p>PO Box 29 039 Greenwoods Corner Auckland 1347</p> <p>2A Heywood Crescent Epsom Auckland 1023</p> <p>Ph: 09 624 5674 Fax: 09 624 5672</p> <p>www.cervinpublishing.co.nz</p>	<p>Linda Cassells (Director)</p> <p>linda@calicopublishing.co.nz</p>
Craig Potton Publishing Limited	<p>PO Box 555 Nelson 7040 98 Vickerman Street Port Nelson Nelson 7010</p> <p>Ph: 03 548 9009 Fax: 03 548 9456</p> <p>www.craigpotton.co.nz</p>	<p>Jane Connor (Managing Director and Publisher)</p> <p>jane@cpp.co.nz</p>
David Bateman Limited	<p>PO Box 100 242 North Shore Mail Centre Auckland 0745</p> <p>30 Tarndale Grove Albany Business Park Albany North Shore City Auckland</p> <p>Ph: 09 415 7664 Fax: 09 415 8892</p> <p>www.batemanpublishing.co.nz</p>	<p>Paul Bateman</p> <p>bateman@bateman.co.nz</p>

PUBLIC VERSION

David Ling Publishing	PO Box 34 601 Birkenhead Auckland 0746 Ph: 64 9 418 2785 davidling@xtra.co.nz www.davidling.co.nz/	davidling@xtra.co.nz
ESA Publications (NZ) Ltd	PO Box 9453 Newmarket Auckland mark@esa.co.nz www.esa.co.nz	Mark Sayes (Publisher and Managing Director) mark@esa.co.nz
Exisle Publishing	PO Box 60 490 Titirangi, Waitakere Auckland 0642 Ph: 09 817 9192 Fax: 09 817 2295 www.exislepublishing.com	Gareth St John Thomas (Chief Executive) carole@exisle.co.nz
Five Mile Press Pty Ltd	1 Centre Road Scoresby VIC 3179 Australia Ph: +61 3 8756 5500 www.fivemile.com.au	Alexandra Maramenides (Managing Director)
Griffin Press (Australia)	168 Cross Keys Rd Salisbury South South Australia 5106 Ph: 1300 300 668 Ph: (08) 8235 2000 sales@gpress.com.au www.griffinpress.com.au/	
Hachette New Zealand Limited	PO Box 100-749 North Shore Mail Centre Auckland New Zealand 4 Whetu Place Mairangi Bay Auckland New Zealand Ph: 09 4775550 Fax: 09 4775560 www.hachette.co.nz	Kevin Chapman (Managing Director & Publisher) admin@hachette.co.nz

PUBLIC VERSION

Hardie Grant Publishing	<p>Private Bag 1600 South Yarra Victoria 3141 Australia</p> <p>Ground Floor, Building 1 658 Church st Richmond Victoria 3121 Australia</p> <p>Ph: +61 3 8520 6444</p> <p>info@hardiegrant.com.au</p> <p>www.hardiegrant.com.au</p>	
Harlequin Enterprises (Aus) Pty Ltd	<p>Harlequin Enterprises Pty Ltd Locked Bag 7002 Chatswood DC NSW 2067 Australia</p> <p>Level 5 15 Help Street Chatswood NSW 2067 Australia</p> <p>Ph: 09 837 1553</p> <p>www.harlequinbooks.com.au</p>	
Harper Collins Publishers (New Zealand) Limited	<p>PO Box 1 Shortland Street Auckland 1140</p> <p>31 View Road Glenfield North Shore City Auckland</p> <p>Ph: 09 443 9400 Fax: 09 443 9403</p> <p>www.harpercollins.co.nz/</p>	<p>Tony Fisk (Managing Director)</p> <p>info@harpercollins.co.nz</p>
Hinkler Books Pty Ltd	<p>45-55 Fairchild Street Heatherston Victoria 3202 Australia</p> <p>Ph: +61 03 9552 1333</p> <p>enquiries@hinkler.com.au</p> <p>www.hinklerbooks.com</p>	<p>enquiries@hinkler.com.au</p>
Hyndman publishing	<p>325 Purchas Road Amberley 7482</p> <p>Ph: 03 314 9635</p> <p>http://hyndman.co.nz</p>	

PUBLIC VERSION

Limited Edition Books	<p>12 Goodger Street Waipukurau 4200 Central Hawke's Bay New Zealand</p> <p>Ph: +64 6 858 6287 Fax: +64 6 650 9112</p> <p>limitededitionbooks@fineprint.co.nz</p> <p>http://limitededitionbooks.fineprint.co.nz/</p>	
Macmillan Publishers New Zealand Limited	<p>Private Bag 10 2970 North Shore Mail Centre Auckland 0745</p> <p>24 The Warehouse Way Northcote Auckland New Zealand</p> <p>Ph: 09 905 3200 Fax: 09 905 3224</p> <p>www.macmillan.co.nz/</p>	<p>David Joel (Chief Executive and Managing Director)</p> <p>david.joel@macmillan.co.nz</p>
New Holland Publishers (NZ) Ltd	<p>PO Box 34 321 Birkenhead Auckland 0746</p> <p>Corner Lake and Ocean View Roads Northcote, North Shore City Auckland 0627</p> <p>Ph: 09 481 0444 Fax: 09 480 0129</p> <p>www.newhollandpublishers.co.nz</p>	<p>Belinda Cooke (Managing Director)</p> <p>bcooke@nhp.co.nz</p>
Parragon Publishing Pty Ltd	<p>Level 6 57 Symonds Street Grafton Auckland 1010</p> <p>www.parragon.com/</p>	Peter Nelson
Quercus Publishing Ltd	<p>55 Baker St, 7th Floor, South Block London W1U 8EW</p> <p>Ph: 021 7291 7200</p> <p>enquiries@quercusbooks.co.uk</p>	
Scholastic New Zealand Limited	<p>Private Bag 94407 Botany Manukau 2163</p> <p>21 Lady Ruby Drive East Tamaki Manukau 2013</p> <p>Ph: 09 274 8112 Fax: 09 274 8115</p> <p>www.scholastic.co.nz/</p>	<p>Anne Preston (North & West Auckland Manager)</p> <p>apreston@scholastic.co.nz</p>

PUBLIC VERSION

Scribe Publications Pty Ltd	<p>18–20 Edward Street Brunswick 3056 Victoria Australia</p> <p>Ph: +61 3 9388 8780 Fax: +61 3 9388 8787</p> <p>info@scribepub.com.au</p> <p>http://scribepublications.com.au</p>	
Simon & Schuster (Australia) Pty Ltd	<p>PO Box 448 Camberay NSW 2062 Australia</p> <p>Suite 19a, Level 1, Building C 450 Miller Street Camberay NSW 2062 Australia</p> <p>Ph: 61 2 9983 6600 Fax: 61 2 9988 4293</p> <p>cservice@simonandschuster.com.au</p> <p>www.simonandschuster.com/</p>	
South Pacific Press	<p>PO Box 19 088 Wellington 6149</p> <p>Ph: 04 381 2245 Fax: 04 381 2243</p> <p>www.southpacificpress.com</p>	<p>Neale Pitches (CEO)</p> <p>neale@southpacificpress.com</p>
Trio Books Ltd	<p>PO Box 17 021 Wellington</p> <p>Ph: 04 476 8049</p> <p>enquiry@triobooks.co.nz</p> <p>www.triobooks.co.nz</p>	
Zenith Publishing Group	<p>PO Box 752 New Plymouth 4340 New Zealand</p> <p>49-55 Rimu Street New Plymouth 4312 New Zealand</p> <p>Ph: 64 6 759 4699 Fax: 64 6 758 031</p> <p>www.zenithpublishing.co.nz</p> <p>Karen@zenithpublishing.co.nz</p>	<p>Karen Watt</p> <p>Karen@zenithpublishing.co.nz</p>

PUBLIC VERSION

SELF-PUBLISHING		
The Copy Press	<p>The Copy Press 105 Neale Ave Stoke, Nelson New Zealand</p> <p>Ph: 03 547 2972 Fax: 03 547 2973</p> <p>info@copypress.co.nz</p> <p>www.copypress.co.nz/index.php</p>	
Lulu	www.lulu.com	
MeBooks.co.nz	<p>8 Heparu Street Hataitai Wellington 6021 New Zealand</p> <p>Ph: 021707204</p> <p>Mebooks.support@gmail.com mebooks.sales@gmail.com</p> <p>http://mebooks.co.nz/</p>	
Smashwords	<p>Smashwords, Inc 15951 Los Gatos Blvd., Ste 16 Los Gatos CA 95032</p> <p>www.smashwords.com/</p>	<p>Jim Azevedo (Marketing manager)</p> <p>jim@smashwords.com</p>
PRINTERS		
1010 Printing International (Hong Kong)	<p>Units 2&3, 5/F Lemmi Centre 50 Hoi Yuen Road Kwun Tong Kowloon Hong Kong</p> <p>Ph: +852-8226 1010 Fax: +852-2156 8039</p> <p>enquiry@1010printing.com</p> <p>www.1010printing.com/eng/</p>	<p>Tiffany Johnson (Australia and New Zealand Sales Director)</p> <p>enquiry@1010printing.com</p>
Asia Pacific Offset (Hong Kong)	<p>57 Norfolk Street Ponsonby, Auckland 1021 New Zealand</p> <p>Ph: +64 9 378-4971</p> <p>www.asiapacificoffset.com/</p>	<p>Barbara Nielsen (New Zealand Consultant)</p> <p>barbara@asiapacificoffset.com</p>
The Caxton Press	<p>PO Box 36411 Merivale Christchurch 8146</p> <p>113 Victoria Street Christchurch New Zealand</p> <p>Ph: +64 3 366 8516 Fax: +64 3 365 7840</p> <p>www.caxton.co.nz</p>	<p>Bruce Bascand, Managing Director</p> <p>03 366 8516</p> <p>bruce@caxton.co.nz</p>

PUBLIC VERSION

Colorcraft (Hong Kong)	Unit 8-9, 16th Floor Kodak House Phase II 321 Java Road North Point Hong Kong Ph: +852 2590 9033 Fax: +852 2590 9005 enquiries@colorcraft.com.hk www.colorcraft.com.hk/en/	
Everbest Printing Co. Ltd (Hong Kong)	Block C Unit 5. 10th Floor 7 Ko Fai Road Yau Tong Kowloon Hong Kong Ph: +852 2727 4433 Fax: +852 2772 7687 www.everbest.com/	Mr. Adam Crouch JP adam@everbestprinting.com.au
JP Printer (Malaysia)	J.P. Printers SDN. BHD. Plot 200A, Lorong Perusahaan Maju 8, Kawassan Perusahaan Perai 4, 13600 Prai, Penang, Malaysia Ph: 604-507-9955 Fax: 604-507-5599 sales@jpp.com.my www.jpp.com.my/	sales@jpp.com.my
Ligare Book Printers	235 Archers Road Glenfield North Shore Auckland New Zealand Ph: +64 9 444 3240 Fax: +64 9 444 3243 www.ligare.co.nz	Sharon Simmons, Account Manager sharons@ligare.co.nz
McPherson's Printing Pty Ltd	5 Dunlop Road Mulgrave Victoria 3170 Ph: +61 3 9566 3111 Fax: +61 3 9562 1954 feedback@mcpersonsprinting.com.au	
Printabook	PO Box 840 Christchurch New Zealand Aarque Graphics building 87 Byron Street Sydenham Christchurch New Zealand Ph: 03 366 7731 Fax: 03 379 3513 http://www.printabook.co.nz/ books@digitalprint.co.nz	

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PrintStop (New Zealand)	<p>PO Box 6541 Marion Square Wellington 6141</p> <p>16-18 Cashew Street Grenada North Wellington 6141</p> <p>Ph: 04 232 7653 Fax: 04 232 7656</p> <p>salessupport@printstop.co.nz</p> <p>www.printstop.co.nz</p>	
South China Printing (Hong Kong)	<p>9/F, Millennium City 3, 370 Kwun Tong Road, Kowloon, Hong Kong</p> <p>23/F, Delta House, 3 on Yiu Street, Shek Mun, Shatian, New Territories, Hong Kong</p> <p>Ph: 852-2637-3611 Fax: 852-2637-4221</p> <p>www.16286.tradebig.com</p>	Miss Debbie Chan (Administrative Manager)
Wakefields Digital	<p>102-108 Wakefields Street Wellington New Zealand</p> <p>Ph: 04 473 3631 Fax: 04 473 3613</p> <p>info@wakefields.co.nz</p> <p>www.wakefields.co.nz/</p>	info@wakefields.co.nz
DISTRIBUTORS		
Alliance Distribution Services	Ph: 09 477 4120	
Nationwide Book Distributors	<p>PO Box 65 Oxford 7443 New Zealand</p> <p>Nationwide Book Distributors 351 Kiri Kiri Road Oxford 7495 New Zealand</p> <p>Ph: 03 312 1603 Fax: 03 312 1604</p> <p>admin@nationwidebooks.co.nz</p> <p>www.nationwidebooks.co.nz/contact_us</p>	

PUBLIC VERSION

Bookreps NZ Ltd	PO Box 34 989 Birkenhead Auckland 0746 Unit 2 39 Woodside Avenue Northcote Auckland 0627 Ph: 09 419 2635 Fax: 09 419 2634 sales@bookreps.co.nz www.bookreps.co.nz	Jennie Brockie (Sales Manager) jennie@bookreps.co.nz
South Pacific Book Distributors Limited	PO Box 303 243 North Harbour 1330 Unit 1 50 Tardale Grove Albany Auckland Ph: +64 9 448 1591 Fax: +64 9 448 1592 www.soupacbooks.co.nz/	Philip Anstiss philip@spbooks.co.nz
RETAILERS		
Books R Us	Unit 11/101-111 Diana Drive Auckland 10 New Zealand Ph: +64 9 444 4144 Fax: +64 9 444 4518 booksrus@xtra.co.nz	Murray Brown
Paperplus	PO Box 97 063 Manukau City Auckland 2241 5/17 Lambie Drive Manukau Auckland 2104 Ph: 09 262 2486 Fax: 09 262 2768 operations@paperplus.co.nz www.paperplus.co.nz	
Premier Books	PO Box 101-129 North Shore Mail Centre 31 Constellation Drive Rosedale Auckland 0632 Ph: 09 477 0012 Fax: 09 486 8821 www.premierbooks.co.nz	Andrew Forsyth (CEO) andrewf@premierbooks.co.nz

PUBLIC VERSION

Unity Books	19 High Street Auckland New Zealand Ph: 09 307 0731 Auckland@unitybooks.co.nz www.unitybooks.co.nz/	
The Warehouse	P O Box 33470 Takapuna Auckland 0740 26 The Warehouse Way Northcote Auckland 0627 Ph: +64 9 489 7000 Fax: +64 9 489 7444 www.thewarehouse.co.nz	Mark Powell
Whitcoulls	Private Bag 92098, Victoria Street West Auckland 1142 Level 5 Frond House 131 Queen Street Auckland 1010 Ph: +64 9 356 5410 Fax: +64 9 985 7571 www.whitcoulls.co.nz	
ONLINE RETAILERS		
Amazon	1-206-266-2992 www.amazon.com	
Apple	Apple PO Box 912015 Auckland Mail Centre Auckland 1142 Ph: 0800-692-7753 Media.newzealand@apple.com	
Fishpond	www.fishpond.com	
Mighty Ape	Mighty Ape Limited PO Box 302488 North Harbour Auckland 0751 New Zealand Ph: 09 475 9305 Fax: +64 9 475 9047 www.mightyape.co.nz	
The Nile	www.thenile.co.nz	

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Wheeler's Book Club Limited	<p>PO Box 305-404 Triton Plaza, North Shore, Auckland</p> <p>19 Triton Drive, Rosedale, North Shore City, 0632 , New Zealand</p> <p>Ph: 09 479 7979 Fax: 09 479 7949</p> <p>info@wheelers.co.nz www.wheelers.co.nz</p>	
Ziwi	www.ziwi.co.nz	
TRADE ASSOCIATIONS		
New Zealand Book Council	<p>Level 7, Alan Burns Insurances House 69–71 Boulcott Street Wellington 6011</p> <p>Ph: 04 499 1569 Fax: 04 499 1424</p> <p>http://www.bookcouncil.org.nz</p>	<p>Catriona Ferguson (Chief Executive) director@bookcouncil.org.nz</p>
New Zealand Booksellers Association	<p>PO Box 25033 Wellington 6146</p> <p>Level 13 Grand Arcade 16-20 Willis Street Wellington 6100</p> <p>Ph: 04 472 1908 Fax: 04 472 1912</p> <p>info@booksellers.co.nz www.booksellers.co.nz</p>	<p>Lincoln Gould (Chief Executive Officer)</p>
New Zealand Society of Authors	<p>PO Box 7701 Wellesley Street Auckland, 1141 New Zealand</p> <p>Level 4 Duthie Whyte Building 120 Mayoral Drive Auckland</p> <p>Ph: 09 379 4801</p> <p>www.authors.org.nz</p>	<p>office@nzauthors.org.nz</p>
Publishers Associations of New Zealand	<p>P O Box 102 006, North Shore 0745 New Zealand</p> <p>4 Whetu Place Mairangi Bay Auckland 0632</p> <p>Ph: +64 9 477 5570 Fax: +64 9 477 5589</p> <p>www.publishers.org.nz</p>	<p>Anne de Lautour (Association Director) admin@publishers.org.nz</p>

PUBLIC VERSION

- 30. Please provide a copy of the most recent annual report for each of the merger parties. If an annual report is not available, please provide a copy of the audited financial statements of the merger parties (profit and loss account, showing total turnover and profit before tax, and balance sheet). If the merger only relates to a segment of the business of the merger parties, please also provide a copy of any management accounts for the relevant business segment.**
- 30.1 The annual reports of RHNZ and PNZL as well as confidential management accounts of the Penguin NZ division of PNZL are attached in **Confidential Appendix Four**.

PART 7: CONFIDENTIALITY

- 31. If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.**
- 31.1 Confidentiality is sought in respect of the information in this application that is contained in square brackets. 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.
- 31.2 The Applicants request that they be notified of any request made to the Commission under the Official Information Act 1982 for release of the confidential information. The Applicants also request that the Commission seek and consider the Applicants' views as to whether the information remains confidential and commercially sensitive at the time responses to such requests are being considered.
- 31.3 The foregoing equally applies in respect of any additional information provided to the Commission that is expressed to be confidential.

