

Anticipated acquisition by Eglemoss Holdings (UK) Limited of GE Fabbri Limited

**ME/4798/10**

The OFT's decision on reference under section 33(1) given on 17 December 2010. Full text of decision published 17 January 2011.

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**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.**

**PARTIES**

1. **Eglemoss Holdings (UK) Limited** (Eglemoss) is the holding company for four UK-registered subsidiaries active in the publication of partworks in several different languages across 34 countries. It is a wholly-owned subsidiary of Financière Aurenis SAS (Aurenis), a supplier of partworks publications and collectibles operating through newspaper retailers and via subscriptions, headquartered in France. Aurenis has interests in a number of other businesses, including a majority shareholding in Data Base Factory France ([ ] per cent) and Data Base Factory UK Limited ([ ] per cent) (together, Data Base Factory). Data Base Factory is a fulfilment and subscription management support service, which also has a wider call centre offering. For the year 2009, Aurenis achieved a worldwide turnover of £[ ] million.
2. **GE Fabbri Limited** (Fabbri) is a UK company specialising in partworks publications in a variety of languages across 24 countries. Fabbri holds the remaining (minority) interest in Data Base Factory. In 2009, its turnover in the UK was £[ ] million.

## **TRANSACTION**

3. The parties exchanged contracts on 1 October 2010. Eaglemoss will acquire the entire issued share capital of Fabbri for an initial consideration of £[ ] million. This includes the acquisition of the minority interest in Data Base Factory, which will give Eaglemoss full ownership. Completion is expected to take place on [ ].
4. According to the parties, the transaction enables:
  - Aurenis to expand into new geographic areas [ ], and
  - cost synergies to be achieved, particularly with respect to the testing and research and development of new products.

## **JURISDICTION**

5. As a result of this transaction, the enterprises Eaglemoss and Fabbri will cease to be distinct.
6. The parties together accounted for more than 25 per cent of UK partworks publishing revenues in 2009, which the parties asserted is a plausible basis for the OFT to assert jurisdiction.
7. The OFT therefore believes that it is or may be the case that the share of supply test as set out in section 23 of the Enterprise Act 2002 (the Act) is met and that a relevant merger situation is created.

## **BACKGROUND**

8. Partworks are collectable publications in illustrated magazine or book format, on a particular theme, targeted at a particular audience, published on a limited run series, and which often include a cover-mounted gift or other collectable item.
9. The parties informed the OFT that it typically takes up to [ ] years to develop a concept for a new partworks publication. Before the official launch of a new publication, publishers undertake a test launch in a discrete part of the UK (for example, a single town or region) in order to assess the likely success of the partwork. The launch of a new partworks publication is usually accompanied by a publicity campaign.

10. The parties stated that the first few weeks from launch of a new partworks publication is crucial in determining its success since, given the collectable nature of the product, end customers are unlikely to start buying a particular publication part-way through a series. The first issue of the collection is typically sold at a discounted price or is sometimes bundled with other publications (such as a newspaper) at no extra cost to the end customer, in order to generate high levels of interest. In this respect, partworks are usually characterised by a declining retention rate since an increasing proportion of customers stop buying the publication after the first few instalments.
11. Final customers purchase partworks either through a variety of retail outlets (such as kiosks, newsagents and supermarkets), or subscribe by mail order.
12. Partworks publishers do not sell directly to retailers, but rather supply the retail trade through distributors, who negotiate on their own behalf downstream sales with wholesalers and retailers. In addition to distribution services, distributors often provide publishers with sales and marketing services, such as co-operation on the determination of the volumes to be printed for each publication and promotion of advertising spend. In return, distributors receive a discount on the cover price of partworks.
13. In the UK, the parties distribute their publications through a sole distributor, Condé Nast and National Magazine Distributors Limited (COMAG), who receives a discount of approximately [ ] per cent on the cover price as remuneration for its services. Sales via COMAG represent [ ] per cent of total sales for Eaglemoss by volume ([ ] per cent by value) and [ ] per cent for Fabbri ([ ] per cent by value). The remaining sales are achieved by subscription directly to final customers.<sup>1</sup>

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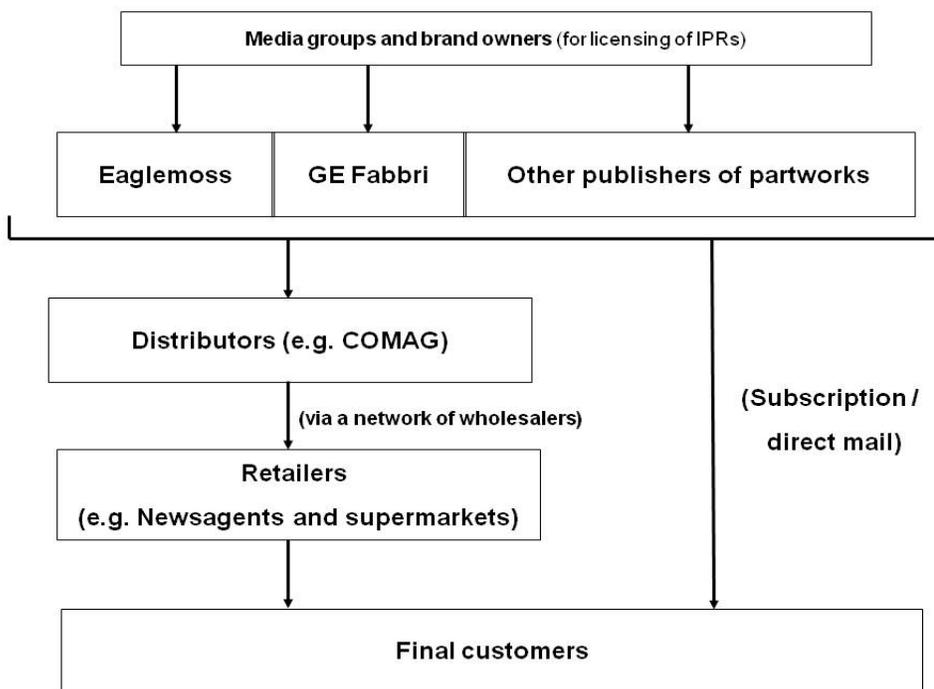
<sup>1</sup> Eaglemoss also sells some publications to Diamond Comics, which specialises in comic book-based product such as Marvel and DC. Diamond Comics' share of Eaglemoss' business is less than [ ] per cent.

## MARKET DEFINITION

### Product scope

14. The parties overlap in the following activities:<sup>2</sup>
- i. the supply of partworks publications, and
  - ii. the acquisition of intellectual property rights (IPRs) from media groups and brand owners.
15. A simplified representation of the supply chain in the partworks industry is set out in the diagram below:

**Figure 1: Supply chain for partworks publications**



<sup>2</sup> The parties are also active in the supply of fulfilment and subscription management support services through Data Base Factory. However, the proposed transaction will not result in the creation of a relevant merger situation in this respect, since Eagle Moss already owns the controlling interests in both businesses for the purposes of section 26 of the Act.

## The supply of partworks publications

### Demand-side substitutability

16. The parties submitted that it is not meaningful for the OFT to define the relevant product scope in terms of an 'all partworks' market in the UK. They argued that from a demand-side perspective, partworks comprising different subject-matters (for example cookery, motoring) or aimed at different target groups (for example children, men, women) are not substitutable. The parties noted that as with certain types of magazines, end-consumers purchase publications which cover their particular subject-matter of interest and are therefore unlikely to switch between these categories (for example, a customer considering buying a cookery magazine would not regard a children's magazine to be a substitute).
17. However, the parties considered that individual partworks compete with newsstand/direct mail material covering a substitutable subject-matter and which are aimed at the same target audience. In this respect, the parties argued that partworks form part of a wider newsstand/direct mail market.
18. The OFT agrees with the parties that substitution from an end-consumer perspective across subject-matter or target audience for partworks is unlikely. Differentiated partworks could not reasonably be regarded by end-customers to be interchangeable with each other due to their varied characteristics. This view is also consistent with previous decisions.<sup>3</sup>
19. However, the OFT additionally considers it relevant to look at the preferences of distributors and retailers of partworks on the basis that retailers affect the available choices for end-customers as a result of

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<sup>3</sup> See, for example, the OFT's recent decision not to make a market investigation reference to the Competition Commission in the newspaper and magazine distribution sector in the UK, where it noted that 'in relation to the publication of magazines, on the demand side, there is an array of different types of magazines covering a wide range of different subjects, and it would seem unlikely that consumers would substitute, for any given title, another title that had very different content. That would suggest that it is unlikely that there is a single product market for magazines and instead consumers may view magazines as forming a number of product markets based on the content, target audience and frequency of their publication. In terms of supply-side substitution, there may be some opportunities for substitution between different categories or types of magazine, which may broaden the definition of the relevant product market in some cases.' (paragraph 3.40, September 2009, OFT1121). See also the approach adopted by the European Commission, for example, in Case COMP/M.5051 *APW/GMG/EMAP*, where it concluded that 'the written press is divided into a number of distinct national or regional product markets based on the type of publication (that is, newspapers and magazines) and on the

allocating shelf-space to such publications. Notwithstanding that retailers will want to stock partworks that they believe end-customers will want to buy, the retailers' preferences and those of end-customers need not be synonymous (for example, retailers may see as substitutes for shelf space partworks that end-customers do not consider substitutable).

20. One retailer informed the OFT that partworks stocked for general sale are received on a sale-or-return basis. It also told the OFT that it would accept any partwork publication so long as it fitted in with its overall strategy, brand and guidelines, irrespective of price or format. That said, although the cover price paid by end-customers is set at a fixed level by publishers, downstream firms such as distributors, wholesalers and retailers are remunerated by receiving a discount on the cover price. This is the case, for example, for the parties' distributor, COMAG (see paragraphs 12 and 13 above). This link from publishers' pricing to retailers, to retailers' pricing to end-customers means that retailers' preferences are likely to be well-aligned with the preferences of end-customers.
21. The OFT therefore considers it most appropriate to look at preferences of end-consumers to determine the degree of demand-side substitution. The OFT concludes that demand-side substitution is limited across subject-matter and target audience.
22. With respect to the parties' view that partworks publications form part of a broader newsstand/direct mail market, they stated that this was justified because:
  - i. when setting prices and considering which products to launch, Eagleboss takes into account non-partworks publications in the same target category (which are sold in the same outlets and on the same shelves as partworks) as well as other types of products relating to the same subject-matter (for example, DVDs, figurines, kits and toys)
  - ii. the price of a partworks publication is comparable to the price range of a competing non-partworks publication (for example, the UK retail prices of partworks publications vary significantly from £1.99 to £7.99; similarly, there are magazines in the UK that retail for £1.99 or less and others that retail for up to £8.99), and

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content of the publications involved and the identity of the target audiences'. See further Case IV/M.1401 *Recoletos/Unedisa* and Case COMP/M.3420 *Gimd/Socpresse*.

- iii. partworks publications compete with other direct mail (subscription) publications, such as Readers Digest and any other type of collectable publication ordered by direct mail.
23. The parties provided the OFT with a number of examples of non-partworks publications, which in their view, constrained partworks and therefore demonstrate that partworks form part of a wider market. For example:
- i. [ ]
  - ii. [ ], and
  - iii. [ ].
24. The OFT's market investigation, contrary to the parties' assertions, suggested that non-partworks publishers seldom consider that they compete with publishers of partworks on a given subject-matter. This is mainly because partworks are typically aimed at the core fan base of a particular subject, and the editorial material which accompanies the cover mount (that is, the collectable item(s)) serves to differentiate these from other publications. Third parties also suggested that even if the particular partworks publication had the same thematic content as its non-partwork counterpart, the target audience is usually different. For example, BBC Magazines publishes a monthly Top Gear magazine for adults. It also entered the partworks market in January 2010, with the Top Gear Turbo Challenge partwork for children, which included Top Gear trading cards as cover mounted gifts. Although the two magazines broadly cover the same subject area, they are aimed at different target audiences, and as such, the substance of each publication is necessarily different.
25. The OFT does not find that the evidence put forward by the parties is indicative of partworks forming part of a wider newsstand/direct mail market on the basis of demand-side substitutability. Although non-partworks publications aimed at a particular target group or covering a particular subject-matter may compete with similarly targeted partworks, the OFT considers that competition in this respect, is far from uniform across all partworks publications. That said, the OFT considers the evidence provided by the parties to be probative of certain non-partworks publications constraining, to some extent, the parties' specific partworks launches, which is considered further below (see Horizontal Unilateral Effects).

26. Rather, the OFT finds that partworks have a number of differentiating characteristics which do not make them substitutable with the majority of other similarly-themed publications for end-consumers (and therefore for distributors/retailers). First, end-customers tend to have a specialised interest in the relevant subject-matter, over and above ordinary readers of ordinary publications found on newsstands, to the extent that many are willing to subscribe to the publication for its length of running (generally one to two years).<sup>4</sup> Second, partworks can be distinguished from many non-partworks publications on the basis of their collectable nature. To the extent that non-partworks publications may also include cover mounts and/or have subscription services and be of similar price to the relevant partwork, the OFT has not seen compelling evidence that such publications would be of similar content and target the same audience to be substitutable. In fact, the numerous examples put forward by the parties rarely showed this to be the case. Third, the OFT notes that unlike other types of publications, partworks do not contain advertising and therefore depend entirely on sales of the publications themselves to generate revenue. This would again highlight the unique nature of partworks. Fourth, the OFT notes that launches of new partworks are lumpy and time-limited. Publishers can also alter the timing of the launch or the test (as evidenced in the examples provided by the parties in paragraph 23 above), which enables them to minimise the degree of competition from other similar publications.
27. Finally, the OFT assessed whether partworks sold through retail channels should be considered together with those sold via direct mail/subscription. In certain situations, the OFT may combine primary and secondary products (that is, products that are purchased only as a result of the customer having purchased a primary product, or in this case, subsequent partworks publications sold by direct mail/subscription) for the purpose of defining the relevant product scope. One such situation is:

'if each primary product is associated with a range of secondary products which are compatible with it – but not with other primary products – the Authorities may define one market for the primary products and multiple secondary markets, each one containing the secondary products which are compatible with one primary product. Sometimes the same firm supplies

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<sup>4</sup> The OFT recognises that the retention rate in the sale of partworks significantly declines after the first few instalments (see paragraph 10 above). However, partworks publishers must factor in these losses when considering the duration of the partwork and its likely success.

both a primary product and one of the secondary products which are compatible with it. In these cases the Authorities may have regard to the indirect constraints imposed in the secondary markets from competition in the primary market.<sup>5</sup>

28. In this regard, subsequent issues of a given partwork sold by direct mail/subscription are clearly not compatible with initial issues of any other partwork. The publisher of the initial issues of a partwork (that are sold by retailers) therefore has a monopoly over the subsequent issues that are sold by direct mail/subscription. At issue is the extent to which any constraint from competition in the sale of partworks in the retail channel is transmitted to the direct mail/subscription monopoly to a sufficient degree to put both channels in the same market.
29. Here, the OFT found there to be few differences between the retail and direct mail/subscription channels in terms of pricing, distribution and marketing. The direct mail/subscription channel is complementary to the retail channel, with the retail channel providing the initial impetus for sales supported by considerable advertising and promotions, and the subscription channel maintaining sales for further issues. Indeed, one retailer told the OFT that after issue seven of a particular partwork, retailers usually take firm orders from customers for subsequent issues since after issue seven, the partwork will be removed from their shelf space. This indicates to the OFT that there is a constraint from the retail channel to the subscription channel, but not vice versa.
30. The OFT therefore considers that both channels should be considered together.
31. To conclude on the demand-side, the OFT takes the view that on the narrowest possible basis, it could be argued that each individual partworks publication (which has different content or target audience) forms a separate market. Further, the OFT believes that the retail and direct mail/subscription channels should be considered together for the purposes of its analysis. However, the OFT has gone on to examine whether each individual partworks publication sold in the retail and direct mail/subscription channels may be aggregated together to form a wider market on the basis of supply-side considerations.

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<sup>5</sup> Merger Assessment Guidelines, paragraph 5.2.20, third bullet, subsection (b).

## Supply-side substitutability

32. The OFT considers that markets are defined primarily on the basis of demand-side substitution. However, the OFT may aggregate several narrow relevant markets into one broader one on the basis of supply-side substitution where:<sup>6</sup>
- a) capacity can be used by firms to supply a range of different products that are not demand-side substitutes, and the firms have the ability and incentive quickly (generally within a year) to shift supply between these different products depending on demand for each, and
  - b) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.
33. The parties submitted that supply-side considerations would lead to a broader market definition than just the supply of partworks. They noted that most partworks publishers are also active in other types of publishing, such as Hachette (part of the Lagardère group) and the BBC, which are major publishers active globally across the publishing industry generally. They further argued that any publishing firm would have the ability and incentive to produce partworks, such that from the supply-side, all publishers of newsstand and direct mail publications could be said to constrain incumbent partworks publishers.
34. However, the parties also asserted that supply-side considerations would not allow the OFT to determine the proposed transaction on the basis of an 'all-partworks' market. In their view, partworks publishers do not exert a supply-side price constraint on each other since the limited shelf-life of partworks (generally one to two years) together with the lengthy time period required for extensive research and development between conception and launch (at least one year, particularly where the rival is not already in possession of the relevant IPRs) means that there would be no credible threat of a rival launching a competing partwork product in response to a small but significant non-transitory increase in price (SSNIP).
35. The OFT's market investigation did not support the view that for supply-side reasons, the market should include all newsstand publications on the

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<sup>6</sup> See the Merger Assessment Guidelines, paragraph 5.2.17.

basis that non-partworks publishers could just as easily start supplying partworks as incumbent partworks publishers could publish a new partwork. In fact, IPR holders informed the OFT that, with respect to the licensing-in of IPRs for themed partworks (which is a key input into partworks), they typically invite existing partworks publishers to bid for such licences. They confirmed that these existing relationships are important, with the incumbent publisher (that is, a partworks publisher with which the rights holder has an existing commercial relationship) often winning subsequent rights for future partworks. This would indicate that IPR owners would not usually approach non-partworks publishers.

36. With respect to a putative 'all-partworks' market, third party responses confirmed that publishers supply all types of partworks. Competition between partworks publishers takes place across all genres, subject-matters and target audiences. The OFT is therefore of the view that partworks publishers can (and do) use their capacity to supply a range of different individual partworks publications which are otherwise not demand-side substitutes.<sup>7</sup> In addition, the OFT considers that such publishers have the ability and incentive to quickly shift supply depending on demand. The parties themselves stated that all current publishers of partworks (whether located in the UK or elsewhere) have the ability in terms of, for example, skills, capabilities and assets to launch new partworks in the UK in any genre and targeted at any audience. The OFT disagrees with the parties' view that partworks publishers do not constrain each other because of the long time period involved in launching a competing partwork relative to the amount of time the incumbent partwork is on sale. This is because the OFT considers that competition takes place prior to conception of the particular partwork, that is, at the point at which partworks publishers bid for the relevant IPRs.
37. The same partworks publishers compete to supply each particular partwork. Further, the conditions of competition are the same for each partworks publisher seeking to supply an individual partwork.<sup>8</sup> The OFT therefore believes that on the basis of supply-side considerations, each individual partworks publication can reasonably be aggregated to form a market for all partworks.

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<sup>7</sup> See paragraph 32a) above, referring to the Merger Assessment Guidelines, paragraph 5.2.17.

<sup>8</sup> See paragraph 32b) above.

38. Concluding on market definition, the OFT adopts a conservative view in finding that although demand-side considerations may limit the product scope to individual partworks (aimed at a specific target audience and covering a specific subject-matter), supply-side arguments suggest aggregating each of these narrow markets to a broader 'all partworks' market. However, the OFT considers that it is not necessary to take a definitive view on the relevant product scope in this case, since no material competition concerns arise howsoever defined.

#### Licensing of IPRs from media groups or brand owners

39. Partworks publications may often (although not always) require the licensing-in of IPRs from media groups or brand owners. According to the parties, competition therefore takes place between rival partwork publishers for those licences in two main ways:
- i. a partworks supplier may enter into a formal agreement with a media group or brand owner to secure contractual rights of first refusal or
  - ii. the brand owner may put to tender a particular brand or content for exploitation as a partworks publication.
40. The OFT understands from the parties, and from third party responses that the process of tendering IPR material for partworks will typically involve the IPR owner approaching either a partwork publisher which it feels is best-placed to develop the product or will invite several publishers to put forward proposals for partworks. Occasionally, partworks publishers may approach IPR owners with an idea for launching a new partwork on a given theme. The IPR owner will then consider the proposal(s), in terms of quality of material, marketing, distribution and royalties payable to the brand owner.
41. The OFT therefore considers that the relevant product scope relates to the acquisition of IPR licences for exploitation through a partworks publication, a process which usually (although not always), involves a tendering process whereby publishers bid for the rights to the material.

## Geographic scope

### The supply of partworks

42. The parties suggested that the OFT does not have to take a view on the precise geographic scope for the supply of partworks in the UK since no competition concerns are raised howsoever defined. However, they emphasised that most partworks publishers in the UK publish partworks in a wide range of countries, and when launching new publications in the UK, would take into account the likely success of such partworks in other English language countries. The parties also highlighted that partworks publishers typically introduce identical material across several countries in order to maximise returns on a particular publication.
43. The OFT recognises that even if the geographic scope of the market is limited to the UK, there may exist some constraint from partworks publishers operating outside the UK. However differences in pricing, language, distribution channels and subject material may restrict the degree of constraint that non-UK partworks publishers can impose on publishers within the UK. The OFT does not find it necessary to conclude on the geographic scope of the market. However, on a cautious basis, the OFT assesses the proposed transaction using a UK-wide frame of reference, not least because the competitive landscape in the publishing of partworks publications may be different outside the UK.

### The licensing of IPRs from media groups or brand owners

44. The parties submitted that competition for licences takes place on a global basis since media groups and brand owners could be located anywhere in the world. They therefore suggested that the geographic scope should be wider than the UK, particularly because licences will typically be granted for a particular project in one or more national territories.
45. Third party responses confirmed that the licensing of IPRs takes place on a supra-national level. IPR holders informed the OFT that licences are granted for publication across several countries, often globally, and bidding for such licences is not restricted by location of the publisher.
46. The OFT has not found it necessary to conclude on the geographic scope of the market. Whilst there is some evidence that the geographic scope is

wider than the UK – perhaps European-wide or even global<sup>9</sup> – on a cautious basis, the OFT has examined the merger on a UK level.

## **HORIZONTAL UNILATERAL EFFECTS**

47. The parties overlap in the supply of partworks in the UK, and the licensing-in of IPRs from rights owners. The OFT has therefore considered whether the merged entity could unilaterally impose prices above the current level (or impose prices which would be higher than those absent the merger), or weaken its competitive offering, in particular by reducing its range or quality of service to customers of partworks as a result of a loss of competition.
48. The OFT, in conducting its analysis, has sought to assess:
- i. the post-merger shares of supply and concentration
  - ii. the pre-merger closeness of competition between the merging parties, and
  - iii. the extent to which other partworks publishers and/or non-partworks publishers will be able to constrain effectively the merged entity.

### **Shares of supply and concentration**

The supply of partworks

49. The parties submitted shares of supply for the major partworks publishers in the UK for the last three years. Table 1 below shows that the proposed transaction combines the number two and number three players in the partworks market for 2009 and might be seen as reducing the number of major market players from four to three. For the same year, the parties' combined share of supply was [40-45] per cent (increment of [20-25] per cent). However, the same analysis based on 2010 figures (to September) would suggest that the merger brings together the number one and number four players in a market with four other significant players remaining. Share figures give the parties a combined share of supply of [35-40] per cent (increment [10-15] per cent):

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<sup>9</sup> This is also in line with past European Commission cases where it found that the geographic market for the acquisition of primary publishing rights is worldwide in scope (see Case No. COMP/M.2978 *Legardère/Natexis/VUP*).

**Table 1: Shares of supply for the partworks market in the UK**

	2010 <sup>1</sup>		2009		2008		2007		Overall	
	Value (£m)	Share (%)	Value (£m)	Share (%)	Value (£m)	Share (%)	Value (£m)	Share (%)	Value (£m)	Share (%)
Eaglemoss	[ ]	[25-30]	[ ]	[20-25]	[ ]	[15-20]	[ ]	[15-20]	[ ]	[15-20]
GE Fabbri	[ ]	[10-15]	[ ]	[20-25]	[ ]	[35-40]	[ ]	[35-40]	[ ]	[25-30]
<b>Combined</b>	[ ]	<b>[35-40]</b>	[ ]	<b>[40-45]</b>	[ ]	<b>[50-55]</b>	[ ]	<b>[55-60]</b>	[ ]	<b>[45-50]</b>
De Agostini	[ ]	[10-15]	[ ]	[30-35]	[ ]	[20-25]	[ ]	[20-25]	[ ]	[20-25]
Hachette	[ ]	[20-25]	[ ]	[15-20]	[ ]	[15-20]	[ ]	[10-15]	[ ]	[15-20]
RBA	[ ]	[10-15]	[ ]	[5-10]	-	-	-	-	[ ]	[0-5]
BBC	[ ]	[10-15]	-	-	-	-	-	-	[ ]	[0-5]
Amercom	[ ]	[0-5]	-	-	-	-	-	-	[ ]	[0-5]
Simply Media	[ ]	[0-5]	[ ]	[0-5]	-	-	-	-	[ ]	[0-5]
Others	[ ]	[0-5]	[ ]	[0-5]	[ ]	[0-5]	4.5	[5-10]	[ ]	[0-5]
<b>Total</b>	[ ]	<b>100.0</b>	[ ]	<b>100.0</b>	[ ]	<b>100.0</b>	[ ]	<b>100.0</b>	[ ]	<b>100.0</b>

Source: parties' estimates

<sup>1</sup> To September 2010

Note: Percentages may not add up to 100 per cent due to rounding

50. The parties asserted that due to the dynamic nature of partworks, historic shares of supply cannot be taken as meaningful indicators of the likely levels of future publications or the distribution of such publications across the various target groups, subject-matters and genres. Instead, the parties submitted that the number of launches by publishers is a key determinant of business success, and to that extent, analysing the number of new launches that have taken place, will be more conducive to establishing future levels of competition.

51. Table 2 below shows the number of publications launched by partworks publishers since 2007. As can be seen, the parties had [50-55] per cent of new partworks launches in 2009, although this figure reduced to [15-20] per cent in 2010:

**Table 2: Number of launches of new partworks publications in the UK, 2007 - 2010**

Publisher	2007		2008		2009		2010 <sup>1</sup>		Total	
	Number	Share (%)	Number	Share (%)	Number	Share	Number	Share (%)	Number	Share (%)
Eaglemoss	[ ]	[10-15]	[ ]	[20-25]	[ ] (*)	[35-40]	[ ]	[15-20]	[ ]	[20-25]
Fabbri	[ ]	[35-40]	[ ]	[30-35]	[ ] (*)	[10-15]	-	-	[ ]	[20-25]
<b>Combined</b>	[ ]	<b>[45-50]</b>	[ ]	<b>[50-55]</b>	[ ]	<b>[50-55]</b>	[ ]	<b>[15-20]</b>	[ ]	<b>[40-45]</b>
De Agostini	[ ]	[20-25]	[ ]	[20-25]	[ ]	[10-15]	[ ]	[15-20]	[ ]	[15-20]
Hachette	[ ]	[20-25]	[ ]	[20-25]	[ ]	[10-15]	[ ]	[25-30]	[ ]	[15-20]
Chorion	-	-	[ ]	[5-10]	[ ]	[5-10]	-	-	[ ]	[0-5]
RBA	[ ]	[5-10]	-	-	[ ]	[10-15]	[ ]	[15-20]	[ ]	[5-10]
Simply Media	-	-	-	-	[ ]	[10-15]	-	-	[ ]	[0-5]
Del Prado	[ ]	[5-10]	-	-	-	-	-	-	[ ]	[0-5]
Midsummer	1	[5-10]	-	-	-	-	-	-	[ ]	[0-5]
Amercom	-	-	-	-	-	-	[ ]	[5-10]	[ ]	[0-5]
BBC	-	-	-	-	-	-	[ ]	[5-10]	[ ]	[0-5]
<b>Total</b>	[ ]	100.0	[ ]	100.0%	[ ]	100.0	[ ]	100.0	[ ]	100.0

<sup>1</sup> Figures are for 2010 to date

Source: parties' estimates

Notes: (\*) includes [ ].

Percentages may not add up to 100 per cent due to rounding

52. The above tables show that the number of partworks launched by Fabbri and its share of the supply of partworks has fallen considerably between 2007 and 2010. The parties informed the OFT that in 2010, Fabbri has not [ ] launched any partworks in the UK. According to them, this is due to:

i. [ ]

ii. [ ]

iii. [ ], and

iv. [ ].

53. Third parties informed the OFT that certain areas of the partworks market had indeed seen declining sales. For example, they stated that aggressive reductions in the price of non-partwork DVDs over the last few years had reduced the perceived value of partworks based on DVDs. These third party responses perceived Fabbri to be heavily reliant on partworks based on TV series, and that therefore, it was particularly hit by the declining sales of partworks based on a TV/DVD themed format.

54. The OFT notes that post-transaction, there will remain two strong players in the market, Hachette and the market leader, De Agostini, as well as new entrants, BBC and Amercom.
55. The OFT observes that the number of new launches by a particular publisher is not a reliable indicator in itself of future market shares since the success of each product launch is key in achieving share of supply in the partworks market.
56. The parties also informed the OFT that Fabbri [ ]. On this basis, the OFT considers that Fabbri's commitment to launching imminent partworks in the UK (and its launches in previous years) suggests that it is still capable of acting as an effective competitive constraint on other partworks publishers, including Eaglemoss. The OFT therefore considers it is important to assess how effective the other remaining publishers will be in constraining the merged entity going forward.

#### The licensing of IPRs from media groups or brand owners

57. The OFT has considered whether the merged entity would have the ability and the incentive to foreclose its competitors out of the market for the acquisition of IP-protected material and also the likely effects of such behaviour on the market for partworks publishing in the UK.
58. Table 3 below shows that the merging parties accounts for over [50-55] per cent of partworks based on copyright material since 2006:

**Table 3: Publications based on IP protected-material (2006-2010)**

<b>Publisher</b>	<b>2006 (%)</b>	<b>2007 (%)</b>	<b>2008 (%)</b>	<b>2009 (%)</b>	<b>2010 (%)</b>	<b>Total (%)</b>
Eaglemoss	[20-25]	[10-15]	[15-20]	[35-40]	-	[15-20]
GE Fabbri	[40-45]	[50-55]	[45-50]	[10-15]	-	[30-35]
<b>Combined</b>	<b>[60-65]</b>	<b>[60-65]</b>	<b>[60-65]</b>	<b>[50-55]</b>	-	<b>[50-55]</b>
Amercom	-	-	-	-	[25-30]	[0-5]
BBC	-	-	-	-	[25-30]	[0-5]
Chorion	-	-	[5-10]	[5-10]	-	[5-10]
De Agostini	[20-25]	[20-25]	[15-20]	[10-15]	[25-30]	[20-25]
Hachette	[20-25]	[10-15]	[15-20]	[10-15]	[25-30]	[15-20]
RBA	-	-	-	[5-10]	-	[0-5]
Simply Media TV	-	-	-	[5-10]	-	[0-5]
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100%</b>	<b>100%</b>	<b>100</b>

Source: parties' estimates

59. Third parties informed the OFT that partworks based on IP-protected material have been performing strongly, despite the prevalent economic conditions which have affected general demand for such publications. Copyright owners told the OFT that existing relationships with partworks publishers are very important.
60. The OFT considers that the market for the acquisition of IPRs for partworks plays an important role in the competitive dynamics of the supply of partworks.
61. The OFT is therefore of the view that given the significant shares of supply of the merging firms, both in the acquisition of IPRs and the supply of partworks, together with the importance of existing ties between publishers and IP owners, indicates that the merged entity may be in a strong position to affect the outcomes in the market for the licensing of IPRs.

**Closeness of competition between the merging parties**

62. The parties consider that they are not particularly close competitors because: (i) Fabbri launched no partworks publications at all in the UK in 2010; and (ii) in the last three years, Eaglemoss and Fabbri have launched no partworks in direct competition with each other. In their view, although they do not allege that absent the merger, they would never launch partworks covering the same content/target audience, they state that it is just as likely that other partworks publishers or new entrants could do so,

and the fact that they have tended not to overlap in the past shows that they are no more close competitors to each other than are other partworks publishers.

63. The parties also provided the OFT with examples of competition between partworks publishers for content licences. Of the 13 examples provided since 2008, the parties bid against each other on only two occasions.
64. However, the parties provided the OFT with a number of internal documents, one of which was a board document [ ] describing Fabbri as the main partworks competitor to Eaglemoss in the UK.
65. Third party views on the closeness of competition between the parties were generally mixed. Two IPR owners suggested that the merging parties are close competitors since they tended to compete for the same IP licences. That said, other third parties told the OFT that the unique nature of competition in partworks meant that all partworks publishers could be considered 'close' competitors.
66. On balance, the OFT believes that the parties are not closer competitors to each other than they are to other partworks publishers in the UK. The lack of new product launches by Fabbri over the last few years has led it to steadily lose share of supply. This in turn has, in the view of the OFT, acted to reduce the degree of closeness of competition between the parties in terms of competitive dynamics. However, the OFT considers that Fabbri does serve to constrain Eaglemoss, and would do so absent the merger, not least given [ ] (see paragraph 56 above).

### **Effectiveness of constraints from existing partworks publishers and non-partworks publishers on the merged entity**

#### The supply of partworks

67. The parties consider that post-transaction there will remain several other partworks publishers active in the UK, a number of which are particularly significant global publishing competitors (such as De Agostini, Hachette and BBC Worldwide) that will be able to compete effectively and constrain the merged entity.
68. One competitor informed the OFT that although the merger may not have any immediate effects on competition, the merger may cause concentration

to move past a critical point, particularly given the reduced number of launches by De Agostini, the current market leader. However, De Agostini told the OFT that [ ].

69. The OFT also considered whether the recent entrants are likely to constrain the parties post-merger. The parties suggested that the BBC is likely to be an effective competitor going forward especially since it is part of BBC Worldwide and, as such, has access to the necessary resources.
70. The BBC and Amercom entered the partworks markets during the course of 2010. Amercom, a Polish partworks company, launched the Fighter Aircraft publication [ ]. The BBC entered the partworks market [ ], with a publication based on the Top Gear TV series. [ ]. The BBC told the OFT that [ ].
71. The OFT considers that entry by Amercom and the BBC into the partworks market has proved to be successful. It is also worth noting that neither competitor acquired licences for their respective publications from third party IPR owners. The OFT believes this is significant since it suggests that new entrants can achieve substantial sales without the need to publish copyrighted subject material. New entry, more generally, is assessed by the OFT in the Barriers to Entry section below.
72. The OFT also notes that a substantial competitive fringe would remain post-merger in the partworks market in the UK. RBA, a Spanish partworks publisher operating across 48 countries is also active in the UK, with a share of supply of approximately five per cent in 2009, and it is possible that partworks publishers who launched partworks in 2009, such as, for example, Simply Media, may continue to supply partworks in the future.
73. Finally, the OFT accepts that non-partworks publishers may offer some constraint on the merged entity where the subject-matter and target audience are sufficiently close. As discussed in paragraphs 23 and 25 above, the parties put forward some evidence to show that they consider similar non-partworks publications when timing the launch of new partworks. Although the OFT does not consider that non-partworks publications are substitutable with partworks in the broader market sense, the OFT accepts that it is possible that some non-partworks publishers may have the ability to start publishing partworks given the similarity of certain products.

## Licensing of IPRs from brand owners and media groups

74. The parties submitted that the proposed transaction would have no material impact on the licensing-in of IPRs for partworks publications since the merged entity would have no market power which could conceivably result in competitors finding it harder to license-in content on reasonable terms. They further stated that rights owners will generally offer the rights to most, if not all, the UK partworks publishers, which will not change as a result of the proposed transaction. The parties also stressed the considerable bargaining power that the licensors have since they are major companies, such as Paramount, Disney, Warner and Lucas.
75. Third parties did not express any concerns in relation to the market for the licensing of IPRs. Several responses confirmed the parties' view that the proposed transaction will not affect competition in this area.
76. The OFT considered whether the merged entity would have the ability and incentive to engage in exclusionary behaviour in the acquisition of IPRs. IP right owners are typically large media companies, who seek to maximise revenues from issuing IPRs. The parties would therefore only be able to foreclose competitors through bidding IP content prices to a point which would be untenable for competitors. While this may, in theory, be achievable, it would also serve to damage the profit margins of the merged entity. Given that several partwork publishers are part of large publishing companies which would be able to compete for IP licences with the parties on an equal footing, the OFT considers that such foreclosure would be unlikely. In any event, any foreclosure could be circumvented to some extent by partworks publishers launching non-IPR protected material, or further activity could be induced in response, by existing IPR owners such as the BBC.

## **Conclusion on Horizontal Unilateral Effects**

77. Although the merged entity will have a sizeable market share in partworks publishing, the OFT considers that post-merger it will continue to be constrained by existing direct competitors, recent new entrants, and for at least certain individual partworks publications, by non-partworks publishers. The OFT believes that such competition is sufficient to counter any horizontal unilateral effects arising from the merger.

78. The OFT also notes that the parties are not particularly close competitors, especially given Fabbri's increasing strategic focus on locations outside the UK.
79. In terms of the licensing-in of IPRs, the OFT is of the view that notwithstanding the notable increment to Eaglemoss' share of supply post-merger, it is not likely to be in a position, or have the incentive to foreclose competitors when bidding for IPRs. In addition, licensors of IPRs have considerable countervailing bargaining power.
80. On balance, and on the basis of the evidence received, the OFT therefore does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition in either the supply of partworks, or the licensing-in of IPRs from brand owners and media groups in the UK.

## **BARRIERS TO ENTRY**

81. The parties submitted that barriers to entry to publishing partworks in the UK are low. They informed the OFT that in the last three years, five companies have entered the partworks market in the UK:
  - i. Amercom, which launched 'Fighter Aircraft'
  - ii. BBC, which launched 'Top Gear'
  - iii. Chorion, whose licensed brands include 'Noddy', 'the Mr. Men and Little Misses', 'Paddington Bear' and 'Beatrix Potter', of which 'Noddy & Friends' was launched in the UK in 2009. However, the parties informed the OFT that Chorion has recently ceased publishing partworks
  - iv. Simply Media, which launched 'Ultimate Wildlife' and 'World War II' in the UK in 2009, and
  - v. Paperview, which recently published 'Disney Literature Classics'.
82. The parties submitted that the capital expenditure required for entering the partworks market on a scale necessary to achieve a five per cent market share, whether as a new entrant or as a company which already has the necessary technology and expertise, is between £1 million and £1.5

million. They stated that although the costs associated with promoting and advertising new launches vary by publication, advertising and promotional spend is likely to amount to a minimum of £0.5 million. The parties also submitted that it would be possible for a partworks publisher to launch a partwork, without the expense of a TV advertising campaign, by associating the launch with a particular (non-partwork) publication or newspaper publisher. This would typically involve the first issue being given away with the host media and subsequent issues then being sold at full price. They suggested that the costs associated with this type of launch were lower, at around £250,000, although they could vary with the launch size and the type of partwork being published.

83. The OFT's market investigation broadly confirmed the parties' view that barriers to entering the partworks market are low. As discussed in paragraph 71 above, the OFT notes that partworks publishers do not have to obtain licences from IPR holders to launch new partworks. The OFT also considered whether the cover mounts issued with partworks were likely to act as an entry barrier, given that typical publications do not include such items. However, cover mount suppliers informed the OFT that production methods and materials for collectibles are fairly standard and would not give rise to notable barriers to entry for new entrants of partworks.
84. Given the evidence of recent successful entry by Amercom and the BBC (see paragraphs 69 to 71 above), the OFT does not consider that barriers to entry are insurmountable. However, given its conclusions on Horizontal Unilateral Effects, the OFT has not needed to conclude on whether barriers to entry are low enough to prevent a significant lessening of competition.

## **COORDINATED EFFECTS**

85. The parties submitted that no coordinated effects can be said to arise since the structure of the market is not such that the proposed transaction will alter the behaviour of partworks publishers so as to increase price or reduce choice. They stated that partworks publishers are incentivised to seek out the best possible licensing deal for each partwork project, and to invest heavily in testing to ensure its success.
86. The parties informed the OFT that Eaglemoss and Fabbri already cooperate to some extent in launching certain partworks publications, particularly [ ] on the basis of a 50:50 profit sharing arrangement. In the UK, [ ].

87. The OFT is not aware of any previous or existing coordination in the market for the supply of partworks or for the licensing-in of IPRs either in the UK or elsewhere. In addition, the OFT notes that partworks are differentiated products with prices varying by publication. New product launches are irregular and demand is lumpy around launch since it is at this point that competition for end-customers occurs. The OFT also notes the evidence of new entry notwithstanding that the demand for partworks in the UK is declining.
88. The OFT considers that taken together, these factors serve to mitigate the risk of any coordinated effects arising in the partworks market in the UK.

### **THIRD PARTY VIEWS**

89. Third party views have been discussed above where relevant.
90. In general, the majority of third party responses had no significant concerns about the merger. They stated that post-transaction, there would remain significant competitors in partworks publishing, including De Agostini, who was broadly recognised as the market leader. Several third parties suggested that the merger would create a publisher which would be able to compete more effectively with De Agostini and which would also survive the effects of a shrinking overall demand for partworks.

### **ASSESSMENT**

91. The parties overlap in the supply of partworks and the licensing of IPRs for partworks in the UK. The OFT considers that the relevant product scope could be limited to individual partworks classified by target audience and/or subject matter but more plausibly, could be the supply of 'all partworks'. In addition, the OFT believes the acquisition of IPRs for partworks from brand owners and media groups could form a separate product frame of reference. On a cautious basis, the OFT takes the relevant geographic scope for the supply of partworks as national. However, the OFT does not believe it has to conclude on the precise market definition in this case since the proposed transaction does not raise material competition concerns howsoever defined.
92. In the supply of partworks, the proposed transaction will create the largest player in the UK, with a share of supply in excess of [40-45] per cent. For

the licensing in of IPRs from rights holders, the merged entity will have over [50-55] per cent share of supply.

93. However, the OFT considers that the merger does not raise significant competition concerns. First, it observes that two major players, De Agostini (the current market leader) and Hachette will continue to constrain the merged entity going forward. Second, the OFT finds that the parties are not closer competitors to each other than they are to other partworks publishers in the UK. In this regard, the OFT also notes that Fabbri has increasingly been losing share of supply in the UK as [ ]. Third, the OFT observes that there has been successful new entry in the last three years, notably from the BBC and Amercom in 2010 and these entrants have informed the OFT that [ ]. Fourth, a number of other smaller players such as RBA and Simply Media will continue to supply partworks and procure IPR licences from rights holders for partworks in the UK. Fifth, the OFT notes that certain non-partworks publications may additionally serve to constrain the merged entity where a specific partwork targets the same audience and is based on the same subject-matter. Finally, third parties were generally unconcerned about the proposed transaction.
94. The OFT does not consider that any coordinated effects arise in this case.
95. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

96. This proposed transaction will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.