

Completed acquisition by Pearson plc of Harcourt Businesses from Reed Elsevier plc

The OFT's decision on reference under section 22 given on 24 August 2007.
Full text of decision published on 4 September 2007.

Please note that square brackets indicate text or figures which have been deleted or replaced with a range at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Pearson plc** (Pearson) is an international media and education company listed on the London Stock Exchange. It is comprised of three major operating groups: the Financial Times Group, the Penguin Group and Pearson Education. In the UK, Pearson Education is principally active in providing teaching and learning resources to higher education, primary and secondary schools but also has activities in the vocational sector, home learning and in English language teaching. Pearson also owns Edexcel, which provides academic and vocational qualifications and testing to schools, colleges and employers.
2. **The Harcourt Businesses** (Harcourt) were formerly owned by Reed Elsevier plc (Reed Elsevier). They are Harcourt Education Ltd and the UK business of Harcourt Global Library business and Harcourt Assessment. The only material overlap in the UK is between the activities of Pearson and Harcourt Education Ltd.
3. **Harcourt Education Ltd** is a provider of teaching and learning resources for use in UK primary and secondary schools through the Heinemann and Rigby and Ginn imprints. It also publishes resources under the Heinemann brand in the vocational sector. Turnover in the UK for the period ended 31 December 2006 was £[] million.

TRANSACTION

4. On 21 May 2007, Pearson acquired the Harcourt businesses and assets from Reed Elsevier. The transaction was notified on 29 June 2007. The administrative deadline is 24 August 2007 and the statutory deadline expires on 21 September 2007.

JURISDICTION

5. As a result of this transaction Pearson and Harcourt (the parties) have ceased to be distinct. The parties overlap in the supply of teaching and learning resources. They have combined shares of supply in the UK in excess of 25 per cent for the supply of teaching and learning resources for the following subjects: primary Maths; primary Science; secondary Maths and secondary English, so the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

6. The parties overlap in the supply of teaching and learning resources (resources) for use in the following sectors:
 - Primary and secondary schools
 - Vocational sector
 - Home learning
7. With regard to the supply of resources for home learning, on the basis of the evidence before it, the OFT has concluded that the parties combined share of supply is less than ten per cent. Furthermore, there are a number of other competitors present in this sector which the OFT considers would continue to act as a constraint on the parties post-merger. As a result, the OFT does not consider that competition concerns will arise in this sector and it will not be considered further.
8. The competitive assessment for the other two areas of overlap will be considered separately in turn below.

PRIMARY AND SECONDARY SCHOOLS

Product market

Distinction between types and delivery of resources

9. The parties supply a range of resources, including text books, online resources, CD-ROMs, DVDs/Videos and supplementary teaching and revision aids, which may be supplied as:
 - Individual products (such as text books or CD-ROMS)
 - Blended products (for example textbooks accompanied by on-line materials or CD-ROM)
 - Complete programmes (or schemes) including, text books, teachers' material, on-line resources and supplementary material.
10. The parties submitted that the appropriate frame of reference is the supply of all such resources. They argued that all these types of resources are substitutable as they are all used by teachers and students to assist the teaching and learning process and that the majority of publishers produce all types of resources.
11. Third parties confirmed that the majority of publishers produce the full range of resources. Some commented that the majority of resources are offered in the form of blended products or complete programmes, although teachers can select whether to buy some or all of the components. However some third parties stated that the different types of resources are complements, so did not consider them to be substitutes.
12. However, the OFT does not consider that it is necessary to reach a definitive conclusion on these points, as it does not affect the competitive assessment in this case.

Distinction by subject

13. The parties submitted that the appropriate frame of reference is the supply of resources for all subjects. The parties argued that most publishers have the necessary skills, capability and reputation to publish across a range of subjects and that it is cost effective to do so.
14. However the OFT has evidence to suggest that the supply of resources should be segmented by subject. Publishers' shares of supply vary significantly by subject and a number of publishers are only active in certain subjects.
15. In this case, the OFT has concluded that it is not necessary to reach a definitive conclusion on whether there is a distinction by subject as it does not affect the competitive assessment. However, for the sake of completeness, a cautious approach has been taken and the OFT has therefore examined the transaction on the basis of the overall supply of resources and on the basis of the supply of resources for Maths, English and Science separately where information is available.¹

Distinction between primary and secondary schools

16. The parties submitted that the supply of resources should be considered separately for primary and secondary schools.
17. On the demand-side, the parties stated that there are different characteristics in the resources used in primary schools, so they are not usually substitutable for those prepared for secondary schools.²
18. Third parties confirmed that the expertise and market knowledge required for publishing in the two sectors is different. In primary schools, the expertise is required in how children learn to read and write, whilst in secondary schools it is in specialist content (such as modern foreign

¹ These three subjects were chosen as schools are required to teach them up to the age of 16. In addition, these subjects were identified by the parties as those for which their combined shares of supply are highest.

²Teaching and learning resources are developed to assist in teaching the National Curriculum. The National Curriculum is for the eleven years of compulsory schooling and is divided into four Key Stages. Primary schools teach Key Stages 1 (ages 5-7) and 2 (ages 7-11), whilst Key Stages 3 (ages 11-14) and 4 (ages 14-16) are taught at secondary school. GCSEs are taken by students in Key Stage 4.

languages and physics). Some third parties also commented that they have separate sales and marketing teams for each sector.

19. Based on the information provided, a narrow frame of reference has therefore been adopted for the purposes of the analysis in this case, with supply of resources to primary and secondary schools considered separately.

Secondary schools – distinction between Key Stage 3 and exam level

20. Within secondary schools, a distinction can be made between teaching for ages 11 to 14 (Key Stage 3) which follows the National Curriculum³ and for ages 14 to 18 which are exam based (GCSE⁴ and A Level).
21. GCSE and A level qualifications are awarded by exam boards. The content of the syllabuses for these qualifications vary between exam boards but all are based on criteria set by the Qualifications and Curriculum Authority (QCA).
22. The parties submitted the appropriate frame of reference is the supply of resources for all levels in secondary schools. The parties argued that publishers of Key Stage 3 resources have the necessary skills, capability and reputation to publish resources for GSCE and A Level. In addition they stated that resources for Key Stage 3 and exam levels will be sold to one and the same purchaser within each school (namely the Head of Department).
23. However some third parties have stated that a distinction should be made as there is a greater uniformity in the resources offering for Key Stage 3 as all are based on the National Curriculum.
24. For exam levels, (GCSE and A level) third parties submitted that resource purchasing decisions are influenced by the school's choice of exam board. As the content of exam board syllabuses vary, therefore the content of the resources required to teach the different syllabuses may also vary.

³The National Curriculum is set by the Qualifications and Curriculum Authority or its equivalent in Wales, Northern Ireland and Scotland.

⁴ GCSEs are taken by students in Key Stage 4.

25. Third parties stated that the supply of resources for exam levels requires building editorial expertise and detailed knowledge of exam syllabuses. Close links with the exam boards are therefore important for publishing resources for GCSEs and A Levels. This link is discussed further in the non horizontal issues section below.
26. The OFT does not consider that it is necessary to reach a definitive conclusion on this point as it does not affect the competitive assessment in this case. However, for the sake of completeness, a cautious approach has been taken. The OFT has therefore examined the acquisition on the basis of the overall supply of resources to secondary schools and separately for exam levels (GCSE and A Level).

Geographic market

27. Schools in England, Wales and Northern Ireland follow the National Curriculum, whilst schools in Scotland follow an advisory Curriculum determined by the Scottish Ministers.⁵
28. The parties submitted that while there is a different curriculum in Scotland the resources used are predominantly the same as those used in schools elsewhere in the UK.
29. The parties maintained that the competitive dynamics are similar for England, Wales, Northern Ireland and Scotland. They submitted that the same publishers⁶ are present across the UK, using the same marketing and distribution models, and that prices between Scotland and the rest of the UK are comparable.
30. Third parties generally noted that the same competitive dynamics exist between the home countries although stated that switching between national curricula would require reworking of resources. Some stated Scotland should be considered distinctly.
31. It has not been necessary to reach a definite conclusion on the appropriate geographic frame of reference, since the outcome of the competition assessment does not differ irrespective of whether the frame of reference

⁵ Scotland also has a specific Scottish exam board (SQA).

is for the UK or whether Scotland and other individual home countries should be considered distinctly.

COMPETITION ISSUES

PRIMARY SCHOOLS

Horizontal issues

32. Harcourt is the largest publisher in the UK in the supply of resources to primary schools with a share of supply of sales of approximately [10-20] per cent. Pearson is the fourth largest publisher, and of a similar size to the other publishers, with a share of supply of [0-10] per cent.
33. In individual subjects, the merged entity has its highest shares of supply in Maths ([40-50] per cent), Science ([25-35] per cent) and English ([15-25] per cent) with increments of [5-10] per cent, [10-15] per cent and [0-5] per cent respectively.
34. There are a number of publishers, including Collins, Nelson Thornes and Oxford University Press (OUP), present in this sector that supply resources for a range of subjects. For the three core subjects there are at least two large competitors who will continue to act as a constraint on the parties' behaviour post-merger. There are also a number of smaller suppliers present in this sector in the UK including A&C Black, Scholastic, 2Simple, Espresso, some of which focus on niche areas in terms of subject and/or product offered. The parties submitted that over a third of the primary school sector is supplied by publishers that have shares of supply of less than 5 per cent.
35. The parties submitted that primary schools purchase ('pick and mix') from a number of publishers as the resources offered are all curriculum focused and so are quite similar. This has been confirmed by some third parties. One customer stated that switching between publishers is easy and is beneficial as it is never wise to become dependent on one publisher.

⁶ With the exception of a few specialist Scottish publishers who supply teaching and learning resources specially designed for the Scottish guidelines.

36. Given these factors, and that there were no third party concerns, the OFT considers that the merger does not give rise to any horizontal competition concerns in respect of the supply of resources to primary schools.

SECONDARY SCHOOLS

Horizontal issues

All levels

37. For the supply of resources for all levels in secondary schools, the transaction will combine the largest publisher (Harcourt) in the UK and the fourth largest, with a share of supply of sales of approximately [15-25] per cent (increment of [5-10] per cent).
38. In individual subjects, the merged entity's share of supply ranges from [10-20] per cent in Science (increment of around [5-10] per cent) to [20-30] per cent (increment of [5-10] per cent) in English.
39. There are still a number of publishers present offering products that are competitive substitutes for those of the parties, thereby acting as substantial competitive constraints on Pearson post-merger. Collins, Hachette (Hodder), Nelson Thornes and OUP supply resources across all subject categories, whilst Folens and Cambridge University Press (CUP) are active in nearly all the subjects.
40. Given these factors and the lack of customer concerns, the OFT considers that this acquisition does not give rise to any horizontal competition concerns in the supply of resources for all levels in secondary schools.

GCSE and A Level

41. With regards to the supply of resources for GCSE and A Level, the shares of supply broadly reflect the position in the overall secondary school sector.
42. The merged entity estimated it has a share of supply of resources of [15-25] per cent (increment [5-10] per cent) for GCSE and [20-30] per cent (increment [5-10] per cent) for A Level. Its highest share of supply is for GCSE English for which it has [25-35] per cent (increment [0-5] per cent).

43. The large publishers, Collins, Hachette, Nelson Thornes as well as OUP are active at this level and are all of a similar size to the parties (pre merger). Their shares of supply vary across subjects (Nelson Thornes being strongest in Maths and Science and OUP in English and Science), but in the core GCSE subjects of English, Maths and Science, all four are present and will continue to act as a competitive constraint post-merger.
44. Given these factors and the lack of customer concerns, the OFT considers that this acquisition does not give rise to any horizontal competition concerns in the supply of resources for exam levels in secondary schools.

Non horizontal issues

45. Pearson owns an exam board, Edexcel, which awards GCSE and A level qualifications⁷ so pre-merger it was active in both the supply of qualifications and the related resources (the exam board and publishing level). As Harcourt is not active at the exam board level, the acquisition does not lead to a change in the pre-merger situation at the exam board level. However, the transaction does increase the scope of exam resources that the merged entity can offer.
46. Certain third parties have raised concerns regarding this link. In particular that:
- The merged entity has the ability and incentive to exclusively endorse its own resources for Edexcel qualifications to the disadvantage of competing publishers and which may result in less choice, reduced quality and/or increased prices of Edexcel exam resources.
 - The merged entity has the ability and incentive to discontinue the supply of its resources to competing exam boards thus reducing the attractiveness of their exam qualifications to schools.

⁷ Edexcel also provides work related qualifications including BTECs and NVQs.

Background

Exam boards

47. There are three principal exam boards (AQA, OCR and Edexcel) in the UK that are active in schools and colleges in England. AQA is independent of any publisher group while OCR is under the same ownership as OUP (Oxford University Press) [Endnote 1] and Edexcel is owned by Pearson. There is an additional exam board in each of Wales (WJES), Northern Ireland (CCEA) and Scotland (SQA).
48. Based on estimates provided by the parties, AQA is the largest provider awarding around [40-50] per cent of GCSE and A level qualifications in the UK. Edexcel and OCR are of similar size awarding around [20-30] and [20-30] per cent of GCSE and A level qualifications in the UK respectively.⁸
49. Third party exam boards and publishers submitted that GCSE and A level qualifications offered by these exam boards are considered to be generally substitutable as regulation by the QCA ensures that they have degrees of similarity in content and structure.
50. The choice of exam board is generally made by the subject Head of Department within each school or college based on the appropriateness of the syllabus for the teachers and students. Within a school or college more than one exam board may be used for different subjects.
51. Third party publishers told the OFT that in selecting their exam board, price is only a secondary factor for schools and that a 5-10 per cent rise in price by one exam board would be unlikely, of itself, to result in immediate switching to an alternative exam board due to the investment that had already been made in lesson planning and resources for the selected syllabus.
52. In general, estimates from the parties and a third party suggest that switching between exam boards is around [] per cent per year due to changes in heads of department taking their exam board preferences with them. However, switching was said to increase with a change in

⁸ For England, Edexcel is the smallest of the three exam boards. AQA awards approximately [45-55] per cent, OCR approximately [25-35] per cent and Edexcel approximately [20-30] per cent.

curriculum which occurs on average between three to five years. The next curriculum changes are for A-levels that will come into effect in schools in September 2008 and for GCSEs in September 2009.⁹

Resources for exam syllabuses

53. Some third party publishers stated that resources are only purchased after the selection of the exam syllabus and there is mixed evidence on the extent to which heads of departments consider the price of resources when deciding which exam board to select. The parties estimated that schools' spending on exam boards compared to resources is [] for GCSE and [] for A Levels.
54. In supplying resources for GCSE and A Level qualifications, publishers can offer three types of resources:
- (i) Endorsed resources – resources that are tailored to meet the specifications of the examination syllabus and have been endorsed by the relevant exam board.
 - (ii) Non-endorsed resources - resources that are tailored to meet the specifications of the exam syllabus but have not been endorsed by the relevant exam board.
 - (iii) Generic resources –resources on a subject but are not tailored to a specific exam syllabus.
55. The three principal exam boards – AQA, OCR and Edexcel – all award endorsements, although publishers have stated that their terms vary. Currently OCR and Edexcel have an open endorsement policy and endorse a number of publishers. In 2005 AQA tendered an exclusive endorsement arrangement for its GCSE Maths and Science qualifications, which was won by Nelson Thornes. It is planned that this exclusive endorsement arrangement will be extended into a fully exclusive partnership for all AQA qualifications.¹⁰

⁹ This excludes: English, English Literature, ICT (including applied ICT), Mathematics, Science except for Environmental Science, Electronics and Human Physiology and Health. GCSE English, ICT and Mathematics are being revised to include functional qualifications for first teaching from September 2010.

¹⁰ AQA press release, 13 December 2005.

56. Third parties have stated that both exam boards and publishers benefit from endorsement. Publishers receive early information as to the syllabus/specification content, benefit from a quality assurance check and increased promotion as their resources are marketed at exam board exhibitions and teaching training days. The exam boards, in return, receive publicity for their specifications through the publishers' sales and marketing teams and a percentage royalty from sales of resources of between [] per cent (Edexcel and AQA only).

Third party concerns – exclusive endorsement

57. Pre-merger Pearson already owned one of the three principal exam boards (and the leading provider of qualifications in Maths). However, post merger, it will also become the largest publisher in the supply of resources to the secondary school sector.
58. Third party publishers have raised concerns that the merged entity will have the ability and the incentive to exclusively endorse (or at least favour) its own resources for Edexcel qualifications. It is argued that this exclusive endorsement or favouritism will restrict access to Edexcel's exam specifications and content, therefore reducing the ability of competing publishers to produce alternative (non-endorsed) resources.
59. The third party concerns raised are, to a certain degree, in relation to features in this sector independent of the merger, such as vertical integration and exclusive endorsement arrangements.¹¹ While features of the sector are therefore relevant to the assessment, the effects of these other factors cannot simply be attributed to this transaction as effects of the merger. The OFT's assessment under the substantial lessening of competition test focuses on how much competition will be lost as a result of this merger.
60. The theory of harm raised is perhaps best characterised as conglomerate: it involves the sale of complementary products - exam board qualifications and resources - to the same customers that is, schools. A conglomerate or other non-horizontal theory of the exclusionary effects of a merger - has no foundation if no market power exists at any level of the supply chain.

¹¹ It was only in 2005 that Edexcel became wholly owned by Pearson and AQA announced its exclusive partnership with Nelson Thornes.

61. The OFT has therefore considered whether market power existed prior to the merger or was created by the merger. The merger does not lead to horizontal changes at the exam board level and so cannot create or enhance market power at this level. At the publishing level, the OFT's horizontal analysis above establishes that Pearson will not enjoy post-merger market power at this level either.
62. The next question is whether Pearson, via Edexcel, enjoys a sufficient degree of pre-merger market power at the exam board level to form the basis for a valid foreclosure theory. Foreclosure here should be taken to include reducing rivals' demand by foreclosing customers on the theory that, without Edexcel endorsement, schools taking Edexcel qualifications would not purchase the resources of Pearson's rivals.
63. The balance of the evidence before the OFT suggests that, despite a degree of concentration at the exam board level, Edexcel awards only [20-30] per cent of GCSE and A level qualifications in the UK. In addition the OFT has received evidence to suggest that schools can and do switch to other exam boards. The OFT therefore considers it unlikely that Pearson could leverage its position at the exam board level to disadvantage schools and in turn consumers at the resources level as a result of the merger.
64. A potential effect of such an exclusive endorsement strategy might be a reduction in choice and/or average quality of resources offered to schools as well as increased prices for resources for Edexcel qualifications. However, no school has supported such allegations, and nor has any third party respondent other than competitors.
65. Although endorsement is widely used and may confer an advantage for selling resources for GCSE and A levels, on the basis of the evidence provided by third parties, the OFT considers that it is only one of a number of factors taken into account by schools in selecting resources and that quality of the content of the resources is the most important factor.
66. Moreover, all the main publishers currently supply all three types of resources for exam qualifications. Data provided by third parties showed that generic and non-endorsed sales combined constitute up to approximately 70 per cent of the overall sales of GCSE and A level resources. Based on the current evidence presented, non-endorsed and

generic resources are a realistic alternative choice for schools. Thus, the OFT believes that the balance of evidence suggests that any potential reduction in the quality or increase in price for Edexcel resources, would lead schools to switch to resources they perceive as of superior quality from other publishers, even if such resources lack formal endorsement. The OFT has received no evidence to suggest that the ability of schools to switch will be affected as a result of this merger, nor that the ability of rivals to invest in quality, innovation or marketing competing resources will be affected.

67. Therefore, on the basis of the evidence provided, the OFT considers that while Pearson would have the ability and incentive to ensure that its resources receive Edexcel endorsement, this does not amount to the ability and incentive to foreclose rivals in the relevant sense - such that school customers would be harmed as a result of the harm to competition itself.

Third party concerns – supply of resources to exam boards

68. Some competing exam boards have argued that the merged entity will discontinue supplying resources for their exam boards, so reducing the attractiveness of their exams to schools resulting in loss of uptake by schools.
69. The parties contended that even if market power exists, which they do not believe is the case, the transaction does not increase the incentive to reduce its participation at either the exam board or publishing level. As stated above, they have argued that they will still have the incentive to publish resources for other exam board syllabuses as this increases the scope of resources it offers. It also reduces its reliance on the success of one exam board.
70. A third party has maintained that there are only a few publishers that are able to supply the complete range of subjects (Nelson Thornes, Hachette and the parties to the merger). Nelson Thornes' exclusive endorsement agreement with AQA and the merger together will, it is said, remove three of the main publishers thus reducing the number of publishers that tender for endorsement or publish for their exams.
71. It is not clear from the information the OFT has obtained, whether the AQA/Nelson Thornes agreement prevents Nelson Thornes from supplying

resources for other exam boards, however, Pearson has stated that post-merger it will have the incentive to continue to supply resources as widely as possible.

72. As discussed above, the OFT does not believe that the merger has created market power at the publishing level. Moreover, even if such a strategy was feasible, it would only be rational for Pearson to forego sales of resources (assuming this to be commercially viable) if it could be confident that it would recoup such loss by a sufficient number of schools concerned switching to Edexcel exams. At best, the OFT considers that this is too speculative to be considered credible, particularly since there appears to be no barriers to prevent exam boards multi-sourcing from the smaller publishers present in the sector. Even if it is accepted that at present these publishers may not have the full scope currently enjoyed by the larger publishers, this transaction may provide the incentive to expand.
73. On the basis of the evidence before it, the OFT considers that the merger will not lead to any competition concerns at the exam board level.

BARRIERS TO ENTRY AND EXPANSION

74. The parties submitted that the main barriers to entry into the supply of resources for both primary and secondary schools are the set up costs (for example marketing) and the development of material.
75. The parties stated that these barriers to entry are low for both sectors. The parties estimated that small scale entry would cost £10,000 -£50,000 within a period of three months to develop the resource and a further three months to arrange for publication. Substantial investment (for example in a new significant digital resource or a range of resources) may require investment of £250,000 or more and 12-18 months from development to publication.
76. The parties provided examples of new entrants to these sectors. However these are mainly software providers, such as Espresso, that specialise in digital resources that entered the sector with the introduction of e-Learning credits programme.¹²

77. Other publishers provided mixed evidence on the relative ease of entry to both sectors. Some stated that development costs can be quite high. However although others said that entry was relatively easy, they added that the costs involved and length of time are dependent on the type of product, number of components and level of resources available for production. Third parties estimated that it would take between 18 months to three years for cost recovery.
78. In considering barriers to expansion, the parties contended that existing suppliers of resources to primary and secondary schools can easily, in terms of time and cost, extend their range and volume of sales. They maintained that the publishers already have contractual arrangements with printing presses and software replication houses, established routes to market and relationships with potential customers.
79. However third parties stated that it is difficult for a supplier of resources in the primary school sector, for example, to expand to supply resources for the secondary school sector due to the structural and expertise differences (as discussed above).
80. Third parties stated that expansion into a new subject is harder than into a new education level of the same subject (such as a Key Stage 3 publisher expanding into GCSE), as different subjects require different sales and marketing routes and different knowledge/expertise (such as authors). However, publishers may benefit from brand recognition.
81. One third party commented that the changes in curriculum (which has been discussed above) or new government funding offer the opportunity for expansion. The publishing may be staggered over a period of time to enable the publisher to meet the start of the new initiative or curriculum change whilst having time to deliver a complete programme.
82. Overall, the evidence on barriers to entry was mixed, however, given the conclusion it is not necessary to rely on this.

¹² This programme was introduced by the Government in 2002 to encourage the use of digital and blended resources. This programme is coming to an end as the final e-Learning credits were allocated to schools in April 2007 and will need to be spent by 2008.

VOCATIONAL SECTOR

Product market

83. The parties submitted that the appropriate frame of reference is the supply of resources to the vocational sector. The parties stated that publishers produce and market resources to lecturers who will usually recommend texts or other resources to their students. The majority of sales are, therefore, made to individual students.
84. There is no equivalent to the National Curriculum in the vocational sector. There are syllabuses and curricula offered by a wide range of vocational awarding bodies. Similar to resources published at exam level within secondary schools, publishers will supply resources for these syllabuses and curricula.
85. The parties stated that it is difficult to delineate the vocational sector by subject. They stated that there are many thousand accredited vocational qualifications (covering over 100 vocations) offered by colleges, schools and Private Training Providers in the UK.
86. In addition they argued that there is extensive supply-side substitutability with most large publishers having the necessary skills, resources and reputation to supply resources across a wide range of subjects.
87. Given the low increments to the share of supply (as discussed in the horizontal issues section below), the OFT considers that it is not necessary to reach a definitive conclusion on the appropriate frame of reference as it does not affect the competitive assessment in this case.

Geographic market

88. The parties submitted that the appropriate geographic frame of reference for the supply of resources to the vocational sector is the UK. However the OFT does not consider that it is necessary to reach a definite conclusion as it does not affect the competitive assessment in this case.

Horizontal issues

89. In the supply of resources to the vocational sector, the merged entity's share of supply of sales is around [10-20] per cent (increment of [0-5] per cent). In the subjects in which the parties overlap, their combined share of supply ranges from [5-15] per cent in Information and Communication Technology to [20-30] per cent in Construction, Planning and the Built Environment. The increment to the shares of supply in all these qualifications is small ([0-5] per cent).
90. There are a large number of competitors in this sector, including large publishers such as Nelson Thornes and Hachette, as well as numerous smaller competitors. The parties estimated that nearly 40 per cent of the sales of resources in this sector are made by publishers with shares of supply of less than two per cent. These large publishers and small competitors combined will therefore continue to act as a constraint on the parties' behaviour post merger.
91. Given the relatively low increment in shares of supply and the number of alternative publishers, the OFT considers that the merger does not give rise to horizontal competition concerns in respect of the supply of resources to the vocational sector.

Non-horizontal issues

92. In addition to supplying GCSEs and A Level qualifications, Edexcel also awards vocational qualifications. Harcourt is not active at this level, so the acquisition does not lead to a new link in the vocational sector. However, the transaction does increase the scope of resources that the merged entity can offer.
93. A third party raised concerns that the merger combines the largest vocational publisher (Harcourt) with one of the largest vocational exam boards (Edexcel). However it did not provide supporting evidence for this statement or its concerns.

94. Based on the parties' best estimates¹³, Edexcel's share of supply is approximately [10-20] per cent, whilst the largest provider, City & Guilds, has a share of supply of approximately [25-35] per cent. In addition, the parties stated that there are over a hundred bodies currently offering accredited vocational qualifications in the UK.
95. As discussed above, with regards to supply of resources, the merged entity has a share of supply of around [10-20] per cent and will face constraints from a number of competitors. At the vocational exam board level, the merger does not increase its share of supply.
96. Given these modest shares of supply and the number of competitors present at both the exam board and publishing level, the OFT does not believe that any non horizontal concerns arise in the vocational sector.

THIRD PARTY VIEWS

97. Third party views have been referenced and addressed in the relevant sections of the competitive analysis above.

ASSESSMENT

98. The parties overlap in the supply of resources for use in primary and secondary schools, the vocational sector and for home learning. In relation to the supply of resources for home learning, the overlap is small and there are a number of other competitors present. Competition concerns do not, therefore, arise in this sector.
99. For the supply of resources to primary and secondary schools, the OFT has considered the effects of the merger in these sectors separately. In addition, the OFT has considered separately the supply of resources for exam levels (GCSE and A Level).
100. For the supply of resources to primary schools, although the merger involves the largest supplier, there are a number of competitors present which will continue to act as a competitive constraint. The OFT considers

¹³ The parties have stated that there is no external source of data on vocational qualifications and there is no obligation on vocational awarding bodies to submit this data to any central authority. they have estimated from publicly available sources.

that the constraint imposed by these competitors, combined with the ability of schools to multi-source resources will pose a sufficient constraint on the parties' behaviour post-merger to prevent adverse merger effects.

101. With regards to the supply of resources to secondary schools (overall and for exam levels), the OFT considered that the number of other competitors remaining in the sector, whose products are substitutes, will act as a strong constraint on the parties' products post-merger.
102. For the supply of resources for GCSE and A level exams, as Pearson also owns an exam board, third parties raised concerns regarding Pearson's ability to potentially favour the supply of resources for its exam qualifications by exclusive endorsement and to potentially refuse to supply resources for other exam boards. However the OFT considers that the merger does not create or enhance market power at any level; and that the combination of Pearson's position at the exam board level and the alleged foreclosure mechanism – refusal to endorse rival suppliers resources or otherwise favour its own resources for Edexcel qualifications – may present some disadvantage to competitors but will not harm customers.
103. The OFT believes that, on the evidence available, the prospect of harm to customers is insufficiently material because it does not appear that customers lack the ability or incentive to switch to non-endorsed resources if they perceive a deterioration in the quality of Edexcel-endorsed products relative to the quality of rivals' non-endorsed resources, or indeed to switch from Edexcel to a rival exam board itself.
104. As for the supply of resources to other exam boards, the OFT believes, on the evidence available, that Pearson would lack the profit incentive to refuse to supply resources for rival exam boards. This is because the losses from this refusal to supply at the publishing level are unlikely to be outweighed by the gains at the exam board level, which would depend on this having the effect of driving customers from other exam boards to Edexcel. The OFT therefore rules out foreclosure effects at the exam board level as too remote to be credible.
105. With regards the supply of resources to the vocational sector, Pearson is also present at both the publishing and exam board level. However, given the relatively low increment in shares of supply and the number of alternative suppliers at both the publishing and exam board level, the OFT

considers that the merger does not give rise to any competition concerns in that sector.

106. 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

107. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.

ENDNOTE

1. Correction - OCR is under the same ownership as CUP (Cambridge University Press).