
Anticipated joint venture between Menzies Distribution Limited and Eason and Son (NI) Limited

The OFT's decision on reference under section 33(1) given on 5 April 2007. Full text of decision published 18 April 2007.

PARTIES

1. **Menzies Distribution Limited** (Menzies), a wholly owned subsidiary of John Menzies plc, is the second largest wholesaler of newspapers and magazines in the UK. It operates throughout the UK as well as in County Donegal in the Republic of Ireland (RoI).
2. **Eason and Son (NI) Limited** (Eason), a wholly owned subsidiary of the Irish company Eason and Son Limited, operates four lines of business throughout Northern Ireland (NI) and RoI. These lines comprise: retailing of books, magazines and stationery; wholesaling of books; wholesaling of stationery; and wholesaling of newspapers and magazines. In NI, Eason retails books, magazines and stationery, and wholesales newspapers and magazines. Eason's NI, and hence UK, turnover was £18.2 million in the year to January 2007.

TRANSACTION

3. Menzies and Eason intend to form a joint venture company called EM News Distribution (NI) Limited (EMND) to which each will transfer their wholesale newspaper and magazine distribution businesses in NI. EMND will be owned equally by Menzies and Eason (the Parties).
4. The Parties made an informal submission to the OFT on 2 February 2007. The OFT's administrative target date for announcing a decision was 30 March 2007.

JURISDICTION

5. The OFT believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. The Parties' wholesale newspaper and magazine distribution businesses will come under common ownership in NI and the Parties' combined share of supply of wholesale newspaper and magazine distribution in NI, a substantial part of the UK, exceeds 25 per cent, satisfying section 23 (2) (b) of the Enterprise Act 2002 (the Act).

FRAME OF REFERENCE

Product scope of the frame of reference

6. The Parties overlap in the supply of wholesale distribution of newspapers and magazines in NI.
7. Wholesale newspaper and magazine distribution in NI (as throughout the rest of the UK) involves an exclusive contract for a publisher defined territory between the wholesaler and a publisher¹ for delivery of either the publisher's newspapers or magazines (or both) to retailers. For this reason, retailers can only be supplied by the publisher appointed wholesaler to whom the retailer pays a carriage charge for delivery.
8. The main wholesalers in NI are the Parties, Wholesale Newspaper Services (WNS) and News Speed.
9. In NI (as throughout the rest of the UK) publishers of national newspapers such as News International, Trinity Mirror and Associated News Limited and of national magazines such as Frontline, Comag and Marketforce account for a significant part of the Parties' turnover. There are also a large number of small/medium publishers with non-national newspapers and national or non- national magazines. From information available to the OFT however, small/medium publishers constitute a small proportion of the Parties' turnover.

¹ Although we refer to publishers as publishers of newspapers and magazines, magazine publishers often contract via intermediaries.

Wholesale newspaper and magazine distribution

10. The Parties and the majority of third parties submitted that wholesale newspaper and magazine distribution should be considered together. Most third parties submitted that distribution arrangements are similar for both, facilities (packing, sorting and delivery) are common between the two types of product and retailers receive both newspapers and magazines together from the majority of wholesalers². Third parties also stated that combining the delivery of newspapers and magazines assists in the recovery of fixed delivery costs.
11. Some third parties submitted that there are some differences in delivery time sensitivities between newspapers and magazines and one added that there are examples of extremely efficient newspaper only wholesalers. One third party also pointed out that there were some differences between distributing different types of newspapers (for example, weekday national, Sunday national and regional newspapers). However, in this third party's view, these differences were not great enough to warrant segmenting the frame of reference further.
12. In **Menzies / Thos Swift**³, the OFT considered the merger on the basis of newspaper and magazine wholesaling together and that considering the case on a narrower basis would not have altered its conclusions.

Conclusion on product frame of reference

13. For the purposes of the scope of the product frame of reference, it is not necessary for the OFT to conclude whether newspapers and magazines should be considered together or separately as our conclusion on the competition assessment is the same whichever scope of the product frame of reference is adopted. Our assessment in this case applies to both newspapers and magazines. Equally, we have not found it necessary to sub-segment newspapers into newspapers types.

² The OFT is not aware of any wholesaler in NI which does not undertake wholesaling for both newspapers and magazines.

³ OFT decision of 26 March 2006, available at: www.offt.gov.uk/advice_and_resources/resource_base/Mergers_home/decisions/2006/menzies

Geographic scope of the frame of reference

14. The Parties submitted that the relevant geographic scope of the frame of reference is NI and most third parties agreed.
15. Most large newspaper or magazine publishers⁴ simultaneously tender contracts on a sub-NI publisher territory basis and on an all NI publisher territory basis (and even include Great Britain publisher territories) so that the four main wholesalers can bid for sub NI publisher territories or all NI publisher territories (and even Great Britain publisher territories)⁵.
16. Some third parties indicated that NI's geographic size and relatively small population of around 1.7m encourage bids for all NI rather than sub NI publisher territories. Third parties confirmed that the location of depots and distribution distances are important: all four main wholesalers have at least some presence in Belfast which provides easy access to most of the larger population centres in NI (Belfast, Newry, Armagh and Lisburn). Of the three wholesalers who service all NI contracts, News Speed do so from one depot and WNS and Menzies from two depots.
17. Since 1981, Eason has distributed to the publisher territories in the south of NI and Menzies chiefly to publisher territories in the north and west of NI (including part of County Donegal). There is however some wholesaling activity by Menzies that takes place in Eason's publisher territory since publisher territories are not identical and Menzies has some magazine and newspaper contracts covering all NI. News Speed and WNS have distributed across all of NI for a number of years. The four main wholesalers have all previously bid in tenders for sub NI and for all NI wholesale contracts. Furthermore, as far as we are aware, there has been no bidding for NI contracts from wholesalers operating outside of NI although some third parties suggested that bidding from wholesalers not operating in NI was possible⁶.

⁴ For example, Associated News Limited tenders its newspaper contracts for all UK territories at the same time. Similarly, Frontline tenders its magazines for all UK territories at the same time.

⁵ Due to its location in the north-western tip of Ireland, County Donegal has historically also been supplied by wholesalers in NI and included in NI tenders. Some publishers also tender contracts in RoI simultaneously with those in NI and mainland Great Britain.

⁶ One third party suggested that wholesalers based in RoI could also provide distribution services in NI.

18. The above factors may indicate that the relevant geographic market is wider than sub NI publisher territories. However, it is not necessary for the OFT to conclude on the geographic scope of the frame of reference as our conclusion on the competition assessment is the same whichever scope of the geographic frame of reference is adopted. Our assessment in this case applies to both sub NI publisher territories and all NI publisher territories.

HORIZONTAL ISSUES

19. Menzies is the leading wholesale national newspaper and national magazine distributor in NI with Eason the second largest. However, News Speed is nearly twice as large as Eason in the wholesaling of national newspapers alone due to its News International contract. Individually News Speed and WNS have significantly more wholesale regional newspaper distribution than the Parties.
20. Menzies has been winning contracts from other wholesalers over the past few years. Most notably Trinity Mirror (newspapers) and (Frontline partner) Bauer (magazines) awarded contracts to Menzies on an all NI basis (which also demonstrates the willingness of large publishers to switch). Conversely, between 2004 and 2006 Eason bid for contracts for national newspapers (Daily Mail, Associated Newspapers and Northern & Shell) and national magazines (COMAG and Frontline) that were being serviced by Menzies chiefly in the north and west of NI but was not awarded any of the contracts.
21. In terms of number of bidders for sub NI or all NI newspaper and magazine wholesaling contracts, the merger will reduce the current number from four to three. Bidding data for large publisher contracts available to the OFT indicates that Eason is Menzies' closest competitor. The data also demonstrates that News Speed or WNS (or both) were involved in the bidding process for newspaper and magazine contracts for all NI or sub NI in the most recent 2005/06 large publisher contract round.
22. A minority of third parties expressed concerns about or being left post-merger without any alternative to the Parties. However, in line with the majority of third party responses, the OFT considers that WNS and News Speed, will continue to be effective alternative wholesalers to the Parties. Whilst we do not have bidding data for small/medium publishers, which

mostly appear to use a much more informal process, the majority of medium/small publishers' responses confirm that News Speed and, for some, WNS are alternatives to the Parties.

23. As regard the credibility of WNS as an alternative wholesaler, on which some third parties expressed concerns, the Parties submitted that one of the reasons for the merger was by way of reaction to the recent purchase of WNS by the Independent News and Media plc (INM). Through an Irish subsidiary (Newsread) INM is a player with significant experience in wholesale newspaper and magazine distribution in RoI. Furthermore, INM has confirmed that it intends that WNS continue to compete for all newspaper and magazine tenders in NI in the future.
24. Finally, on the possibility of post-merger price increases and increased in retailer carriage charges, which some third parties raised, the OFT does not have any evidence that this merger will create an incentive for the Parties to increase prices or carriage charges for retailers.

Barriers to entry and expansion

25. The Parties stated, confirmed by third parties, that the main entry barrier is gaining distribution contracts sufficient to provide economies of scale and scope. Third parties also submitted that reputation is important in obtaining contracts from incumbent wholesalers. However, third parties also stated that upon obtaining a large publisher contract, the physical infrastructure can be put in place quickly (within 3-6 months)⁷ and easily. The Parties submitted that wholesaling is essentially a logistics business requiring handling equipment, IT systems, vehicles and labour⁸. The Parties estimated that the physical infrastructure required for a modern depot would cost around £1–1.5m. Some of this cost would be sunk but the Parties claimed it is difficult to estimate how much.
26. One third party informed the OFT that the lack of contiguous wholesaler territories may reduce competition by limiting entry⁹. However large publishers did not identify such concerns and further confirmed that,

⁷ A longer period would be required if an entrant was a building a new depot.

⁸ The Parties used the example of News Speed which entered NI in 1988 once it had been awarded the News International contracts.

⁹ However, the same third party also suggested that wholesalers in bordering RoI may be potential competitors.

subject to contract, they could switch in a timeframe of around 3-6 months to an alternative wholesaler to the Parties¹⁰ or, in some instances, seek solutions from outside NI. Large publisher responses demonstrate a clear ability and willingness to make contracts available to alternative/existing wholesalers and that switching costs are not such as to deter switching¹¹.

27. Furthermore, most third parties submitted that if for whatever reason they considered there was insufficient competition among wholesalers the next time their contracts come up for tender, they would consider sponsoring entry (or did not discount such a move)¹².

Countervailing buyer power

28. The Parties state that the rationale for this transaction includes the following: achieve greater economies of scale; meet increasing demands of publishers to improve monitoring of sales and harmonisation of service levels; and to offer publishers an 'Island of Ireland' solution for NI in combination with the joint venture in the RoI¹³. From third party responses, the OFT considers large publishers (and some small/medium publishers) are a key driver to this proposed joint venture.
29. Indeed the Parties claim that large publishers of newspapers and magazines possess buyer power and that this is partly evidenced by the decline in wholesaler margins. On the evidence available to the OFT in this case, these decreases appear largely offset by the increases in newspaper and magazine cover prices on which wholesaler margins are calculated. The majority of third parties claimed however that large publishers do have some buyer power and that this will continue post merger. Examples given include publishers switching and negotiating better contract terms. Large publishers likewise support this view. Small/medium publishers arguably

¹⁰ This is supported by Menzies; MGN (Trinity Mirror) switched its wholesaling contract to Menzies in 2004 on an all of NI basis and (Frontline partner) Bauer also switched its contract to an all NI basis to Menzies last year.

¹¹ In NI, all of the major contracts will go to tender within two years of each other (between 2009 and 2011) which may be a small enough period of time for a new entrant to suffer losses while it seeks further contracts.

¹² Although to the OFT's knowledge, News International is the only publisher who has sponsored entry in NI i.e. News Speed in 1988.

¹³ The Parties have already received clearance from the Irish competition authorities to form a joint venture company in respect of their combined Irish newspaper and magazine distribution operations.

have less buyer power, as their contacts are less valuable than the large publisher contracts.

VERTICAL ISSUES

30. The OFT does not consider that this merger raises any vertical issues.

THIRD PARTY VIEWS

31. Third party views have been discussed above. The majority of third parties were unconcerned or neutral on the proposed merger.

ASSESSMENT

32. The majority of third parties are unconcerned with the proposed merger. Although the Parties are close competitors both News Speed and WNS are sizeable competitors in NI in some wholesaling segments and are able to cover sub NI or all of NI publisher territories. The majority of third parties support the finding that News Speed and WNS will provide a sufficient competitive constraint to the Parties whether on a sub NI or on all NI publisher territory basis and that alternatives would also be available. Third parties also confirmed that switching is possible and has recently occurred. In addition, third parties submitted that large publishers have some degree of countervailing buyer power.
33. The OFT notes that although gaining distribution contracts sufficient to provide economies of scale and scope has been identified as the main barrier to entry in this case, third parties confirm that once obtained, the availability and costs of the remaining infrastructure required are unproblematic.
34. Finally, the OFT does not consider that that the merger will impact adversely on retailers. For those retailers which are currently customers of both Menzies and Eason (and so pay two sets of carriage charges), they will in future only deal with one, which may result in some savings in their carriage charges.

35. Consequently, the OFT 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 within a market or markets in the United Kingdom.

DECISION

36. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.