

Completed acquisition by Oxford University Press of Nelson Thornes Limited

ME/5913/13

The OFT's decision on reference under section 22(1) given on 24 May 2013.
Full text of decision published 31 May 2013.

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. **Oxford University Press** (OUP) is a department of the University of Oxford, which was formally established by statute in 1571. The University – and therefore OUP itself – operates as a charity, whose principal objects are the advancement of learning by teaching and research and its dissemination. OUP publishes across the world in many different languages, for all levels, and across virtually the whole range of academic and educational disciplines. The acquisition relates to the activities of the Oxford Education division of OUP, which is made up of the following businesses: Africa (Southern and Eastern Africa), Australia (Australia and New Zealand), and the UK based education business (**OXED**).
2. **Nelson Thornes** is a UK based educational resources provider. In 2000, the educational publisher Thomas Nelson was acquired by Wolters Kluwer, who merged Thomas Nelson with its existing publishing arm Stanley Thornes to create Nelson Thornes. In 2007, the private equity group Bridgepoint purchased the educational division of Wolters Kluwer and formed Infinitas Learning, which operates across several European countries. Nelson Thornes continued to be based in the UK. Nelson Thornes had a global turnover of £[] million for the financial year ending 31 December 2012, and a UK turnover of £[] million for the same period.

TRANSACTION

3. On 18 January 2013, OUP acquired 100 per cent of the issued share capital in Nelson Thornes for a consideration of £[] million, with further appropriate balance sheet adjustments. Following receipt of a satisfactory submission on 12 March 2013, the statutory deadline for a decision is 7 June 2013, and the extended administrative deadline for a decision is 24 May 2013.

JURISDICTION

4. As a result of this transaction OUP and Nelson Thornes have ceased to be distinct. The parties overlap in the supply of teaching and learning resources to primary schools and secondary schools with shares of supply of over 25 per cent, therefore 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

5. The parties overlap in the supply of teaching and learning resources for primary and secondary schools, including key stage 3, GCSE, and A-Level.
6. While both parties produce some home learning materials, Nelson Thornes supplies 11-plus preparation materials while OUP supplies reading materials for 3-7 year olds. Both parties are active in the vocational learning segment, however, OUP supplies only one vocational product from which it achieved revenue of less than £[] in 2012.¹ Therefore these two segments, home learning and vocational learning, are not considered further.

Background

7. All publicly funded maintained schools are required to follow the National Curriculum, as established by HM Government.² The National Curriculum in

¹ A student book and accompanying teacher guide called *BTEC Level 2 First in Sport*

² Note that independent schools do not have to follow the National Curriculum. Equally the growing numbers of academy and free schools, directly funded by HM Government rather than via LEAs, no longer have to follow the National Curriculum. However, all remain heavily

England, Wales and Northern Ireland is divided into a number of Key Stages:

- Key stages 1 and 2 (ages 4-11) are taught in primary schools, and are assessed by teachers and by some national tests in English and Maths.
 - Key stage 3 (ages 11-14) is taught in secondary schools and is assessed by teachers.
 - Key stages 4 (ages 14-16) and 5 (ages 16+) are assessed through GCSE and AS/A-levels (A-level).³ For these, exam boards set syllabuses and exams, based on criteria set by the qualifications regulator.⁴ At present, (except in Scotland⁵) schools can choose which of five exam boards to use for each qualification, and can use different boards for different subjects and key stages.⁶ Each board may offer multiple syllabuses per subject and level, so that (except in Scotland) schools may choose from between five and 15 syllabuses per subject and level.⁷
8. At all stages, schools can choose which materials to use. At GCSE and A-Level, teaching and learning resources may be generic, or exam board and syllabus specific (especially for core subjects). Exam boards may also 'endorse' teaching and learning resources.
9. Schools may update and replace resources at any time, for example to introduce new ideas and approaches. Curriculum change is commonly the key impetus driving school purchases. In primary schools curriculum change may be due to pedagogical trends, for example, the recently promoted phonics as a way of teaching children to read. In secondary schools, curriculum changes affect the content that schools and exam boards must cover. The extent of the change will determine whether new resources are needed. Major curriculum change tends to occur around

influenced by the National Curriculum, partly because it leads into the National Curriculum Tests at the end of Key Stage 2 and into GCSE exams at the end of Key Stage 4.

³ There is also a range of vocational qualifications at these levels.

⁴ Ofqual in England, DCELLS in Wales, CCEA in Northern Ireland, SQA in Scotland.

⁵ Where there is only one exam board, the Scottish Qualifications Authority (SQA).

⁶ The exam boards are AQA, CCEA, Edexcel, OCR and WJEC. CCEA is predominantly active in Northern Ireland, and WJEC in Wales. SQA is the exam board in Scotland.

⁷ In Scotland, students take qualifications (standard grades, intermediates, highers and advanced highers) set by the SQA.

every five years. Providers will compete to update their resources or create new resources for such changes, remaining active in supplying material for the same subject and exam board, or may choose to provide resources for a different subject and exam board, or choose to supply material across a number of subjects and exam boards.

10. In view of the many potential subjects and syllabuses, with varying demand for each, publishers will choose a subset to produce materials for. The publisher will generally decide the subset it wishes to supply before schools make their syllabus choices. This means a publisher has only partial information about likely demand when making this choice, particularly at times of major curriculum/syllabus change. After schools decide on their exam boards and syllabuses, there may, especially for less common subjects, only be a limited number of publishers for each syllabus, plus any generic materials. OUP submitted that it may take up to 20 months to produce a wholly new product for a significant curriculum change. Major changes to the current GCSE and A Level curriculums are expected in 2015.⁸
11. Publishers may also enter through 'off cycle' publishing where materials are produced for existing examination units outside of a curriculum change. There will be some exam-board switching by schools each year, though much less-so than at times of curriculum change.

Product scope

12. Schools can obtain a wide range of types of teaching and learning resources from a number of sources.⁹ OUP submitted these products may both substitute and complement existing resources.
13. In the Pearson/Harcourt case¹⁰ the OFT left the precise market definition open but considered segmenting the overall supply of educational

⁸ www.education.gov.uk/schools/teachingandlearning/qualifications/gcses/a00221366/gcse-reform
<http://ofqual.gov.uk/qualifications-and-assessments/qualification-reform/a-level-reform>

⁹ For example: printed textbooks and support materials, printable and interactive digital materials, blended text and digital products, whole schemes (text books, teacher, and student materials), and manipulatives (for use in maths), which may be obtained from traditional (large) publishers, smaller/niche publishers, paid-for digital providers, free online resources or self created materials.

resources. Such segmentations included between the primary and secondary sectors, between different types of examinations: GCSE and A level, and, where the information was available, between some different subjects, for example, maths, english, and science. In the current case, we have considered whether the market for teaching and learning resources should be segmented by age group or school level, by subject, exam board and syllabus, and by medium of delivery.

School level

Primary vs. Secondary

14. As described above, the school system in England, Wales and Northern Ireland is split into key stages. OUP identified separate markets for primary (key stages 1 and 2) and secondary schools (key stages 3 to 5), due to differences between the two including the more general nature of primary teaching, and a higher proportion of sales to primary schools made directly as opposed to through school suppliers.
15. The parties, and other publishers, produce distinct materials for each of the secondary key stages and, because of the necessity to cover the national curriculum in each year, we may expect only limited demand-side substitution between materials for these different levels.
16. The boundaries of the relevant product market are generally determined by reference to demand-side substitution alone. However, the OFT may aggregate several narrow relevant markets into one broader one on the basis of substitution on the supply-side when:
 - a. assets 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 capacity between these different products depending on demand for each, and

¹⁰ Completed acquisition by Pearson plc of Harcourt businesses from Reed Elsevier plc - www.oft.gov.uk/OFTwork/mergers/decisions/2007/Pearson

- b. the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.¹¹

17. The OFT does not consider the evidence supports widening the product scope on the supply side to include both the supply of primary and the supply of secondary material as resources cannot be quickly reallocated between the two, with such substitution requiring significant investment and planning and development time. Additionally, in the primary level segments the merging parties compete with different firms and are subject to a potentially wider range of constraints than in the secondary level segments.

Segmentation by secondary age group

18. The OFT does not consider there to be demand-side substitution between the material for different age groups as the material is not functionally interchangeable due to the necessity to cover the national curriculum. OUP submitted that there is supply-side substitution between different secondary segments, particularly for traditional publishers such as Pearson, Harper Collins and Hodder, who are able to re-deploy authors, editing, sales, and marketing and distribution teams across the secondary 'checkerboard'.
19. The OFT notes that, although firms are active across a range of secondary segments, the same firms are not active in each segment and the number and identity of competitors sometimes varies within a subject, across the secondary age groups.
20. As a result, on a cautious basis the starting point for the OFT's assessment has been to consider as separate markets those for primary materials, and materials for each of the 11-14, 14-16 and 16+ secondary age ranges.

Subject

21. In the Pearson/Harcourt case, the OFT did not conclude on whether different subjects were in different markets, but, on a cautious basis

¹¹ See *Merger Assessment Guidelines*, Joint publication of the Competition Commission and the OFT, September 2010, paragraph 5.2.17

considered whether competition concerns arose in the subject-based segments of maths, english, science, and other.

22. In the current case, OUP submitted that it was not appropriate to segment the market by subject, in particular because competition in the secondary segment involves a 'checkerboard' of subjects and exam syllabuses, with publishers making advance decisions (in particular at times of curriculum change) about which syllabuses to produce materials for – meaning that there is supply-side substitution between subjects.
23. However, for a teacher of a specific subject, materials produced for other subjects will not be demand-side substitutes, although there may be limited substitution between subjects at the school level – since around 30 per cent of purchasers in schools have to engage in ad hoc bidding within the school to determine their budget.¹²
24. Given there is limited demand-side substitution, the OFT has considered OUP's arguments regarding supply-side substitution (applying the framework set out at paragraph 16). The OFT considers that any supply-side arguments apply only where the provider is currently active in that subject. To switch supply to a different subject requires significant investment, and planning and development lead times. While additional supply-side arguments may apply at the time of a curriculum change, these changes are infrequent and so do not represent the timely switching of resources and capacity to warrant widening the product scope through substitution on the supply side. Further, even at the time of a curriculum change switching to supply a different subject will involve significant investment and lead times.¹³

Exam board (or syllabus)

25. In relation to exam boards and syllabuses, there may be some degree of demand-side substitution between exam boards. Responses from teachers indicated that exam-board specificity is the most important factor in their textbook purchases, and Ofqual research shows that available materials

¹² Parties – classroom learning resources in English Schools BESA 2012 table 4.5 and 4.4

¹³ Curriculums for each subject will change from 2015 onwards with planning and development undertaken by suppliers significantly in advance of this. The OFT has considered the constraint from this supply-side response or 'resetting' in the entry and expansion section below.

were a key reason for board-switching decisions for only 17 per cent of respondents while pupil outcomes were the key reason for 39 per cent (possibly reflecting substitution driven by school perception of syllabus quality).¹⁴ While generic materials exist and material developed for one syllabus can be used in teaching another, a school will generally purchase the material developed for the syllabus they intend to teach.

26. On the supply-side, similar to the above assessment for subject, the OFT considers that substitution is limited as significant investment decisions are made about what subject and exam board to supply, in advance of any curriculum changes. Between curriculum changes there is therefore limited supply-side substitution as switching to another curriculum requires significant investment and lead times. While additional supply-side arguments may apply at the time of a curriculum change, these changes are infrequent and not sufficiently timely to warrant widening the product scope to include all exam boards and syllabus.¹⁵
27. The OFT has therefore, on a cautious basis, assessed the transaction for each subject area and exam board individually, focusing on the competitive conditions within the current syllabuses.

Medium of delivery

28. OUP submitted that the appropriate frame of reference is the supply of all types of resources (that is, print, digital, and blended - a combination of both print and digital). In particular, they submitted that digital resources are both complements and substitutes for other materials, and that a significant proportion are provided as part of blended products or programmes (as was found in Pearson/Harcourt). While some competitors supported OUP's proposition, commenting that they consider digital and print materials to be substitutes, they also submitted that the extent of substitution varied across segments, and other competitors did not support a wide product market including digital and print materials.
29. OUP submitted that in the primary segment, teachers pick and mix a wide range of resources for use in their lessons, partly because teaching at the primary level is more general (and less exam-focused) than in senior

¹⁴ Ofqual (2012) Summary of Host Research on Textbooks, Study Aids and Support Services

¹⁵ See footnote 13.

schools. OUP provided a diverse list of competitors including providers of digital resources, free online resources, and assessment. Third party competitors supported that primary teachers combine resources from a variety of sources, suggesting the parties may face constraints from a range of providers in addition to the large educational publishers.¹⁶

30. In the secondary segment, on the demand side, some customers explained that they consider digital resources to be substitutes for printed materials and growing in importance. However, most customers did not yet see digital as a substitute for print – for example because they did not have the appropriate IT infrastructure in their school to replace print with digital text books.
31. On the supply side, the OFT understands that there is a relatively large number of digital providers, but switching from digital to print is not straightforward and relatively few digital providers also produce textbooks, suggesting that the two products are not supply-side substitutes.
32. On the basis of this evidence, the OFT has, in this case, assessed the supply of print products by traditional publishers, but has also considered the constraints from small publishers and digital providers where evidence suggests these may act as a competitive constraint on the merging parties (particularly in the primary sector where some third parties suggested that there were a wider range of providers).

Conclusion on product scope

33. The OFT has, on a cautious basis, assessed the transaction on the basis of the supply of educational publishing segmented by the medium of delivery, age group or school level, and subject and exam board for the purposes of the competitive assessment. The prospect for entry or expansion at the time of a curriculum change is taken account of separately.

Geographic scope

34. OUP submitted that, broadly speaking, the conditions of competition are similar across England, Wales, Northern Ireland and Scotland. Schools in England, Wales and Northern Ireland follow their own versions of the

¹⁶ Pearson, Hodder, Harper Collins, and Cambridge University Press.

National Curriculum, whereas schools in Scotland follow an advisory curriculum determined by Scottish Ministers.¹⁷ Although there is a different curriculum in each country, and at examined levels Scotland, Wales and Northern Ireland are aligned to particular awarding bodies,¹⁸ OUP submitted that generally publishers approach the four home countries as another aspect of the 'checkerboard' nature of the market and that across the UK the same suppliers are present,¹⁹ using the same marketing and distribution models, and comparable prices.

35. Customer responses suggest that some additional constraints are present in Scotland, through publishers such as Leckie and Leckie, Bright Red, and Chemcord. OUP, however, does not extensively publish for the Scottish Curriculum.
36. While it has not been necessary to conclude on geographic scope, the OFT has assessed the transaction on a UK basis,²⁰ with the assessment being informed by the various exam boards, and schools in Scotland, Wales and Northern Ireland, as well the English equivalents. While the OFT notes that it may be possible to consider the transaction at a narrower geographic level, as a result of taking different exam boards into account, this would have no material impact on the competitive assessment.

COMPETITIVE ASSESSMENT – HORIZONTAL ISSUES

37. The OFT has considered whether unilateral effects will arise in relation to any age group/subject/exam board syllabus segment. This section sets out:
- the parties' market shares in each age group/subject segment
 - analysis of possible unilateral effects at the primary level
 - analysis of possible unilateral effects at the secondary level.
38. No vertical concerns are raised by the transaction and this area is not considered further.

¹⁷ Scotland also has a specific national Examination Board: the SQA. See www.sqa.org.uk/sqa/CCC_FirstPage.jsp.

¹⁸ WJEC in Wales, CCEA in Northern Ireland, SQA in Scotland.

¹⁹ Although there are some local suppliers

²⁰ As was done in *Pearson/Harcourt*, paragraphs 27-31.

Market shares

39. OUP provided market share information based on Education Publishers Council data.²¹ OUP submitted, and most competitors agreed, that this data underestimated the size of the market. OUP provided estimates that uplift the EPC data by approximately 20 per cent to account for the shortfall. OUP also presented some evidence to suggest that the total market for teaching and learning resources is significantly larger than implied even by these uplifted figures. However, in line with the market definition outlined above, the OFT focuses its assessment in the secondary segment on the constraint provided by traditional publishers – as represented by the more conservative figures.
40. Considering each subject area and age group separately, the merger creates high combined market shares and in some cases high increments to those shares. Given the considerable number of different subject, level, and exam board segments, the OFT took as a starting point for its assessment those subject/age group segments where the parties would have a combined share of over 30 per cent, as well as, on a cautious basis, primary maths where their combined share is [25-35] per cent.

Table 1: Segments in which the transaction leads to an increment

2012 shares (parties' estimates)	Segment size (£m)	EPC data (£m)	OUP	NT	Combined
Primary overall	[]		[30-40]	[0-10]	[35-45]
English	[]		[35-45]	[0-10]	[45-55]
Maths	[]		[20-30]	[0-10]	[25-35]
Secondary overall	[]		[5-15]	[5-15]	[20-30]
Maths 11-14	[]		[5-15]	[5-15]	[15-25]
Maths 14-16	[]		[5-15]	[0-10]	[10-20]
Maths 16+	[]		[5-15]	[0-10]	[10-20]
English 11-14	[]		[25-35]	[0-10]	[20-30]
English 14-16	[]		[0-10]	[0-10]	[0-10]
English 16+	[]		[10-20]	[15-25]	[30-40]
Science 11-14	[]		[5-15]	[0-10]	[10-20]
Science 14-16	[]		[10-20]	[25-35]	[35-45]
Science 16+	[]		[5-15]	[15-25]	[25-35]

²¹ Collated from data submitted by its members, largely the larger traditional publishers.

2012 shares (parties' estimates)	Segment size (£m)	EPC data (£m)	OUP	NT	Combined
MFL 11-14		[]	[5-15]	[0-10]	[15-25]
MFL 14-16		[]	[0-10]	[15-25]	[20-30]
MFL 16 +		[]	[15-25]	[20-30]	[40-50]
History 11-14		[]	[20-30]	[0-10]	[20-30]
History 14-16		[]	[0-10]	[0-10]	[0-10]
History 16 +		[]	[0-10]	[5-15]	[5-15]
Business & Economics 14-16			[0-10]	[5-15]	[5-15]
Business & Economics 16 +		[]	[0-10]	[5-15]	[15-25]
Geography 11-14		[]	[35-45]	[15-25]	[55-65]
Geography 14-16		[]	[15-25]	[20-30]	[40-50]
Geography 16 +		[]	[15-25]	[5-15]	[25-35]
Religious Studies 11-14		[]	[0-10]	[0-10]	[5-15]
Religious Studies 14-16		[]	[0-10]	[15-25]	[25-35]
Religious Studies 16 +		[]	[20-30]	[10-20]	[35-45]
ICT 11-14		[]		[5-15]	[5-15]
ICT 14-16		[]	[0-10]	[0-10]	[5-15]
ICT 16 +		[]	[15-25]	[15-25]	[30-40]
Physical Education 14-16		[]	[0-10]	[15-25]	[25-35]
Physical Education 16 +		[]	[0-10]	[5-15]	[5-15]
Design & Technology 11-14			[0-10]	[55-65]	[60-70]
Design & Technology 14-16			[0-10]	[45-55]	[45-55]
Social Sciences 16 +			[15-25]	[0-10]	[20-30]
Other 16 +		[]	[0-10]	[0-10]	[5-15]

PRIMARY SEGMENTS

41. The competitive conditions in primary maths and primary literacy are considered separately below.

Primary Maths

42. In the primary maths segment the merger results in a combined market share of [25-35] per cent, increment [0-10] per cent. A large proportion of OUP's [20-30] per cent share is driven by its sales of Numicon 'manipulatives',²² which provided revenues of £[] million in 2012, out of OUP's total revenue in the UK primary maths segment of £[] million. Nelson Thornes does not produce manipulatives, suggesting that the parties are not close competitors in this segment. There are a number of alternative manipulatives providers, including TTS, Smartkids, Philip & Tacey, and Polydron.
43. Pearson, Hodder, and Cambridge University Press, all large publishers, are present in this segment, with Pearson especially strong, with a tail of smaller competitors. The OFT did not receive any significant third party concerns about the effect of the merger on the primary maths segment. On the basis of the evidence above the OFT considers that the merger is unlikely to lead to a significant lessening of competition in the primary maths segment.

Primary literacy

44. In primary literacy, the merger results in a combined share of [45-55] per cent, increment [0-10] per cent. The OFT received a number of concerns from third party competitors, which focused particularly on the supply of reading schemes.²³
45. OUP submitted that reading schemes were not an appropriate frame of reference given that there is a broad continuum of resources available to teach children to read. However, given the concerns raised, the OFT looked at this segment separately, before considering the constraints from other parts of the primary literacy segment.
46. The OFT estimates (based on information from the parties and competitors) that the parties have a combined share of around [50-60] per cent,

²² Manipulatives, refer to physical objects, such as rods or blocks, used by students to actively learn a mathematical concept.

²³ Collections of texts where the resources have been carefully levelled to provide children with a gentle progression of challenge in reading ability.

increment [0-10] per cent for the supply of Primary Reading Schemes. Pearson and Harper Collins are also active in this market, with a tail of other publishers of reading schemes²⁴ with much smaller shares.

47. Third parties that were concerned about the effect of the merger on reading schemes (and in literacy more generally), were concerned that given OUP's strength in Reading Schemes the merger would have a detrimental effect on competition, and on teaching, as a consequence of one firm having so much influence on how reading is taught. Third parties considered that this effect would be as a result of the heavy use of OUP resources in schools, and through OUP's (resulting) influence on government policy.

Nelson Thornes' reading schemes as a constraint on OUP's

48. Competitor comments confirmed that OUP and Nelson Thornes do compete in the supply of reading schemes. However, several competitors commented that Nelson Thornes was not considered to be the strongest competitor to OUP for reading schemes,²⁵ and that Nelson Thornes had declined as a competitor in recent years.²⁶ Internal OUP documents also suggest that Pearson (and to a lesser extent Harper Collins and Scholastic) are considered as stronger competitors.²⁷ Third parties generally agreed with OUP that Pearson and Harper Collins were stronger competitors to OUP than Nelson Thornes.²⁸ This would suggest that in response to a price rise or quality decline from OUP, the resulting diversion would be more likely to flow to Collins or Pearson products than to Nelson Thornes, reducing the incentive for price rises or quality declines.

Other reading schemes as a constraint on OUP's

49. In the reading scheme segment publishers and customers will make a distinction between whole-school reading schemes and supplementary schemes. An example of a whole-school scheme would be OUP's Oxford Reading Tree, which includes over 600 books and is designed for children

²⁴ For example: Scholastic, Rising Stars, Gardner, and Jolly Phonics.

²⁵ []

²⁶ []

²⁷ OUP 2012 Plan

²⁸ []. The parties highlighted Pearson as OUP's strongest competitor.

aged five to eleven. Supplementary schemes may focus on struggling readers, a smaller age range, or a particular niche.²⁹

50. As noted above, the key competitors to OUP in the provision of whole school schemes are Pearson and Collins. OUP also provided the OFT with a list of competing firms which included 10 firms, not including the parties, with schemes including 100 books or more.³⁰ Moreover, there is a wider range of competitors that produce smaller and supplementary schemes. Examples in this category include Rising Stars, Scholastic, and Jolly Phonics.
51. Small schemes may provide a constraint on OUP at the margin, since schools do not have to purchase full schemes and are able to combine multiple schemes. Although some competitors suggested that schools were relatively conservative in their purchases and tended to stay with one (main) scheme, particularly in the earliest years, the majority agreed that teachers will, in reality, mix and match resources from a number of schemes, for example by introducing parts of another programme to supplement an existing scheme. If the school finds that children progress by using the scheme, the school may then purchase the whole scheme.

Other literacy materials as a constraint on OUP's reading schemes

52. OUP submitted that there was no strict demarcation between reading schemes and other resources, and that different types of literacy resources compete, noting that:
- Teachers will mix levelled readers with 'real' books which are not part of a reading scheme, and that any publisher would be able to correlate its books to the Book Bands, 'the widely-used and primary levelling system in the UK.'³¹ This was supported by third party competitors who also referred to the fact that the levelling system supported the use of a mix and match approach.

²⁹ For example, Gardner Education has a range of fourteen schemes, only one of which contains more than 60 books, including a graphic novels scheme, and non-fiction schemes.

³⁰ Barrington Stoke, Collins, Dandelion Books, Gardner Education, Jelly and Bean, Jolly Learning, McGraw-Hill, Pearson, Phonic Books, and Usborne.

³¹ Book Bands for Guided Reading (4th edition), A handbook to support Foundation and Key Stage 1 teachers provided by the Institute of Education, University of London at www.ioe.ac.uk/about/5826.html.

- Other language and literacy resources are also used to teach reading, and will therefore compete with reading schemes. This was supported by third party competitors, with one commenting that there is a wide variety of material that is integral to learning to read and write and competes with reading schemes.

Other primary literacy segments

53. In addition to the comments noted in paragraph 48 above about the closeness of competition between the parties in reading schemes, third party competitors and trade (wholesaler and retailer) customers commented that outside of reading schemes, OUP and Nelson Thornes materials were not close competitors in the wider literacy segment.³² OUP argued that while OUP's strength was in phonics, Nelson Thornes was stronger in 'skills' materials and that Nelson Thornes did not supply any phonics materials, with the result that the parties' primary literacy portfolios were complementary rather than competing.³³
54. The OFT, based on the evidence available, considers that OUP's high market share in literacy is in part because of its successful phonics materials. Demand for these materials has been boosted by government match funding, for which OUP was one of 15 eligible publishers. This funding was available between 2011 and 2013, and assisted in increasing OUP's market share. For example, OUP's shares in primary English increased by [] percentage points between 2009 and 2012. OUP informed the OFT that it believed its share would fall once the funding is discontinued. Third parties confirmed that OUP had received a high proportion of the match funding, providing some support to OUP's arguments.
55. Some competitors argued that OUP's success in gaining Government match funding for its phonics materials is a factor which makes the merger more concerning, since OUP will gain share in circumstances where it has already benefitted from government support that they consider may have raised entry barriers for other non-supported providers. However, the OFT

³² []

³³ The OFT notes that Nelson Thornes made a bid for match funding at the time the set approved suppliers was determined, but was not included in that list.

notes that, even if the scheme had operated to raise barriers, there are five other independent providers, including recent entrants³⁴ offering 'mainstream schemes' eligible for the match funding which appeared in the Department for Education's approved catalogue.³⁵

56. OUP submitted that it will also face constraints from growing digital provision (not included in the estimated market shares), such as 3P Learning's reading programme ('Reading Eggspress') and 'Spellodrome', and literacy materials from other digital providers such as Espresso, Education City, and Renaissance Learning. Self created and free resources from providers such as TES and the Guardian are also used by teachers, particularly for support materials. These materials may provide some additional constraint, although the evidence (as described in the 'product market' section above) does not suggest that digital materials are as yet close substitutes for books.

Barriers to entry and expansion in primary literacy

57. The OFT has considered whether there are barriers to entry and expansion in the primary segment. As per its established Guidelines,³⁶ in assessing whether entry or expansion might prevent a substantial lessening of competition, the OFT considers whether such entry would be: timely, likely, and sufficient.
58. In the primary segment, OUP provided a varied list of competitors, and submitted that the large number of existing competitors and the variety of resources used are evidence that barriers to entry are low. This was supported by examples of recent expansion by digital providers, and OUP argued that these are part of a broader shifting landscape, with technology facilitating the expansion of digital resources in UK primary schools.³⁷

³⁴ Pearson, Jolly Phonics, Phonics International, Sounds Together, and Synthetic Phonics.

³⁵ See www.pro5.org.uk/phonics

³⁶ OFT/CC 2010 Merger assessment guidelines section 5.8

³⁷ Examples include 3P Learning's expansion into Literacy through new online resources – Spellodrome and Reading Eggspress – building on the success of 'Mathletics' which is used by over 3.5 million children in over ten thousand schools worldwide. Teachit expanded in 2008 from secondary English into the primary segment, and now states that 'it is the leading online teacher community.'

59. Competitor responses suggest that the highest barriers to entry are those that relate to reading schemes. OUP and third parties estimated that a whole school reading scheme would cost from £700,000 to £2 million to produce, and would take from one to five years (although the latter would involve a phased introduction with a publisher publishing new material into an existing scheme each year). Costs of entry are lower for smaller schemes, which OUP estimated might cost £50,000 to £70,000 to produce, an estimate which was consistent with third party estimates. The biggest barrier to entry highlighted by competitors was the necessity for a substantial sales force and the difficulty of getting an audience with schools (in which OUP has an advantage because of its other successful materials).
60. On the basis of competitor comments, the OFT does not consider that new entry into whole school reading schemes would be timely or likely enough to provide a sufficient constraint. However, some additional constraint may be provided by the possibility of expansion of existing small schemes – since competitors commented that teachers were willing to try new reading schemes (alongside existing schemes), with some arguing that it was easy to enter the market for reading schemes on a small scale, and that it is possible to expand from that position.³⁸

Conclusion on primary literacy

61. The merged entity will have high shares in the supply of primary literacy resources, and of reading schemes in particular. However, the increment as a result of the merger is small. On the basis of the evidence above, the OFT considers on balance that sufficient constraints will remain after the merger to prevent a significant lessening of competition. These include some large providers of whole-school reading schemes (such as Pearson and Harper Collins), providers of smaller reading schemes (such as Scholastic and Rising Stars), and providers of non-reading scheme books and other literacy resources, as well as the potential constraint provided by the possibility of expansion by existing small schemes.

³⁸ []

SECONDARY SEGMENTS

62. The OFT also considered whether unilateral effects would arise in relation to the loss of competition in the supply of educational materials to any segment of the secondary sector.

Market shares

63. In its analysis, the OFT has focused on those subject/age group segments where high combined market shares (and increments), give rise to prima facie concerns. These are shown in table 2 below.

Table 2: Market shares for those secondary segments where the merged entity would have greater than a 30 per market share.

Subject	Age group	OUP %	Nelson Thornes %	Combined Shares %	Pearson	Hodder	Harper Collins
Design & Technology	11-14	[0-10]	[55-65]	[60-70]	[0-10]		[5-15]
	14-16	[0-10]	[45-55]	[45-55]	[0-10]	[15-25]	[0-10]
Geography	11-14	[35-45]	[15-25]	[55-65]	[5-15]	[0-10]	[0-10]
	14-16	[15-25]	[20-30]	[40-50]	[15-25]	[15-25]	[0-10]
ICT	16+	[15-25]	[15-25]	[30-40]	[0-10]	[35-45]	[0-10]
Modern Languages	16+	[15-25]	[20-30]	[40-50]	[10-20]	[15-25]	[0-10]
Religious Studies	16+	[20-30]	[10-20]	[35-45]	[15-25]	[15-25]	
Science	14-16	[10-20]	[25-35]	[35-45]	[20-30]	[0-10]	[10-20]
Science	16+	[5-15]	[15-25]	[25-35]	[20-30]	[10-20]	[0-10]
English	16+	[10-20]	[15-25]	[30-40]	[10-20]	[0-10]	[0-10]

Source: Parties' and competitors' estimates

64. As noted in the earlier market definition, within the examined subject/age group segment, materials for different exam board syllabuses are weak demand-side substitutes. Consequently, the OFT considers that for

examined segments, the strongest constraints faced by publishers will be from materials aimed at the same syllabuses as their own materials.³⁹

65. The starting point for the assessment of each segment has therefore been to consider the extent to which OUP and Nelson Thornes are supplying materials for the same exam board syllabuses – that is, current competition irrespective of curriculum changes⁴⁰ - and, in cases where they do supply for the same syllabus, to consider whether they face sufficient constraints from other firms.
66. The OFT considers that for the majority of the segments of initial concern (based on market shares and increments) a number of factors point to the merged entity continuing to face competitive constraints going forward:
- for some exam board specifications, the parties do not overlap, suggesting that they are not close competitors
 - OUP provided switching data for English, science (and maths), which also suggests that they compete less closely than implied by their market shares
 - within those exam specifications where OUP and Nelson Thornes do overlap, they remain, in the majority of cases, subject to competition from other publishers active for the same specifications, and
 - in most segments the parties also face constraints from generic or old materials.
67. **Design and Technology** — In this subject the merged entity has a combined share of [60-70] per cent, increment [0-10] per cent for materials for 11-14 year olds. For the 14-16 age group, the combined share drops to [45-55] per cent, increment [0-10] per cent. OUP submitted that it had not published any materials for the current syllabuses in this sector since 2008 (prior to curriculum change), in contrast to Nelson Thornes, which may suggest that the parties were not close competitors. Pearson ([0-10] and [0-10] per cent respectively) and Harper Collins ([5-15] and [0-10] per cent respectively) are also present in both age groups, while Hodder is present in the 14 -16 age group with an estimated [15-25] per cent.

³⁹ Although third parties commented that for some specifications with only few candidates, the course cannot sustain a large number of publishers producing exam-specific materials.

⁴⁰ The OFT has not been able to assess future, post 2015 curriculum change, competition at an exam board level but has assessed the extent to which there will remain sufficient credible suppliers at the time of any curriculum change generally. See the entry and expansion section.

68. **Geography** — For the 11 – 14 age group, where the merged entity has a combined share of [55-65] per cent, increment [15-25] per cent, OUP submitted that the materials were largely complementary, with OUP's text books appealing more to specialist Geography teachers, and Nelson Thornes' text books appealing more to non-specialist teachers. Thus the two sets of material catered for different types of teaching and different types of learning. Pearson ([5-15] per cent), Hodder ([0-10] per cent) and Harper Collins ([0-10] per cent) are also present in 11-14 Geography.
69. For the 14-16 age group, combined shares are [40-50] per cent, increment [15-25] per cent. The parties overlap only in respect of AQA syllabuses. OUP submitted that Pearson ([15-25] per cent) also published for the main AQA syllabus. Hodder ([15-25] per cent) is present in 14-16 Geography across a range of non-AQA specifications, and overlaps with OUP in publishing for the OCR exam board. Harper Collins ([0-10] per cent) is present in this subject through generic materials.
70. No third party raised concerns about the merged entity's presence in the Geography sector, and no third party competitors highlighted OUP and Nelson Thornes as particularly close competitors for this subject.
71. **ICT** — Is a relatively small value segment. Here the merged entity will have a combined share of [30-40] per cent, increment [15-25] per cent. The parties overlap for the AQA syllabus. There are three other large publishers with market share. This includes Hodder, which is also present in AQA, and which OUP estimated as having a greater share of the market than the parties combined.
72. **Modern languages** — In the overall 16+ segment the merged entity will have a combined share of [40-50] per cent, increment [15-25] per cent. Three large traditional publishers, Pearson ([10-20] per cent), Hodder ([15-25] per cent) and Harper Collins ([0-10] per cent) also publish for this sector. The parties overlap for AQA French, German, and Spanish. Pearson also publishes for the AQA French syllabus. One third party commented that Modern Languages was the secondary segment in which OUP and Nelson Thornes most closely competed. However, it also considered Pearson to be very strong in the 11-14 and 14-16 sectors, making it easier for them to enter into more 16+ A Level languages. Hodder also publishes for French, German and Spanish A Level, albeit for different exam boards.

73. **Religious studies** — In the 16+ sector the merged entity will have a combined share of [35-45] per cent, increment [15-25] per cent. Pearson ([15-25] per cent) and Hodder ([15-25] per cent) are also present in this sector. The parties overlap in materials for the AQA exam board, for which Hodder also publishes. Pearson publishes for other exam boards. A third party customer commented that for this subject there was a good choice of resources for all abilities, age ranges and facets of the curriculum and no third party raised concerns.
74. **Science** — For the 14-16 age segment the merged entity will have a combined share of [35-45] per cent, increment [10-20] per cent. There was a significant curriculum change in 2011. OUP submitted that in neither 2010 (pre-change), nor 2012 were there any specifications for which OUP and Nelson Thornes were the only two publishers. Further, in 2010 there were no specifications for which they both published, and following the curriculum change in 2012 there were only 5 of 33 specifications in which they overlapped. Harper Collins, Pearson and Hodder are all present in this segment, and between 2010 and 2012 there have been a number of movements in and out of particular specifications.⁴¹ Furthermore, OUP provided analysis of switching data, which showed that only some [] per cent of each party's new customers were ex-customers of the other party. In 16+ science, the parties overlap in AQA, where Collins is also present. In the segment overall, Pearson and Hodder are also present. A third party customer argued that textbooks are strongly constrained by digital resources, as well as old textbooks (and tight budgets).
75. **English** — for the 16+ segment, combined shares are [30-40] per cent, increment [10-20] per cent. The parties overlap only in materials for the AQA exam board. The AQA board accounts for over 60 per cent of candidates, and, apart from Hodder, the parties are the only firms to publish for it. However, OUP's revenues from resources for AQA English are small (not more than £[]), and OUP submitted that some 70 per cent of spending for 16+ English is for literature texts, which allows generic materials to have a stronger presence.⁴² This is supported by information

⁴¹ The OFT understand that [] is planning to enter the GCSE science segment in the near future (albeit not for a board that the parties currently cover).

⁴² For example, OUP submitted that Pearson has a [15-25] per cent share of the 16+ English segment without publishing for AQA.

provided by Ofqual, who highlighted research showing that the majority of English teachers do not use textbooks.⁴³ The switching data provided by the parties showed that only [] per cent of each party's new customers were ex-customers of the other party.

76. On the basis of this evidence, the OFT considers that in each segment, the parties will continue to face constraints. Constraints are weakest in the two segments (16+ modern languages, and 16+ English) where the parties overlap within a syllabus, without there being another competitor present within that syllabus, as well as a limited number of other segments where the competing publisher does not appear to be providing a strong constraint.
77. The OFT has therefore gone on to consider the extent to which the parties will continue to be constrained through the prospect or threat of entry by publishers that are present in a different syllabus within the same subject/age group segment.

Barriers to entry and expansion in the secondary segment

78. In assessing whether entry or expansion might prevent a substantial lessening of competition, the OFT considers whether such entry would be: timely, likely, and sufficient. Particularly relevant for the analysis below, timeliness requires that entry must be expected to be sufficiently timely so as to constrain the merged firm. The OFT may consider entry or expansion within less than two years as timely, although this is assessed on a case-by-case basis.
79. OUP submitted that barriers to entry into a new segment are low for existing publishers, and particularly for traditional publishers such as Pearson, Collins, and Hodder, as they have a strong position overall and could redeploy production and distribution resources across the secondary segment 'checkerboard'. They argued that small scale entry into a subject could be achieved for as little as £10,000, and for full courses they estimated a cost of £200,000 to £300,000 to produce a typical key stage 3 course and £50,000 to £100,000 for a GCSE or A-Level course. The OFT notes that these estimates exclude sales costs, on which OUP submitted it aims to spend roughly [] per cent of anticipated revenue.

⁴³ Host Policy Research (2012) Textbooks, Study Aids and Support Services Research

80. OUP also argued that barriers to entry were low for new providers as technological and business-model developments meant that it is becoming easier to both produce digital and print educational material (for example through Apple's iBooks Author), and to market it (using platforms such as Amazon). The parties listed a number of new entrants both into digital provision, and into traditional publishing.⁴⁴
81. Competitors, however, suggested that to enter a new segment would take 18 months to two years, and substantial investment, with costs likely to be higher for new entrants that would need to establish credibility and identify buyers. However, new entry is not impossible with at least two competitors CGP and Illuminate having recently entered new secondary segments.

Curriculum changes

82. In the secondary segment, OUP submitted that the 'reset' nature of competition at times of curriculum change means that there are regular opportunities when barriers to expansion within a segment are low, and gave evidence of relatively volatile market shares, including large shifts at times of curriculum change. For example, there was an increase from [5-15] to [15-25] per cent in OUP's share of EPC-reported supply in GCSE Science, from 2005 to 2006 at the time of curriculum change. OUP also provided a number of specific examples of 'off-cycle' publishing, which suggests that it is possible (though more difficult) to expand at times other than those of curriculum change.
83. Third parties commented that publishers present in a particular subject for one exam board were likely to be able to switch to another exam board for the same subject more easily (both within the same age group and in neighbouring age groups). This view was supported through observation of the segments in which the different publishers are present. OUP provided the OFT with detailed evidence showing that the large publishers move between exam boards at times of curriculum change, and also,

⁴⁴ The latter category included Psychology Press (A Level psychology), Barrington Stoke (reading books), Badger Learning (support materials, especially in Science), Coordination Group Publications (revision materials, plus recent entry into resources for AS/A Level), and Illuminate publishing (revision guides, plus recent entry into A Level Biology student books).

occasionally, at other times (mid cycle). This suggests that at the time of curriculum change the parties will likely be constrained by (at least) all publishers who currently publish within a subject and key stage, rather than only those that publish for the same exam board.

84. In every subject and key stage there is at least one other large publisher that has published new materials since the most recent curriculum change – although this publisher may not be in the same syllabus as that in which the parties overlap. In all except 11-14 Geography, there are at least two other large publishers.
85. OUP also highlighted that planned changes in 2015 for GCSEs and A Level exams would amount to a major curriculum change, and that curriculum change stimulates competition. This view is supported by third party competitors, who generally confirmed OUP's proposition that those publishers with established sales forces can move into new curriculum segments relatively easily at the time of a curriculum change. The OFT notes that curriculum change is also the point at which a large number of purchases happen – for example, total sales in GCSE science at the point of curriculum change in 2006/7 and 2011 were more than double the sales made in the intervening years. For A-Level the effect is less marked but sales were about 25-30 per cent higher in 2008 at the time of science curriculum change. This suggests that the strongest competition between publishers occurs at the point at which the highest number of purchases is made.
86. In relation to the prospect for 'entry' as a result of the 'reset' characteristics of the market, driven by curriculum change, the OFT is conscious that curriculum change may be infrequent and not timely or certain enough to put weight on this factor as part of its assessment. In its assessment of the effects of a merger, the OFT would generally be sceptical about the weight that can be attached to planned government policy changes such as curriculum changes where there is uncertainty over whether these will be finally adopted or implemented.
87. However, the OFT has received confirmation from the Department for Education that curriculum change will definitely occur in 2015, with publishers' investment and quality decisions already being made or in the process of being made. For the 14 -16 age group the next curriculum change will apply to GCSEs in English language, English literature,

mathematics, physics, chemistry, biology, combined science (double award), history and geography for first teaching from 2015. Changes to other subjects will follow as soon as possible after that, with the aim that new qualifications are in place for teaching from September 2016. For the 16+ age group it is proposed that fully linear A levels in a range of subjects and standalone AS qualifications will be introduced for first teaching in September 2015. It is anticipated that for subjects requiring more significant change, the new qualifications will be available from 2016.

88. The OFT considers that 'entry' at the point of curriculum change is most likely to occur as a result of publishers with existing presence within a subject producing materials for a new exam-board syllabus in the same subject. In the substantive assessment above, the OFT has therefore taken this constraint into account in a small number of segments. Although the OFT accepts that entry into new subject/age group segments is also made easier by curriculum change, it has not been necessary to conclude on the strength of the constraint provided by such entry.
89. The OFT has examined the extent to which the merger may reduce competition at the time of this 'reset'. The merger will result in the removal of an independent supplier choosing the subject and exam boards for which to produce material for. The OFT notes that post merger three large competitors (Pearson, Hodder and Harper Collins) will remain as well as the smaller Cambridge University Press and others. Further, there is no evidence to suggest that OUP and Nelson Thornes have a greater propensity to compete (or enter) against each other than any of these other publishers and so the OFT does not consider the merger will raise competition concerns in the loss of the merging parties as potential entrants against one another.
90. The OFT was also provided with evidence from smaller niche publishers suggesting that they are able to act as a constraint on the merged entity.⁴⁵ OUP listed a number of smaller publishers such as Psychology Press that are present in specific subject areas, and argued that the merged entity was constrained by the threat of entry and growth of such publishers. It

⁴⁵ For example CGP, which is very strong in revision guides, has recently started producing student books (which compete with textbooks). [] intends to enter new segments in the coming year.

has not been necessary to conclude on the strength of constraint provided by such entry and expansion.

THIRD PARTY CONCERNS

91. Third party views were mixed and have been presented above where relevant. The OFT contacted approximately 90 school customers, fifteen trade customers (retailers and school suppliers), 45 competitors (including providers of digital and free resources) and five exam boards, as well as the educational publishing and bookselling trade bodies and Ofqual (the qualifications regulator).
92. Third party views were mixed. Primary Literacy and in particular Reading Schemes generated the most concerns, while in the secondary segment third parties were generally unconcerned about the effects of the merger. While exam boards raised a concern about the prospect for resources being available for each of their specifications, none raised concerns with the merger. One competitor commented that the merger created a large player with resources that would enable it to get to more schools quicker and more frequently and would create a large editorial resource which would give an unfair advantage with regard to speed to market.⁴⁶

ASSESSMENT

93. The parties overlap in the supply of teaching and learning resources for primary and secondary schools, including key stage 3, GCSE, and A-Level.
94. While it has not been necessary to conclude on the product or geographic market definition, on a cautious basis the OFT considered the supply in the UK of educational publishing in terms of the medium of delivery, age group or school level, and subject.
95. The OFT contacted a number of schools, trade customers, competitors and exam boards, as well as the educational publishing and bookselling trade bodies and Ofqual (the qualifications regulator). Third party views were mixed. Primary Literacy and in particular Reading Schemes generated the

⁴⁶[]

most concerns, while in the secondary segment most third parties were generally unconcerned about the effects of the merger.

96. **Primary Segment** — OUP submitted, and third parties confirmed, that Primary teachers pick and mix a wide range of resources for use in their lessons. Thus the merged entity will face constraints from a range of providers in addition to the large educational publishers. In **primary maths** the merger results in a combined market share of [25-35] per cent, increment [0-10] per cent. A large proportion of OUP's market share is driven by its manipulatives product, which Nelson Thorne does not supply, and the parties are not regarded as close competitors. No significant third party concerns were received about the effect of the merger on the Primary maths segment. Therefore, the OFT considers that the merger is unlikely to lead to a significant lessening of competition in the primary maths segment.
97. In **primary literacy**, the merger results in a combined share of [45-55] per cent, increment [0-10] per cent. The OFT received a number of concerns from third party competitors, which focused particularly on the supply of reading schemes, where estimates suggest the merged entity would have a combined share of [50-60] per cent, increment [0-10] per cent.
98. While the merged entity will have high shares in the supply of primary literacy resources, and of reading schemes in particular, the increment is small, and third parties generally agreed with OUP that Pearson, and Collins, were stronger competitors to OUP than Nelson Thorne. Therefore the OFT considers that sufficient constraints, including some large providers of whole-school reading schemes (such as Pearson and Collins), providers of smaller reading schemes (such as Scholastic and Rising Stars), and providers of non-reading scheme books and other literacy resources, will remain after the merger to prevent a significant lessening of competition.
99. In the **Secondary segment** — the OFT, on a cautious basis, looked at those subject areas, and age groups, where the parties had combined shares greater than 30 per cent. The detailed analysis for each of these segments is contained at paragraphs 67 to 75 above. The OFT contacted a number of schools during its investigation and senior school teachers commented

that exam-board specificity was the most important factor taken into account when purchasing materials.

100. On the basis of the evidence presented at paragraphs 67 to 75 above, the OFT considers that for each of the secondary segments of initial concern (based on market shares and increments) the merged entity will continue to face sufficient constraints going forward, and that, as a result, the merger does not raise the prospect of a significant lessening of competition.
101. OUP provided evidence showing that times of curriculum change were the main occasions when publishers moved between exam boards. The OFT notes that major curriculum change is expected in 2015 at both GCSE⁴⁷ and A Level,⁴⁸ and the OFT has taken this into account in the small number of exam board syllabuses where the parties do not face competition from a competing board-specific resource, but there are competitors in other exam boards within the subject area and to take account of wider competition effects at the time of a curriculum change.
102. On assessing the extent of competition lost as a result of the merger at the time of this reset, that is, the reduced likelihood of OUP and Nelson Thornes entering against each other, the OFT found no evidence to suggest that the merging parties were any more likely to enter against each other than any of the other main publishers.
103. 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.
104. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.

⁴⁷ www.education.gov.uk/schools/teachingandlearning/qualifications/gcses/a00221366/gcse-reform

⁴⁸ <http://ofqual.gov.uk/qualifications-and-assessments/qualification-reform/a-level-reform/>