Competition Commission
SINGAPORE

Section 57 of the Competition Act (Cap. 50 B)

Grounds of Decision issued by the Competition Commission of Singapore

In relation to the application for a decision on the proposed acquisition by Times Publishing Limited of Penguin Random House Pte. Ltd. and Penguin Books Malaysia Sdn. Bhd. pursuant to Section 57 of the Competition Act (Cap. 50B)

25 September 2017

Case number: CCS 400/001/17

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [✂]

Contents

I. THE NOTIFICATION AND EXECUTIVE SUMMARY

1. On 18 January 2017, Times Publishing Limited ("**TPL**") filed a notification pursuant to section 57 of the Competition Act (Cap. 50B) ("**the Act**") for a decision by the Competition Commission of Singapore ("**CCS**") as to whether the following if carried into effect will infringe the section 54 prohibition of the Act:

   a. the proposed acquisition by TPL of Penguin Random House Pte. Ltd. and Penguin Books Malaysia Sdn. Bhd. ("**the Penguin Group Companies**") ("**the Proposed Acquisition**"); and

   b. upon completion of the Proposed Acquisition, the entry into an exclusive distribution agreement by the Penguin Group Companies with Penguin Books Limited, The Random House Group Limited, Penguin Random House LLC, and Dorling Kindersley Limited ("**the Publishers**") to distribute the English book titles (in physical format) published by the Publishers (or its subsidiaries) or in which the Publishers control rights, and products containing the Publishers' brands in Singapore, Malaysia and Brunei ("**the Distribution Agreement**").

   (collectively referred to as "**the Proposed Transaction**")[1]

2. In reviewing the Proposed Transaction, CCS contacted five publishers[2], six distributors[3] and sixteen retailers[4] (collectively referred to as "**Third Parties**"). CCS also engaged three government agencies[5] ("**Agencies**") for information as well as their respective views on the Proposed Transaction in Singapore.

3. Of the Third Parties and Agencies contacted, thirteen replied[6] wherein ten provided substantive responses.[7] The feedback provided expressed concerns that the Proposed Transaction may enable the merged entity to restrict supply or discriminate against other retailers for book titles under the Distribution Agreement.

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[1] Paragraph 1.1 of Form M1.
[2] Publishers: [✂].
[3] Distributors: [✂]. A number of them are also involved in publishing or retail of books.
[4] Physical and online retailers: [✂]. The references to retailers in this paper include dealers as well.
[5] Government agencies: Info-communications Media Development Authority of Singapore ("**IMDA**"); National Library Board ("**NLB**"); and National Arts Council ("**NAC**").
[6] [✂]; IMDA; NAC; and NLB.
[7] [✂]; IMDA; NAC; and NLB.

4. At the end of the Phase 1 review, CCS was unable to conclude, based on the information available at that time, that the Proposed Transaction did not raise competition concerns. On 1 March 2017, CCS sent an issues letter to TPL stipulating the competition concerns identified in the Phase 1 review. On 24 July 2017, TPL offered commitments to address the competition concerns ("**the Commitments**"), and requested CCS to consider the Commitments in lieu of proceeding to a Phase 2 review.

5. Between 26 July 2017 and 8 August 2017, pursuant to section 60A of the Act, CCS conducted a public consultation of the Commitments. CCS received information from distributors and retailers during the public consultation. Taking into account the feedback received, CCS is of the view that the Commitments are sufficient to address the competition concerns that may result from the Proposed Transaction.

6. CCS concluded that subject to the implementation of and compliance with the Commitments, the Proposed Transaction will not infringe section 54 of the Act.

II. THE ACQUIRER

7. TPL seeks to acquire Penguin Group Companies from Penguin Random House Limited ("**PRH**"). TPL provides publishing, printing, distribution and retail services worldwide, including in Singapore[8], and is a wholly-owned subsidiary of Fraser and Neave, Limited ("**F&N**").[9]

8. In Singapore, TPL provides its services primarily under the following brand names:
   a. "Pansing";
   b. "Marshall Cavendish";
   c. "Times Printers"; and
   d. "Times Bookstores".[10]

9. TPL has a number of registered entities in Singapore including:
   a. Marshall Cavendish International (Asia) Private Limited (which is involved in the principal activity of the publishing of trade books);
   b. Pansing Distribution Private Limited ("**Pansing**") (which is involved in the principal activity of the distribution of books and magazines);

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[8] Paragraph 10.5 of Form M1.
[9] Paragraph 7.1 of Form M1.
[10] Paragraph 10.3 of Form M1.

c. Times Experience Pte. Ltd. (which is involved in the principal activity of organising conventions/conferences and e-retail of products and services); and

d. Times The Bookshop Pte. Ltd. ("**TTB**") (which is involved in the principal activity of the retail of books, stationery, magazines and periodicals).[11]

10. Global group turnover for TPL was approximately S$308 million in the financial year ended 30 September 2016.[12] Group turnover for TPL in Singapore for the same period was approximately S$[✂].[13]

III. THE TARGET

11. The target of the Proposed Acquisition is the Penguin Group Companies. The Penguin Group Companies are wholly-owned subsidiaries of PRH, which in turn is a joint venture between Bertelsmann and Pearson, with respective shareholdings of 53 per cent and 47 per cent.[14]

12. PRH is part of the Penguin Random House group of companies ("**PRH Group**"), which also includes Penguin Random House LLC ("**PRH LLC**")[15] and the Publishers[16]. PRH Group is a global trade book publishing group, which is also a joint venture between Bertelsmann and Pearson.[17]

13. The Penguin Group Companies were formed in 2013 to provide sales and marketing services for the international lists they represent as well as several other prominent English-language publishers.[18]

14. TPL submitted that in Singapore, the Penguin Group Companies are primarily active in the provision of marketing and distribution of English-language only print trade books via physical platforms.[19]

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[11] Page 167 of Annex 3 of Form M1.
[12] Paragraph 13.1 of Form M1.
[13] Paragraph 13.4 of Form M1.
[14] Paragraph 7.5 of Form M1.
[15] As defined in Form M1.
[16] Paragraph 11.1 of TPL's response to CCS's Information Request dated 1 February 2017.
[17] Paragraph 10.7 of Form M1.
[18] Paragraph 10.8 of Form M1.
[19] Paragraph 14.2 of Form M1.

15. Penguin Random House Pte. Ltd. is PRH's only registered entity in Singapore.[20]

16. PRH Group and the Penguin Group Companies provide their services in Singapore under the following brand names:
   a. "Penguin";
   b. "Penguin Random House"; and
   c. "Random House".[21]

17. Global group turnover for PRH Group was approximately S$[✂] in the financial year ended 31 December 2015.[22] Group turnover for PRH Group in Singapore for the same period was approximately S$[✂].[23]

18. Global group turnover for the Penguin Group Companies in the financial year ended 31 December 2015 was approximately S$[✂].[24] Group turnover for the Penguin Group Companies in Singapore for the same period was approximately S$[✂].[25]

IV. THE PROPOSED TRANSACTION

19. Pursuant to the Proposed Transaction, TPL will acquire from PRH the entire issued and paid-up capital of each of the Penguin Group Companies and the distribution rights to the English book titles (in physical format) published by the Publishers (or its subsidiaries) or in which the Publishers control rights, and products containing the Publishers' brands in Singapore, Malaysia and Brunei.[26]

20. With respect to the Distribution Agreement which [✂][27]:

   a. The Distribution Agreement includes distribution rights currently held by [✂] in Singapore, Malaysia and Brunei.[28]

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[20] Paragraph 10.2 of Form M1.
[21] Paragraph 10.4 of Form M1.
[22] Paragraph 13.2 of Form M1.
[23] Paragraph 13.5 of Form M1.
[24] Paragraph 13.2 of Form M1.
[25] Paragraph 13.5 of Form M1.
[26] Paragraph 11.1 of Form M1.
[27] Clause [✂] of the Sales and Purchase Agreement in Annex 5 of Form M1.
[28] Paragraph 11.3 of Form M1.

b. Under the Distribution Agreement, the Publishers appoint the Penguin Group Companies as their exclusive distributor. Accordingly, the Publishers shall not distribute, or appoint any other distributor to distribute the English book titles (in physical format) published by the Publishers (or its subsidiaries) or in which the Publishers control rights, and products containing the Publishers' brands in Singapore,[✂].[29]

c. The Distribution Agreement shall continue in force for a period of [✂].[30]

21. **Figure 1** and **Figure 2** illustrate the changes in ownership and distribution arrangements before and after the Proposed Transaction.

[29] Clause [✂] of the Distribution Agreement in Annex 6 of Form M1.
[30] Clause [✂] of the Distribution Agreement in Annex 6 of Form M1.

Figure 1: Schematic Overview of the Proposed Acquisition

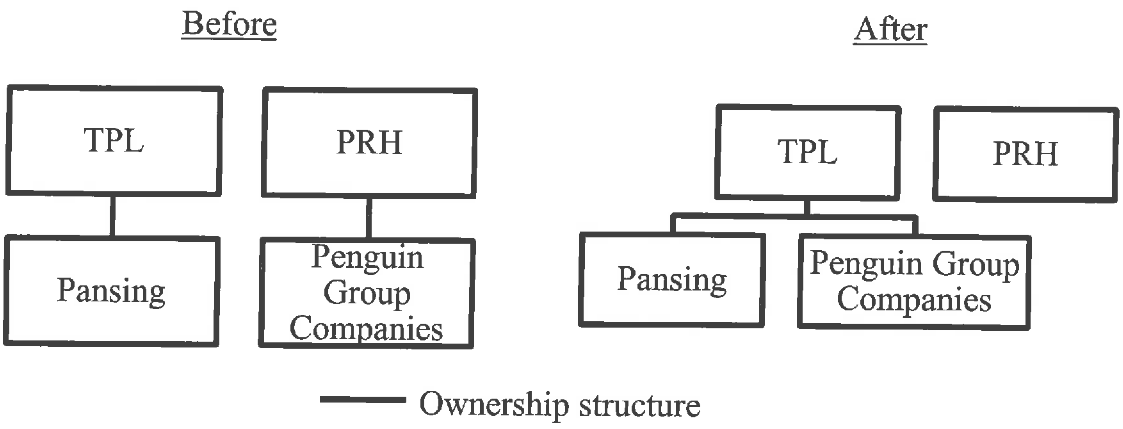
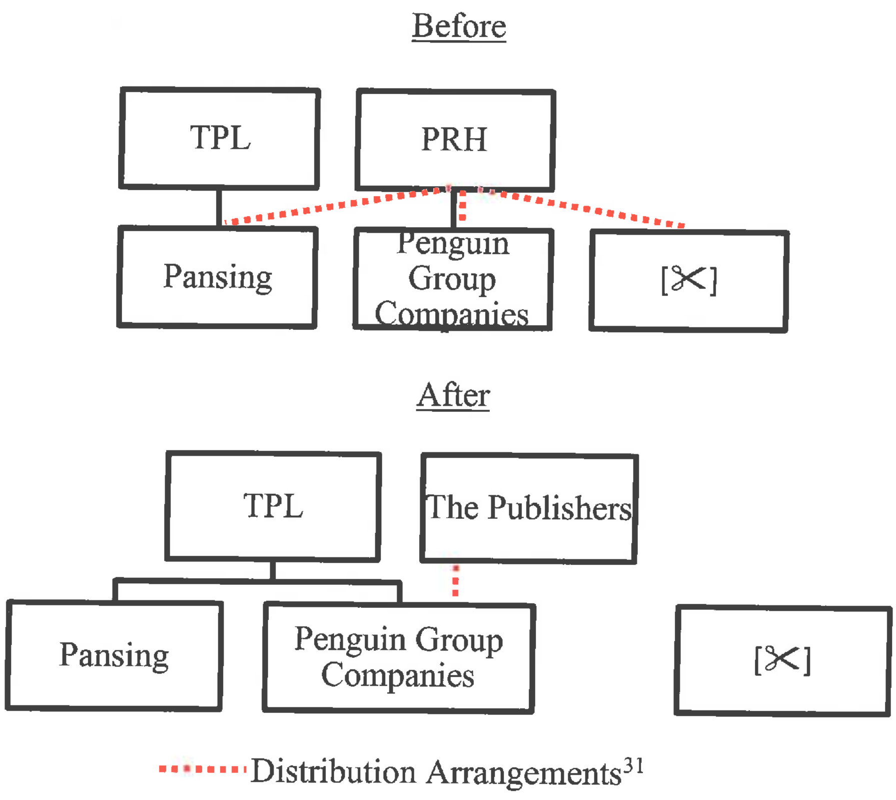


Figure 2: Schematic Overview of the Distribution Arrangements



[31] The distribution arrangements before the transaction were exclusive to each distributor for different titles of PRH.

22. There will be no change in the ownership structures of TPL or PRH Group, other than the fact that the Penguin Group Companies will become wholly-owned by TPL.[32] Other activities of PRH Group are not part of or impacted by the Proposed Transaction.[33] Following the Proposed Transaction, PRH will exit the distribution and marketing business of English-language only print trade books in Singapore, Malaysia and Brunei.[34]

23. The Proposed Acquisition will be funded by TPL's internal resources.[35] The aggregate consideration for the Proposed Acquisition is an amount in cash equal to the sum of S$8 million.[36]

24. TPL submitted that the strategic and economic rationale for the Proposed Transaction is as follows:[37]

   a. PRH's [✂].[38]

   b. TPL expects to derive [✂].[39]

25. TPL submitted that the Proposed Transaction consists of an acquisition of shares which falls within section 54(2)(b) of the Act.[40]

Merger under Section 54 of the Competition Act

26. With regard to the Proposed Acquisition, CCS notes that TPL will acquire the entire issued and paid-up capital of each of the Penguin Group Companies, and hence will acquire direct control of the Penguin Group Companies. Therefore, CCS considers that the Proposed Acquisition constitutes a merger pursuant to section 54(2)(b) of the Act.

27. With regard to the Distribution Agreement, CCS considers that it is an ancillary restriction to the Proposed Acquisition (see paragraphs 156 to 158), and as such, the Distribution Agreement is assessed in conjunction with Proposed Acquisition under the present notification.

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[32] Paragraphs 8.2 and 13.3 of Form M1.
[33] Paragraph 13.3 of Form M1.
[34] Paragraph 11.4 of Form M1.
[35] Paragraph 11.12 of Form M1.
[36] Paragraph 11.8 of Form M1.
[37] Paragraph 12 of Form M1.
[38] Paragraph 12.2 of Form M1.
[39] Paragraph 12.3 of Form M1.
[40] Paragraph 11.5 of Form M1.

V. COMPETITION ISSUES

28. TPL submitted that it (through Pansing and Pansing Malaysia) overlaps with the Penguin Group Companies only in the provision of marketing and distribution of English-language only print trade books via physical platforms in Singapore (the "**Overlapping Product**").[41]

29. Print trade books are physical books which are purchased by the general public in a retail environment (either online or physical) for entertainment purposes, and often on impulse.[42]

Trade book publishing supply chain

30. The marketing and distribution of English-language only print trade books via physical platforms form part of the trade book publishing supply chain. The supply chain consists of the upstream acquisition of publishing rights, editorial input and design, production of the print and/or e-book version of the title and the downstream sale to dealers and consumers as well as marketing and promotional activities. Distributors and marketers are essentially the "middle-men" between publishers and retailers.[43]

31. Publishers in general distribute their products using primary distributors, who may act for more than one publisher. From these primary distributors, print trade books are supplied downstream to retailers, who then sell the print trade books to end-customers. The distributorship agreements for the physical distribution of books within a territory are generally exclusive to one distributor for a defined period, though publishers may appoint multiple distributors to distribute different titles that are respectively exclusive to each distributor.[44] [✂]. For most titles, both US and UK editions will be available, [✂] .The sole physical distinction [✂] is typically only the cover.[45]

32. There are generally no restrictions prohibiting distributors outside the specified territory, e.g. major UK and US wholesalers, from selling the publishers' titles to end-customers within the territory directly, or to retailers

[41] Paragraph 15.1 of Form M1.
[42] Paragraph 1.1 of TPL's response to CCS's Information Request dated 1 February 2017.
[43] Paragraph 18.1 of Form M1.
[44] Paragraph 18.3 of Form M1.
[45] Paragraph 19.3 of TPL's response to CCS's Information Request dated 7 February 2017.

within the territory.[46] Feedback received by CCS did not suggest that retailers in Singapore are restricted from importing titles from overseas distributors.[47]

33. The supply chain for English-language only print trade books via physical platforms can hence be divided into four functional levels, namely:
  a. Publishers' acquisition of publishing rights from authors;
  b. Publishers' supply of books to distributors ("**publishing level**");
  c. Distributors' supply of books to retailers ("**distribution level**"); and
  d. Retailers' sale of books to end-customers ("**retail level**").

34. At the distribution level, CCS considers distributors as resellers of English-language only print trade books to retailers as they usually bear most of the financial and inventory risks. In terms of financial risk, CCS notes that distributors set their own selling price[48] and bear most of the distribution cost. In terms of inventory risk, distributors are generally not able to return all unsold books to the publishers, as there is usually no obligation on the publisher to re-purchase all unsold volumes from the distributors albeit there may be an obligation on the publisher to re-purchase some unsold volumes.[49]

35. As the Proposed Transaction involves a horizontal merger of two distributors, it directly affects the distribution level of the supply chain. CCS first assessed whether the Proposed Transaction will lead to coordinated and/or non-coordinated effects that would substantially lessen competition or raise competition concerns at the distribution level.

36. As TPL is vertically integrated at the upstream publishing level, and also at the downstream retail level (through TTB and Times NewsLink Pte. Ltd. ("**TNL**")), CCS also assessed whether the Proposed Transaction will lead to vertical effects that would substantially lessen competition or raise competition concerns in these upstream and downstream markets.

Online substitution for English-language only print trade books

37. CCS notes that online book sale platforms ("**online platforms**") such as Amazon/Book Depository and Fishpond also sell English-language only print trade books to end-customers through the internet. However, the Proposed Transaction involves a merger of distributors, which are not direct competitors with these online platforms at the retail level. Thus, CCS assessed the degree to which these online platforms would exert competitive

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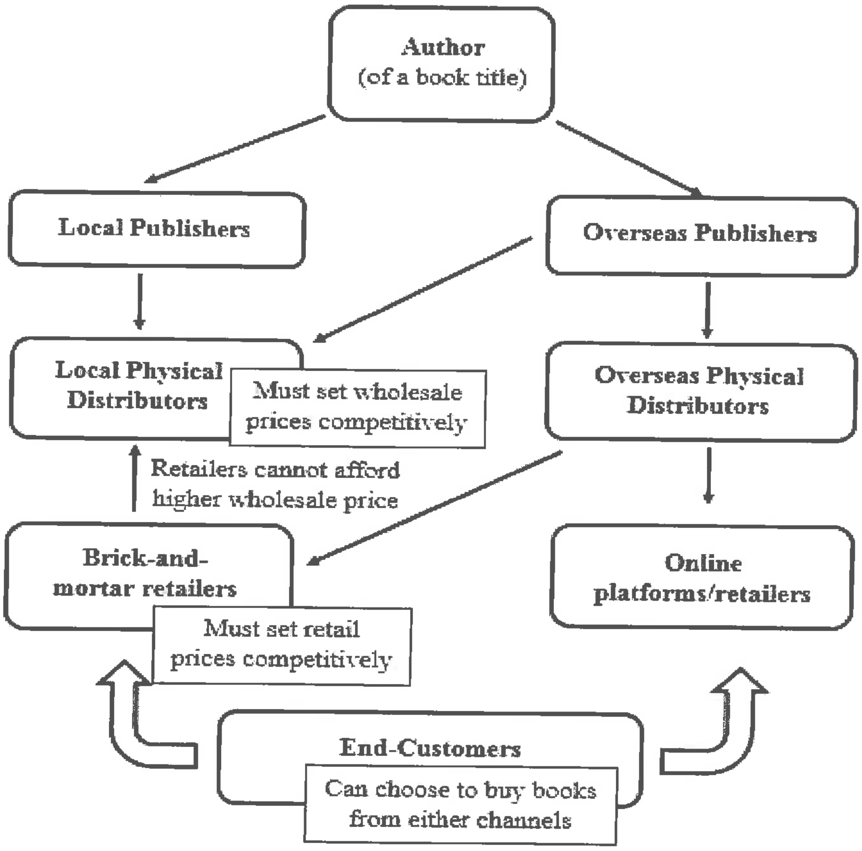
[46] Paragraph 18.3 of Form M1.
[47] Paragraph 7 of Notes of Teleconference between [✂] and CCS dated [✂].
[48] Paragraph 19.12 of Form M1.
[49] Paragraph 24.10 of Form M1.

pressure on the merged entity at the distribution level indirectly through a 'feedback loop', and whether that is sufficient to offset any anti-competitive effects of the Proposed Transaction. **Figure 3** illustrates the feedback loop.

Figure 3: Schematic Overview of the Feedback Loop



Note: The diagram above is not a comprehensive illustration of all the supply relationships amongst the various market players. Instead, the focus of the diagram is on the supply of English-language only print trade books to local physical distributors and brick-and-mortar retailers, based on market feedback.

38. The 'feedback loop' would operate as follows: Online retail platforms could source books from publishers and distributors from another geographic region, and stock them for sale to end-customers in Singapore. These books might include the same edition book title published by the same publisher which is available in the brick-and-mortar retailers, alternative editions of the same book title published by another publisher, or alternative book titles of a similar genre. In this manner, they could compete with brick-and-mortar retailers to supply print trade books to end-customers in Singapore. If competition from online competitors at the retail level would apply pressure to brick-and-mortar retailers to set their retail prices competitively, they would not be able to afford paying uncompetitive wholesale prices to distributors as that would make their retail business uncompetitive. It follows

that the physical distributors, such as the merging entity, would not be able to raise prices post-merger.

39. The extent to which this 'feedback loop' might work would depend on (i) the ability and willingness of end-customers to switch from brick-and-mortar retailers to online platforms, and (ii) the ability (or lack thereof) of brick-and-mortar retailers to absorb a wholesale price increase from the physical distributors that would reduce their retail margins. (Refer to paragraphs 72 to 73 for CCS's assessment)

VI. COUNTERFACTUAL

40. Paragraph 4.14 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016* states that CCS will, in assessing mergers and applying the substantial lessening of competition ("**SLC**") test, evaluate the prospect of competition in the future with and without the merger. The competitive situation without the merger is referred to as the "counterfactual". The SLC test will be applied prospectively, that is, future competition will be assessed with and without the merger.

41. In most cases, the best guide to the appropriate counterfactual will be prevailing conditions of competition, as this may provide a reliable indicator of future competition without the merger. However, CCS may need to take into account likely and imminent changes in the structure of competition in order to reflect as accurately as possible the nature of rivalry without the merger.[50]

<u>TPL's Submission</u>

42. TPL submitted that in the absence of the Proposed Transaction:

   a. TPL will continue to compete with other competitors in the market for the marketing and distribution of English-language only print trade books [✂];[51] and

   b. PRH would [✂].[52] [✂].[53]

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[50] Paragraph 4.16 of *CCS Guidelines on the Substantive Assessment of Mergers 2016.*
[51] Paragraph 23.1 of Form M1.
[52] Paragraph 23.3 of Form M1.
[53] Annex 12 of Form M1.

CCS's Conclusion on the Relevant Counterfactual

43. Though it was submitted that [✂], there is insufficient information for CCS to conclude that this would constitute a likely and imminent change to the market structure in the absence of the merger. Therefore, CCS considers the appropriate counterfactual to be the prevailing conditions of competition. Since the Distribution Agreement is ancillary to the Proposed Acquisition, neither would exist in the counterfactual.

VII. RELEVANT MARKETS

(a) Product Market

TPL's Submission

44. TPL submitted that the relevant product market definition in relation to the overlapping product is the intermediary market for the marketing and distribution of English-language only print trade books via physical platforms at the narrowest,[54] but should be expanded to include online platforms.[55]

Distinction between marketing and distribution services

45. TPL submitted that in the context of Singapore and Malaysia, marketing and distribution services for English-language only print trade books via physical platforms are commonly provided as a single package of services, as:

a. the marketing and distribution functions for print trade books are interlinked and require significant degree of coordination;

b. distributors generally possess the necessary intimate knowledge and business contacts in the local market to conduct the marketing function at the same time; and

c. in light of the small market size, it is generally not economically viable for firms to be set up to manage marketing alone.[56]

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[54] Paragraph 20.1 of Form M1.
[55] Paragraph 20.8 of Form M1.
[56] Paragraph 20.3 of Form M1.

46. TPL submitted that a publisher would also generally outsource the marketing, together with the distribution functions, unless it has sufficient titles or economies of scale to invest resources to internalise the marketing itself.[57] [✂].[58]

47. TPL submitted that there are limited instances where Pansing handles only distribution but not marketing services.[59]

Possible segmentation by classes of retailers

48. TPL submitted that a segmentation by classes of retailers (e.g. large bookshops and specialised superstores, local bookshops, hypermarkets) does not apply in respect of Singapore and Malaysia as the small market size means it is not generally economically viable for the sales and marketing functions to be organised by type of customer.[60] TPL also submitted that there are no material differences in supplying different types of book to retailers.[61]

49. TPL submitted that Pansing internally organises its marketing and distribution function by the type of product, rather than type of customers.[62]

Whether the relevant market includes online platforms

50. TPL submitted that the relevant product market should be expanded to include online platforms[63] on the basis that intermediate customers are able to easily, and do, switch to purchasing English-language only print trade books from online platforms. As such, online platforms are able to, and do, pose key competitive constraints on physical distributors.[64]

51. Further, TPL submitted that online platforms are able to supply English-language only print trade books to intermediate customers and end-consumers in Singapore, as there are no territorial limits, physical limits (i.e. most of the marketing and distribution services can be provided online and offsite) or contractual restrictions within the distribution agreements that

[57] Paragraph 20.3.3 of Form M1.
[58] Paragraph 6.1 of TPL's responses to CCS's Information Request dated 1 February 2017.
[59] Paragraph 20.4 of Form M1.
[60] Paragraphs 20.5 and 20.6 of Form M1.
[61] Paragraph 19.21 of Form M1.
[62] Paragraph 20.6 of Form M1.
[63] Paragraph 20.8 of Form M1.
[64] Paragraph 20.8.1 of Form M1.

prohibit or restrict the sale of print trade books from outside Singapore into Singapore.[65]

CCS's Assessment

Distinction between the supply of English-language only print trade books and provision of marketing services by distributors

52. CCS is of the view that for the purpose of CCS's assessment, there is no need to define separate markets for the supply of English-language only print trade books to retailers, and the provision of marketing services.

53. While it may be possible for the supply of English-language only print trade books and the provision of marketing services to be provided separately, both are closely related to the same objective of enhancing book sales. In reality, both are usually rendered under the same contractual agreement by the same provider.

54. In any case, feedback from Third Parties did not suggest any concern on the Proposed Transaction in relation to specifically the provision of marketing services.

55. Therefore, CCS is of the view that for the purpose of CCS's assessment, there is no need to define separate markets for the supply of English-language only print trade books and the provision of marketing services.

Possible segmentation by classes of retailers

56. CCS has considered a possible market segmentation by classes of retailers e.g. large bookshops and specialised superstores, local bookshops, and hypermarkets.

57. In addition to TPL's submission that there are no material differences in supplying to different types of customers, CCS notes that [✂].[66]

58. Therefore, for the purpose of CCS's assessment, CCS is of the view that it is not necessary to further segment the market by groups of retailers.

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[65] Paragraph 20.8.2 of Form M1.
[66] Annexes 6, 7 and 8 of Form M1.

Whether the relevant market includes e-books

59. CCS considered whether the relevant market includes electronic version of English-language only print trade books ("**e-books**").[67] In this regard, CCS notes that TPL did not submit that e-books are in the same relevant product market. CCS also notes a strong local preference for print books over e-books based on the following results from the 2015 National Literary Reading and Writing Survey:

    a. Print books are the dominant form in Singapore, as a mere 13% of readers only read e-books.[68]
    b. Print books constituted more than three-quarters of literary book purchases for 90% of people who had bought a book in the past 12 months from the time of survey.[69]
    c. Almost all the book buyers agreed that they would pay more for print books. One third of them also indicated that they were willing to pay a premium of $10 to $19.99 for a print book over an e-book.[70]

60. Therefore, in the absence of evidence for demand and supply substitutability between print books and e-books, CCS is of the view that there is no need to include e-books in the relevant market.

Whether certain book categories/genres or individual book titles constitute separate markets

61. CCS considered whether certain book categories/genres or individual book titles constitute separate product markets.

62. According to TPL, print trade books consist of the following categories: (i) general literature; (ii) children's books; (iii) art books; (iv) guides and manuals; (v) strip cartoon albums, though such classifications are not absolute, and there may be overlaps.[71]

63. From a demand substitution perspective, market feedback is mixed as to whether retailers are able to substitute books in one category with books from

[67] E-books shall not be confused with online sale of print books.
[68] Page 21 of the 2015 National Literary Reading and Writing Survey.
[69] Page 42 of the 2015 National Literary Reading and Writing Survey.
[70] Page 43 of the 2015 National Literary Reading and Writing Survey.
[71] Paragraph 1.2 and 1.3 of TPL's response to CCS's Information Request dated 1 February 2017. The book categories are based on paragraph 194 of EC Case No COMP/M.2978 – Lagardere/Natexis/VUP, and paragraph 154 of EC Case No Comp/M.6789 – Bertelsmann/Pearson/Penguin Random House.

another.[72] In this regard, CCS observed that several retailers in Singapore, e.g. specialist bookstores, do focus on certain book categories, and hence may not consider books from other categories to be substitutable.

64. From a supply substitution perspective, there is feedback from Third Parties that existing distributors are able to obtain the necessary distribution rights from relevant publishers/authors to start supplying books for any category within a year.[73]

65. However, CCS notes that different book titles may not be perfect substitutes even if they belong to the same genre/category. For example, from a demand-side perspective, retailers may not consider the *Harry Potter* series and the *Lord of the Rings* series to be interchangeable, even though they might belong to the same genre of books. From the supply-side perspective, the distributor of the *Lord of the Rings* series may not be able to obtain the distribution rights to promptly enter into the distribution of the *Harry Potter* series.

66. In this regard, CCS is of the view that there is naturally some degree of product differentiation between book titles and categories/genres. While there is market feedback to suggest a degree of supply-side substitution between book categories, CCS finds it inappropriate to adopt a binary approach to market definition, where different book titles and categories/genres of books are either perfect substitutes or not competing at all.

67. Instead, for the purpose of CCS's assessment, while CCS includes all English-language only print trade books in the relevant product market, the degree of product differentiation and substitutability will be considered in the assessment of effects on competition.

68. CCS considered whether certain key book titles may constitute their own separate markets. Market feedback in this regard is mixed. Several Third Parties provided feedback that there are "must stock" titles that retailers have to stock regardless of wholesale price.[74] In contrast, another third party

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[72] Paragraph 15 of Notes of Teleconference between [✂] and the CCS on [✂]. Paragraph 21 of [✂] Response to CCS's Invitation to Comment dated [✂].

[73] Paragraphs 25 and 26 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraphs 25 and 26 of [✂] response to CCS's Invitation to Comment dated [✂].

[74] The following key titles were cited as examples of key titles that retailers must stock: (i) the Harry Potter series, (ii) Ladybird series, (iii) Penguin Classics series; and (iv) Roald Dahl series.

suggested instead that "there are no mandatory titles, only bestsellers which are sometimes price inelastic, e.g. during book launch."[75]

69. In this regard, CCS notes that there is naturally some degree of product differentiation between book titles, and that the degree of substitutability between different titles will be considered in the competition assessment.

Whether the relevant market at the distribution level includes online platforms

70. CCS also considered whether the relevant market should include online platforms. In this regard, CCS has observed that online platforms such as Amazon and Book Depository are retailers which engage in the sale of books through the internet to end-customers. Though it is possible for brick-and-mortar retailers to source their supply of books from online platforms, market feedback indicates that retailers do not source from online platforms since prices of online platforms are already marked up to the retail level.[76]

71. Therefore, CCS is of the view that the relevant product market at the distribution level should not include the supply of English-language only print trade books by online platforms.

Relevant market at the retail level to assess feedback loop

72. CCS recognises that online platforms may compete with brick-and-mortar retailers downstream, and hence have the potential to exert competitive pressure upon distributors indirectly through a 'feedback loop' as described above.

73. Therefore, CCS is of the view that the relevant product market at the retail level should be defined as the sale of English-language only print trade books via brick-and-mortar retailers and online platforms, such that an assessment on the effects of the feedback loop from the retail level can be performed. The extent of competitive pressure from online retailers/platforms is assessed below.

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[75] Paragraph 21 of [✂] response to CCS's Invitation for Comments dated [✂].

[76] Paragraph 10 of Notes of Teleconference between [✂] and CCS dated [✂]. Paragraph 24 of Notes of Teleconference between [✂] and CCS dated [✂].

(b) Geographic Market

TPL's Submission

74. TPL submitted that if the relevant product market is considered narrowly, the relevant geographic scope of the market is regional, specifically Singapore and Malaysia.[77] However, if the relevant product market is defined to include online platforms, the relevant geographic scope of the market is global.[78]

CCS's Assessment of the Relevant Geographic Markets

75. Market feedback confirms that retailers have no difficulty sourcing books from overseas distributors, for example in Malaysia, though several Third Parties indicated their preference to source from within Singapore as it is faster and cheaper.[79]

76. Therefore, for the purpose of CCS's assessment, CCS accepts TPL's submission that the relevant geographic markets for the marketing and distribution of English-language only print trade books is regional, specifically Singapore and Malaysia.

77. In terms of the geographic market at the retail level for the assessment of the 'feedback loop', online platforms have been selling books from various overseas locations and shipping to Singapore. As such, CCS defines the relevant geographic market at the retail level as global in nature. The exact extent of competitive pressure from overseas online retailers/platforms is assessed below.

78. It should be noted that, when CCS refers to the geographic market as regional or global, it means the sale of the relevant products from regional or global locations to customers in Singapore.

(c) Overall Assessment

79. Given the considerations set out above, CCS is of the view that the relevant markets for the competition assessment of the Proposed Transaction are:

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[77] Paragraph 20.9 of Form M1.
[78] Paragraph 20.11 of Form M1.
[79] Paragraph 1 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 5 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 9 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 10 of Notes of Teleconference between [✂] and CCS on [✂].

a. the market for marketing and distribution of English-language only print trade books via physical platforms regionally, specifically Singapore and Malaysia; and

b. the market for retail sale of English-language only print trade books by retailers, including brick-and-mortar retailers in Singapore and online platforms globally.

(the "**Relevant Markets**")

VIII. MARKET STRUCTURE

(a) Market shares and market concentration

<u>TPL's Submission</u>

80. TPL submitted that TPL's and the Penguin Group Companies' estimated market shares of the marketing and distribution of English-language only print trade books in Singapore and Malaysia via physical platforms in 2015 were [20-30]% and [10-20]% respectively.[80] The market share estimates by value of the marketing and distribution of English-language only print trade books in Singapore and Malaysia via physical platforms in 2015 are set out in **<u>Table 1</u>** below.

<u>Table 1: Estimated market shares in the market for marketing and distribution of English-language only print trade books via physical platforms in Singapore and Malaysia for 2015 (by value)</u>

Market players	Estimated market shares
TPL (through Pansing and Pansing Malaysia)	[20-30]%
Penguin Group Companies	[10-20]%
Parties Combined	**[40-50]%**

[80] TPL submitted that the estimated market shares would be broadly similar in 2013 and 2014, as TPL observed no significant market developments between 2013 and 2015. TPL is not able to provide estimates of market size and shares by volume, as such figures are not available. (Paragraphs 21.3 and 21.5 of Form M1)

MPH Distributors[81]	[10-20]%
APD	[0-10]%
Wiley	[0-10]%
Other distributors/publishers	[20-30]%
Overseas wholesalers	[0-10]%
Total	**100%**
Pre-merger CR3	**[50-60]%**
Post-merger CR3	**[60-70]%**

<u>CCS's Assessment</u>

81. CCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless:

    a. the merged entity will have a market share of 40% or more, or

    b. the merged entity will have a market share of between 20% to 40% and with a post-merger CR3 at 70% or more.[82]

82. CCS notes that the Proposed Acquisition will lead to a merger between the top two players, which will increase the estimated market share of the market leader to [40-50]%, more than double that of the next largest market player ([10-20]%), and crosses the first threshold above. Other local distributors collectively accounted for about half of the market ([50-60]%). Overseas wholesalers accounted for [0-10]%.

83. Third Party feedback confirms that TPL and Penguin Group Companies are the two largest players in the market, and that other local distributors are relatively smaller.[83]

84. Such a combined market share level may indicate potential competition concerns regarding the loss of competition between the top two players, as

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[81] [✂].

[82] Paragraph 5.15 of *CCS Guidelines on the Substantive Assessment of Mergers 2016*.

[83] Paragraph 6 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 6 of [✂] response to CCS's Invitation to Comment dated [✂].

well as the limited ability of the next largest player to competitively constrain the merged entity. However, exceeding the thresholds of market share alone do not give rise to a presumption that the Proposed Transaction will substantially lessen competition.[84] CCS needs to consider other relevant factors to make an assessment, which will be covered in the sections below.

85. In particular, CCS considered the extent to which competitive constraint comes from a 'feedback loop' from the retail level. For the assessment of the feedback loop, CCS took reference to the market shares estimated by TPL which suggests that at the downstream retail level, English-language only print trade books from online platforms would similarly make up [40-50]% of the retail market.[85]

(b) Barriers to entry and expansion

86. In assessing barriers to entry and expansion, CCS considered whether entry by new competitors or expansion by existing competitors may be sufficient in likelihood, scope and time to deter or defeat any attempt by the merging parties or their competitors to exploit the reduction in rivalry flowing from the Proposed Transaction, whether through coordinated or non-coordinated strategies.

<u>TPL's Submission</u>

87. TPL submitted that barriers to entry and expansion are low and declining.[86]

88. TPL submitted that the costs of working capital do not constitute a prohibitive barrier to entry[87], as the books distribution and marketing is not a capital-intensive industry, and any capital expenditure required to enter the industry would be marginal.[88] TPL estimated based on Pansing's working capital parameters that in order to operate a business with a turnover of approximately 5 per cent of the total market size in Singapore and Malaysia, the required working capital for a new entrant would be approximately S$[✂].[89]

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[84] Paragraph 5.16 of the CCS Guidelines on the Substantive Assessment of Mergers 2016.
[85] Paragraph 21.3 of Form M1.
[86] Paragraph 28.2 of Form M1.
[87] Paragraph 26.3 of Form M1.
[88] Paragraph 26.1 of Form M1.
[89] Paragraph 26.2 of Form M1. TPL's assumption is that the new entrant will engage the services of a third party logistics provider. Further, TPL has also assumed that the key difference between a new entrant and an existing distributor in entering the market would be the capital expenditure required, which is not likely to be significant.

89. TPL submitted that the intellectual property ("**IP**") rights over a publishers' titles, such as copyrights, territorial licenses and trademarks [90] do not constitute significant barriers to entry. This is because a publisher would generally grant access to the requisite IP rights to a distributor when entering into a distribution agreement. Similarly, IP rights would not be an issue if a publisher were to self-supply and internalise the marketing and distribution functions.[91]

90. TPL submitted that approval from the IMDA for the Registered Importers Scheme is not difficult to obtain. Pansing, MPH, APD and Wiley & Sons are among the IMDA's list of registered importers. Further, the IMDA's list also includes several Pansing's customers, such as [✂].[92]

91. On potential entrants, TPL submitted that:

a. A new entrant can easily tie-up with a third party logistics provider ("**3PL**") to offer the full marketing and distribution services.[93]

b. Publishers may self-supply by internalising the marketing function, and engaging a 3PL for the distribution function.[94]

c. 3PLs may themselves expand the scope of their services to offer marketing and distribution services for English-language only print trade books in Singapore and Malaysia.[95]

d. Online platforms, which are not bound by territorial limits, are able to easily distribute print trade books to intermediate customers, or end-customers directly, in Singapore and Malaysia, with little incremental cost or difficulty.[96]

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[90] Paragraph 18.6 of Form M1.
[91] Paragraph 28.1 of Form M1.
[92] Paragraph 28.1 of Form M1.
[93] Paragraph 28.3 of Form M1.
[94] Paragraph 28.3 of Form M1.
[95] Paragraph 28.3 of Form M1.
[96] Paragraph 28.4 of Form M1.

Feedback from Third Parties

92. With regard to entry barriers, market feedback is mixed. While there is feedback that entry barriers are relatively low[97], there is also feedback that the rate of successful entries in the past has been low, and that the need to secure distribution agreements with publishers is a significant barrier.[98]

93. With regard to expansion barriers, market feedback suggests that existing distributors do not face any supply constraints, such that they are able to handle any surge in orders, and are generally able to supply other categories of books as well.[99]

CCS's Assessment

94. According to the *CCS Guidelines on Substantive Assessment of Mergers 2016*, for new entry (actual or threatened) to be considered a sufficient competitive constraint, three conditions must be satisfied: The entry must be likely, sufficient in extent and timely.[100]

95. CCS notes that entry barriers to distributing the same book title are high, due to the prevalence of exclusive distribution agreements between publishers and distributors for individual book titles. Publishers who have already appointed an exclusive distributor to market and distribute a particular book title in Singapore are contractually bound against supplying the same book title in Singapore to a new entrant. In addition, the merging parties are vertically integrated to the publishing level. Authors who have already appointed a publisher in Singapore are typically bound by contract against supplying the same book title to an alternative publisher in the same region.

96. CCS went on further to assess the entry barriers for the marketing and distribution of alternative book titles of the same category/genre from those of existing distributors.

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[97] Paragraph 13 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 13 of [✂] response to CCS's Invitation to Comment dated [✂].
[98] Paragraph 13 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 15 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 14 of [✂] response to CCS's Invitation to Comment dated [✂].
[99] Paragraph 10 of [✂] response to CCS's Invitation to Comment dated [✂].
[100] Paragraph 5.19 of *CCS Guidelines on the Substantive Assessment of Mergers 2016*.

97. CCS notes TPL's submission that the required capital cost[101] and regulatory approvals[102] are not significant entry barriers. IMDA confirmed that there is no licensing requirement for publications imported into Singapore. Only an import permit is required, and it is not difficult to apply for and obtain one.[103]

98. However, CCS is of the view that obtaining distribution agreements from a sufficient number of publishers to amass critical scale to sustain a viable distribution business would be a significant entry barrier. First, based on TPL's submissions and market feedback[104], existing distributors tend to distribute for multiple publishers, suggesting that it may not be commercially viable for publishers to set up distribution operations just to distribute its own published books. The need for publishers to secure distribution agreements with other publishers would be a significant entry barrier for publishers to self-distribute their published books. Second, in securing the necessary distribution agreements from publishers, a potential new entrant would be precluded from securing distribution agreements from publishers who already have established their own distribution operations or have appointed exclusive distributors in Singapore and Malaysia. Third, there had not been any instances of market entry and exit in the market for marketing and distribution services besides the acquisition of joint control of PRH Group by Bertelsmann and Pearson in 2013.[105]

99. Regarding expansion barriers, CCS notes from feedback by distributors that they do not face any supply constraints, which suggests that existing competing distributors are able to expand capacity for the books that they currently supply, or for new books if they are able to obtain the necessary rights from the relevant publishers or authors. In this regard, existing distributors would also face similar constraints when publishers already have their own distribution operations or have appointed exclusive distributors in Singapore and Malaysia.

100. In light of the above, CCS considers that at the distribution level, barriers to entry are high, while barriers to expansion are moderate, suggesting that the

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[101] Paragraph 26.3 of Form M1.

[102] Paragraph 28.1 of Form M1.

[103] IMDA's response to CCS's Invitation to Comment dated 7 February 2017.

[104] Paragraph 9 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 15 of [✂] response to CCS's Invitation to Comment dated [✂].

[105] CCS did not receive any information in the course of its phase 1 assessment to suggest any recent entry or exit by other distributors. TPL did not submit any other instances of market entry and exit in the last five years aside from the acquisition of joint control of PRH Group by Bertelsmann and Pearson and the proposed exit of Penguin Group Companies in paragraphs 29.1 and 29.2 of Form M1.

main competitive constraint on the merged entity would have to come from existing, rather than potential, competitors.

(c) Countervailing Buyer Power

101. The *CCS Guidelines on the Substantive Assessment of Mergers 2016* state that the ability of a merged entity to raise prices may be constrained by the countervailing power of customers.[106]

TPL's submission

102. TPL submitted that the market for the marketing and distribution of English-language only print trade books via physical and online platforms is highly competitive.[107]

103. Accordingly, publishers and retailers are able to exercise strong countervailing buyer power and impose downward pressure on pricing and terms.[108]

104. For publishers, TPL submitted that:

    a. Large publishers are able to self-supply marketing and distribution services, as they have sufficient economies of scale to internalise their marketing and distribution functions, and have their own sales and marketing teams, and distribution tools. In this regard, most major publishers are vertically integrated in marketing and distribution. Accordingly, it would be feasible for any major publishers to establish their own operations in Singapore (or in the Asia region, but including Singapore) if necessary.[109]

    b. There are no significant barriers that would impede publishers from switching distributors, and switching costs are minimal, if at all.[110] For example in 2016, [✂] and [✂] switched from [✂] to [✂]and in-house respectively, while [✂] switched to [✂] from [✂].[111]

[106] Paragraph 5.60 of *CCS Guidelines on the Substantive Assessment of Mergers 2016.*
[107] Paragraph 32.2 of Form M1.
[108] Paragraph 32.3 of Form M1.
[109] Paragraph 32.1 of Form M1.
[110] Paragraphs 24.13 of Form M1.
[111] Paragraph 32.2 of Form M1.

c. Publishers have strong bargaining power relative to distributors, as publishers hold the publishing rights to print trade books, and are generally able to terminate the distribution agreement easily.[112]

105. For retailers, TPL submitted that:

a. Switching costs are not high or prohibitive such that retailers would be deterred from switching distributors.

b. Retailers also have strong bargaining power relative to distributors, as the sale of print trade books typically constitutes only a part and in some cases a low proportion of the products sold.[113]

<u>CCS's Assessment</u>

Countervailing power from publishers

106. CCS accepts TPL's submission that publishers have the ability to switch distributors since they hold the publishing rights and are generally able to terminate the distribution agreement. In this regard, CCS notes that [✂] distribution agreements with [✂] and [✂] both allow either party to terminate with a [✂] notice.[114] However, CCS notes that the ability of publishers to terminate an agreement in itself is not sufficient to prove that publishers are able to switch to another distributor, or credibly threaten to do so, in order to constrain the merged entity. It depends on the availability of viable alternatives.

107. In terms of self-distribution by publishers, CCS notes that it might be feasible for larger publishers to set up their own distribution operations in Singapore and Malaysia to distribute their own published books. However, PRH's decision to divest the Penguin Group Companies [✂] seems to indicate the difficulty in sustaining self-distribution in the Relevant Market. As noted above, evidence seems to suggest that distributing books for multiple publishers is necessary to sustain a viable distribution business, and that a publisher would face difficulties in securing distribution rights from other publishers which have already appointed their respective distributors.

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112 Paragraph 32.3 of Form M1.

113 Paragraphs 24.13 to 24.17, and 32.2 to 32.3 of Form M1.

114 Annexes 7 and 8 of Form M1.

Countervailing power from retailers

108. Market feedback indicates that retailers generally have multiple supplying distributors for English-language only print trade books and have no difficulty switching distributors. However, only larger retailers are able to negotiate for better prices and additional margins or advertisement and promotional expenses based on their size and purchasing power. Smaller retailers tend to enjoy the same standard discounts.[115]

109. However, with regard to the Publishers' titles, CCS notes that retailers would not be able to directly source from the Publishers or any other distributors in Singapore, Malaysia or Brunei, since these titles would be distributed exclusively through Penguin Group Companies via the Distribution Agreement.

110. With regard to the 'feedback loop', CCS recognises that there is an indirect mechanism where brick-and-mortar retailers reflect the competitive pressure they face from online players at the retail level when negotiating with physical distributors. However, CCS notes that this is not the typical situation where countervailing buyer power is exerted by strong downstream players. Instead, the downstream players in the present are possibly in such a delicate position that they may not be able to sustain commercial viability with any exploitation of market power by distributors such as the merging entity.

111. In light of the above, CCS assessed that in the Relevant Markets at the distribution level of the supply chain, it is not clear that publishers and retailers are able to exercise sufficient countervailing power to constrain the merged entity.

IX. COMPETITION ASSESSMENT

(a) Non-coordinated effects

112. Non-coordinated effects may arise where, as a result of the Proposed Transaction, the merged entity finds it profitable to raise prices, or reduce output or quality, because of the loss of competition between the merged entities.[116] Other firms in the market may also find it profitable to raise their prices because the higher prices of the merged entity's product will cause

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[115] Paragraph 12 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 25 of Notes of Teleconference between [✂] and CCS dated [✂].

[116] Paragraph 5.21 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016.*

some customers to switch to competitors' products, thereby increasing demand for the competitors' products.[117]

113. TPL submitted that non-coordinated effects will not arise as a result of the Proposed Transaction for the following reasons:

a. the market for the marketing and distribution of English-language only print trade books via physical platforms is highly competitive, in view of the multitude of vertically-integrated publishers, independent distributors, online platforms and overseas wholesalers;

b. distributors are essentially the "middle-men" between publishers and retailers, who are able to exercise strong countervailing buyer power and impose downward pressure on pricing and terms, and this strong pressure constrains the margins that distributors can make on the sale of each trade book;

c. upstream publishers are able to terminate contracts for marketing and distribution services and switch distributors upon termination of the contracts. There are no high or prohibitive switching costs deterring publishers from switching distributors. Publishers can, and do in fact, switch distributors;

d. downstream retailers are similarly able to switch distributors and marketers. [✂], and there are also no high or prohibitive switching costs deterring retailers from switching suppliers;

e. publishers and retailers are also able to, and do, procure (i) marketing and distribution services; and (ii) English-language trade books, respectively, from more than one supplier;

f. there are several factors which publishers and retailers consider in choosing distributors, including but not limited to (i) for publishers, sales performance, terms of agreement and marketing commitment; and (ii) for retailers, the discount provided, list price and service levels; and

g. barriers to entry and expansion are low and declining, as obtaining the necessary distribution rights from publishers is not unduly restrictive or prohibitive.[118]

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[117] Paragraph 5.30 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016*.
[118] Paragraph 34.1 of Form M1.

CCS's Assessment

Effects arising from the Proposed Acquisition

114. CCS notes that while the Proposed Acquisition will create a market leader that has more than twice the estimated market share ([40-50]%) of its closest competitor ([10-20]%), the merged entity will continue to face competition from other smaller local distributors ([50-60]%) and overseas wholesalers ([0-10]%) for general categories of English-language only print trade books.

115. In this regard, CCS has received market feedback which indicates that the merged entity will not be able to raise wholesale price for English-language only print trade books in general, or reduce the quality of its marketing or distribution service.

116. Market feedback also indicated that retailers generally have multiple supplying distributors at any point in time. Though retailers are not able to find supply substitutes for the same books which are distributed exclusively by a particular distributor[119], retailers are able to switch distributors for an alternative title within a single category/genre of English-language only print trade books without significant difficulties.[120]

117. CCS also notes that, since there is some degree of product differentiation by individual book titles, the incremental price effect arising from the Proposed Transaction would be smaller. This is because TPL and the Penguin Group Companies would have each exploited their respective abilities to maximise the prices of their book titles, such that the scope for further price increase arising from the Proposed Transaction would be limited.

Competition from online platforms

118. One Third Party distributor said that the ability for the merged entity to raise prices would depend whether online platforms continue to competitively constrain the merged entity. [121] Though online platforms may exert competitive constraint on the merged entity through the feedback loop, it is unclear to CCS on the extent of such an effect.

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[119] Paragraph 10 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 9 of Notes of Teleconference between [✂] and CCS on [✂].

[120] Paragraph 4 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 8 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 11 of [✂] response to CCS's Invitation to Comment dated [✂].

[121] Paragraph 9 of [✂] response to CCS's Invitation to Comment dated [✂].

119. In this regard, TPL submitted there are strong and competitive challenges arising from online platforms to the physical distribution of English-language only print trade books.[122] CCS also notes that English-language only print trade books from online platforms (generally attributable to Amazon) make up [40-50]% of the retail market for English-language only print trade books (refer to paragraph 85 above).

120. CCS has also received the following market feedback:

a. Both physical distributors and brick-and-mortar retailers perceive online platforms as potential competitive threat.[123]

b. Online platforms offer a wider range of books and cheaper prices compared to physical retailers.[124]

c. Prices are very transparent at the retail level as one can easily look up for the price of a specific title on the online platforms.[125]

d. Books unsold by retailers are generally fully returnable to the distributors for a credit note in return. Most books are sold on this basis, i.e. sale or return.[126] Therefore, distributors bear most of the inventory risk and have the incentive to price competitively.

121. However, CCS also found evidence to suggest a preference by the majority of consumers in Singapore to purchase print trade books from brick-and-mortar retailers.

a. Based on the National Literary Reading and Writing Survey 2015, *"despite the increasing popularity of online shopping, Singaporeans*

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[122] Paragraph 18.11 of Form M1.

[123] Paragraph 7 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 21 of Notes of Teleconference between [✂] and CCS dated [✂]. Paragraph 13 of Notes of Teleconference between [✂] and the CCS on [✂].

[124] Paragraph 14 of Notes of Teleconference between [✂] and CCS on [✂].

[125] Paragraph 7 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 7 of [✂] response to CCS's Invitation to Comment dated [✂]. Paragraph 13 of Notes of Teleconference between [✂] and CCS on [✂]. Paragraphs 9 and 24 of Notes of Teleconference between [✂]and CCS on [✂].

[126] Paragraph 20 of Notes of Teleconference between [✂] and CCS on [✂]. Some books may be supplied on a firm basis by distributors which means that unsold books are not returnable.

appeared to favour physical bookstores - 8 out of 10 book buyers would head to physical bookstores only".[127]

b. In *CCS Occasional Paper: E-commerce in Singapore*, print books did not feature in the top five retail categories for online shopping in Singapore in the three surveys undertaken between 2013 and 2014. The survey findings are based on the percentage of survey respondents who indicated that they have made an online purchase in that category.[128]

122. While the evidence is mixed as to the extent of competitive constraint from online platforms, CCS notes that the incremental price effects arising from the Proposed Transaction are unlikely to be significant in any case, given the product differentiation between individual book titles.

Effects arising from the Distribution Agreement

123. In respect of the Publishers' titles under the Distribution Agreement, CCS notes that after the Proposed Transaction, the Publishers' titles would be distributed only through the merged entity pursuant to the Distribution Agreement. Despite the consolidation of the Publishers' titles under a single distributor, CCS notes that this is not likely to affect the state of competition at the distribution level. As distributorship agreements are exclusive in nature[129], the supply choices available to retailers for each of the Publisher's titles would generally remain unchanged.

124. Given the above, CCS is of the view that non-coordinated effects are not likely to arise in the Relevant Markets.

(b) Coordinated effects

125. A merger may also lessen competition substantially by increasing the possibility that, post-merger, firms in the same market may coordinate their behavior to raise prices, or reduce quality or output.[130] Given certain market conditions, and without any express agreement, tacit collusion may arise merely from an understanding that it will be in the firms' mutual interests to

[127] Section 4.6 of the National Literary Reading and Writing Survey 2015 conducted by the Singapore National Arts Council.

[128] Table 2 of *CCS Occasional Paper: E-Commerce in Singapore – How it affects the nature of competition and what it means for competition policy* dated 2 December 2015.

[129] Before the Proposed Transaction, different sets of PRH's titles were distributed exclusively through each of Pansing, Penguin Group Companies and [✂].

[130] Paragraph 5.33 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016*.

coordinate their decisions.[131] Coordinated effects may arise where a merger reduces competitive constraints from actual or potential competition in a market, thus increasing the probability that competitors will collude or strengthening a tendency to do so.[132]

TPL's Submission

126. TPL submitted that coordinated effects will not arise as a result of the Proposed Transaction[133], given that the three conditions set out in the *CCS Guidelines on the Substantive Assessment of Mergers 2016* are not met[134], namely:

   a. TPL and other competitors are not able to align their behaviour in the market;

   b. TPL and other competitors do not have the incentive to maintain coordinated behaviour, as there is no credible deterrent mechanism that can be activated if deviation is detected; and

   c. coordinated behaviour is not sustainable in the face of other competitive constraints in the market.[135]

127. This is in view of the following:

   a. there are numerous competitors of varying sizes, including vertically-integrated publishers, independent distributors, online platforms and overseas wholesalers, such that the merged entity will not be able to align or coordinate its behaviour with other competitors post-Proposed Transaction;

   b. there is strong pressure placed by both the upstream and downstream players to constrain the margins that distributors can make on the sale of each trade book, which would make it extremely difficult for the merged entity to monitor compliance with any coordinated activities;

[131] Paragraph 5.34 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016*.
[132] Paragraph 5.35 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016*.
[133] Paragraph 35.1 of Form M1.
[134] Paragraph 35.2 of Form M1.
[135] Paragraph 35.3 of Form M1.

c. barriers to entry and expansion are low and declining. Any coordinated behaviour may be easily disrupted by an opportunistic new entrant, in particular 3PLs; and

d. publishers and retailers have strong bargaining power relative to distributors, and are able to exercise strong countervailing bargaining power and impose downward pressure on pricing and terms in response to any observed coordinated behaviour.[136]

<u>CCS's Assessment</u>

128. Market feedback indicates that the industry is generally not conducive to coordination by distributors, and that the Proposed Transaction would not make coordination any easier.[137] Further, wholesale prices are bilaterally negotiated between distributors and retailers, and are generally not transparent to other distributors or retailers. Product differentiation between book titles also makes it difficult for competitors to coordinate on prices.

129. In light of the above, CCS concludes that the Proposed Transaction does not raise concerns in terms of coordinated effects on competition in the Relevant Markets.

X. VERTICAL EFFECTS

130. A merger may allow the merged entity to foreclose rivals from either an upstream market for selling inputs or a downstream market for distribution or sales. For example, if the merged entity supplies a large proportion of an important input to a downstream process where it also competes, it may be able to dampen competition from its rivals in the downstream market, for example, by diverting its production of the input entirely to its own downstream process.[138]

<u>TPL's Submission</u>

131. TPL submits that the Proposed Transaction does not give rise to any vertical concerns, as:

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[136] Paragraph 35.4 of Form M1.
[137] Paragraphs 17-18 of [✂] response to CCS' Invitation to Comment dated [✂]. Paragraphs 17-18 of [✂] response to CCS' Invitation to Comment dated [✂]. Paragraphs 17-18 of [✂] response to CCS' Invitation to Comment dated [✂]. Paragraphs 17 of [✂] response to CCS' Invitation to Comment dated [✂]. Paragraph 2 of Notes of Teleconference between [✂] and CCS on [✂].
[138] Paragraph 6.11 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016*.

a. TPL will not gain any market power in the upstream market for the acquisition of publishing rights for English-language only print trade books which it can leverage on downstream;

b. TPL will not gain any market power in the downstream physical book retail space as there remain a multitude of larger competitors in the downstream retail space, and market foreclosure effects are not likely;

c. within the intermediary space for marketing and distribution services, the Proposed Transaction does not inhibit the ability of other publishers and retailers to switch freely and easily to other distributors without any significant switching costs;

d. publishers and retailers will continue to be able to exercise strong countervailing buyer power and impose downward pressure on pricing and terms;

e. there remains the ability of major publishers to, or credibly threaten to, internalise demand by establishing their own marketing and distribution operations in Singapore (or in the Asia region, but including Singapore); and

f. the barriers to entry and expansion into the Relevant Market continue to be low and declining.[139]

<u>CCS's Assessment</u>

132. At the publishing level, CCS considered whether the merged entity will have a greater ability or incentive to prevent publishers upstream from distributing their books via other distributors in Singapore. Given the numerous distributors and the moderate barriers to expansion for the distribution of English-language only print trade books in Singapore, CCS is of the view that the Proposed Transaction will not significantly affect the ability of publishers to appoint alternative distributors for the distribution of English-language only print trade books in Singapore.

133. At the retail level, market feedback indicates concerns that the Proposed Transaction may enable the merged entity to restrict supply or discriminate

[139] Paragraph 36.8 of Form M1.

against other retailers.[140] In this regard, CCS is concerned that the merged entity will have greater ability or incentive to restrict supply of books to other retailers, particularly for supply of the Publishers' titles.

134. In particular, CCS is of the view that:

a. Before the Proposed Transaction, neither PRH nor the Penguin Group Companies was affiliated to any retailer in Singapore, and PRH books were sold through different distributors to multiple retailers. After the Proposed Transaction, titles by the Publishers will only be sold through the merged entity which will also be affiliated to a downstream retailer – thus there may be incentive for the merged entity to foreclose third party retailers.

b. PRH Group which the Publishers are part of is known to be one of the world's leading print trade book publishers, and is likely to hold the publishing rights for a substantial list of book titles[141] – thus any effects from the restriction of supply by the merged entity is likely to affect a substantial list of titles;

c. Out of 90 book titles in the Singapore bestseller lists of Popular, Kinokuniya, Times Bookstores and MPH Bookstores,[142] 48% (43 book titles) of the book titles are from publishers affiliated with PRH Group. Out of these 43 book titles, 56% (24 book titles) do not have a different edition from another publisher - thus retailers may only be able to obtain these titles from the merged entity after the Proposed Transaction; and

d. The merged entity will acquire an exclusive supply of books by the Publishers pursuant to the Distribution Agreement for at least [✂] –

[140] Paragraph 4 of Notes of Teleconference between [✂] and CCS on [✂]. Paragraph 1 of Notes of Teleconference between [✂] and CCS on [✂]. Paragraph 7 of [✂] response to CCS' Invitation to Comment dated [✂].

[141] According to an article dated 26 August 2016 from the Publishers Weekly, Penguin Random House was ranked among publishers to be the fifth largest publishers globally, and is the only purely trade publisher to be among the world's 10 largest publishers. Link: https://www.publishersweekly.com/pw/by-topic/international/international-book-news/article/71268-the-world-s-52-largest-book-publishers-2016.html.

[142] In deriving these figures, CCS analysed the bestseller book lists of Popular, Kinokuniya, Times Bookstores and MPH Bookstores available on each of the retailers' websites during the week of 13 February 2017. For each bestseller title, CCS checked Amazon's US website (http://www.amazon.com/) and Amazon's UK website (http://www.amazon.co.uk) during the same week to determine whether there are US and UK editions of the title, and whether the respective publisher is affiliated with the PRH Group.

thus any effects from the restriction of supply by the merged entity will be for a significant period of time.

TPL's Further Submissions

135. In response to CCS's issues letter dated 1 March 2017 raising the above concerns, TPL objected to CCS's concerns and made further submissions that it is in TPL's interest to continue to supply English-language only print trade books which it distributes to other retailers. In particular:

   a. TPL's presence in the downstream retail business is limited and declining. Third party retailers account for [✂] per cent of TPL's books distribution revenue in Singapore in 2016, [✂]. Therefore, it is in TPL's interest to continue to supply English-language only print trade books to third party retailers.[143]

   b. TPL will still need to meet its annual sales targets; [✂]. TPL submitted that it is therefore critical for TPL to continue to supply English-language only print trade books to other retailers to leverage on their retail presence and reach.[144]

CCS's Further Assessment

136. TPL's retail presence is estimated by TPL to be [20-30]% in 2015[145], which is not insignificant. In any case, it is not necessary for TPL to have a significant retail presence to leverage upon the distribution exclusivity for a large stable of book titles and expand its market share in the retail market.

137. In this regard, CCS notes that Clause [✂] of the Distribution Agreement states that [✂]. However, CCS is of the view that [✂] in itself may not be sufficient to offset the incentive of the merged entity to discriminate against third party retailers such as through price discrimination which might render third party retailers commercially unviable, and accordingly generating more sales for its own retailers.

138. Based on the foregoing, CCS concludes that the Proposed Transaction may give rise to vertical effects that would raise competition concerns in the retail market.

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[143] Paragraphs 5.5, 5.7 and 5.8 of TPL's submission dated 8 March 2017 in response to CCS's Issues Letter dated 1 March 2017.
[144] Paragraphs 5.9 to 5.11 of TPL's submission dated 8 March 2017 in response to CCS' Issues Letter dated 1 March 2017.
[145] Paragraph 36.4 of Form M1.

XI. CLAIMED EFFICIENCIES

TPL's Submission

139. TPL submitted that it envisages that the Proposed Transaction would enable TPL to derive cost savings from [✂].[146]

CCS's Assessment

140. The *CCS Guidelines on the Substantive Assessment of Mergers 2016* provide that CCS can consider the presence of any economic efficiencies in markets in Singapore that could outweigh the SLC arising from the merger.[147]

141. CCS may take into account efficiencies where (i) the efficiencies increase rivalry in the market so that the merger does not result in an SLC, or (ii) the efficiencies do not increase rivalry, but will bring about lower cost, greater innovation and greater choice or higher quality and be sufficient to outweigh the adverse effects resulting from the adverse effects resulting from the SLC caused by the merger.[148]

142. For the assessment of claimed efficiencies, merger parties should produce detailed and verifiable evidence about the claimed efficiencies, as CCS will not consider claims if they are vague, speculative, or otherwise cannot be verified.[149]

143. CCS notes that the efficiencies claimed by TPL are neither quantified nor substantiated with verifiable evidence. Therefore, there is insufficient information to assess that the efficiencies outweigh or eliminate any lessening of competition.

XII. ANCILLARY RESTRICTIONS

144. Paragraph 10 of the Third Schedule to the Act states that *"[t]he section 34 prohibition and the section 47 prohibition shall not apply to any agreement or conduct that the directly related and necessary to the implementation of a merger"* (**"the Ancillary Restriction Exclusion"**). In order to benefit from

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[146] Paragraphs 12.3 and 42.1 of Form M1.
[147] Paragraph 7.1 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016.*
[148] Paragraph 7.3 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016.*
[149] Paragraphs 7.9-7.10 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016.*

the Ancillary Restriction Exclusion, a restriction must be directly related and necessary to the implementation of the merger.[150]

145. In order to be directly related, the restriction must be connected with the merger, but ancillary or subordinate to its main object.[151] A restriction is not automatically deemed to be directly related to the merger simply because it is agreed upon at the same time as the merger, or expressed to be so related. If there is little or no connection with the merger, such a restriction will not be ancillary.[152]

146. In determining the necessity of the restriction, considerations such as whether its duration, subject matter and geographical field of application are proportionate to the overall requirements of the merger will be taken into account. It is likely to be the case that the restriction is necessary to the implementation of the merger where, for example, in the absence of the restriction, the merger would not go ahead or could only go ahead at substantially higher costs, over an appreciably longer period, or with considerably greater difficulty.[153]

<u>TPL's Submission Regarding the Distribution Agreement</u>

147. Upon completion of the Proposed Transaction, TPL will indirectly acquire the exclusive distribution rights held by the Penguin Group Companies under the terms of the Distribution Agreement in Singapore, Malaysia and Brunei for the specified term.[154]

148. The parties to the Distribution Agreement are the Publishers and the Penguin Group Companies.[155]

149. The relevant defined terms within the Distribution Agreement are as follows:

    a. [✂]; and

    b. [✂].[156]

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[150] Paragraph 9.6 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016.*
[151] Paragraph 9.7 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016.*
[152] Paragraph 9.9 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016.*
[153] Paragraph 9.10 of the *CCS Guidelines on the Substantive Assessment of Mergers 2016.*
[154] Paragraph 43.1 of Form M1.
[155] Paragraph 43.4 of Form M1.
[156] Paragraph 43.4 of Form M1.

150. Pursuant to Clause [✂] of the Distribution Agreement, the Publishers appoint the Penguin Group Companies as the exclusive distributor to [✂]. ("**the Exclusivity Restriction**")[157]

151. In addition, pursuant to the Clause [✂] of the Distribution Agreement, the Distribution Agreement shall continue in force for a period of [✂].[158]

152. TPL has submitted that:

a. The Exclusivity Restriction is necessary for the implementation of the Proposed Transaction in order to allow TPL to benefit fully from the goodwill and value that is acquired as part of the Proposed Transaction;

b. The consideration for the Proposed Acquisition includes the value of the exclusive distribution rights to be acquired through the Distribution Agreement to be entered into in connection with, and upon completion of, the Proposed Acquisition; and

c. The Exclusivity Restriction is not overly restrictive. In general, distribution agreements for the physical distribution of books within a territory are exclusive to one distributor for a defined period. As set out in Clause [✂] of the Distribution Agreement, [✂].[159]

153. In response to CCS's request to further substantiate how the Distribution Agreement is directly related and necessary for the implementation of the Proposed Acquisition, TPL submitted that the rationale of the Proposed Transaction, as a whole, is [✂].[160] The Distribution Agreement is intended to [✂]. The Exclusivity Restriction and the duration of the Distribution Agreement were integral in [✂].[161]

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[157] Annex 6 of Form M1.
[158] Annex 6 of Form M1.
[159] Paragraph 43.6 of Form M1.
[160] Paragraph 14.4 of TPL's response dated 8 February 2017 to CCS's Information Request dated 1 February 2017.
[161] Paragraph 14.5 of TPL's response dated 8 February 2017 to CCS's Information Request dated 1 February 2017.

154. TPL further submitted that [✂].[162] Without the Distribution Agreement, the exclusivity to the Distribution Agreement and the duration of the Distribution Agreement, the Proposed Acquisition would [✂].[163]

155. Additionally, TPL submitted that distributorship agreements for the physical distribution of books within a territory are generally [✂].[164]

<u>CCS's Assessment</u>

156. *CCS's Guidelines on the Substantive Assessment of Mergers 2016* state that non-compete clauses, if properly limited, are generally accepted as essential if the purchaser is to receive the full benefit of any goodwill and/or know-how acquired with any tangible assets. CCS will consider the duration of the clause, its geographical field of application, its subject matter and the persons subject to it. Any restriction must relate only to the goods and services of the acquired business and apply only to the area in which the relevant goods and services were established under the previous/current owner.[165]

157. CCS notes that the Distribution Agreement is akin to a non-compete clause, in that PRH will not re-enter the distribution and marketing business of English-language only print trade books in Singapore, Malaysia and Brunei, at such time that the Distribution Agreement is in force. CCS also notes that the Distribution Agreement pertains to the goods and services of the acquired business, i.e. the distribution of English-language only print trade books published by the Publishers through physical platforms. The Distribution Agreement is also restricted to Singapore, Malaysia and Brunei.

158. CCS notes TPL's submission that given the nature of and rationale behind the Proposed Transaction, the [✂] duration of the Distribution Agreement is necessary to [✂].[166] CCS also notes TPL's submissions that the Proposed Transaction would [✂] in the absence of the Distribution Agreement. CCS is of the view that the Distribution Agreement, as set out in Annex 6 of Form M1, is directly-related and necessary to the implementation of the Proposed Acquisition and therefore constitutes an ancillary restriction. In this decision,

[162] Paragraph 14.2 of TPL's response dated 8 February 2017 to CCS's Information Request dated 1 February 2017.

[163] Paragraph 17.1 of TPL's response dated 8 February 2017 to CCS's Information Request dated 1 February 2017.

[164] Paragraph 15.2 of TPL's response dated 8 February 2017 to CCS's Information Request dated 1 February 2017.

[165] Paragraph 9.12 of *CCS's Guidelines on the Substantive Assessment of Mergers 2016*.

[166] Paragraph 14.5 of TPL's response dated 8 February 2017 to CCS's Information Request dated 1 February 2017.

CCS has taken into account the Distribution Agreement in its assessment of the Proposed Transaction.[167]

XIII. COMMITMENTS

159. At the end of the Phase 1 review, CCS sent an issues letter to TPL on 1 March 2017 setting out the potential competition concerns identified with the Proposed Transaction. On 24 July 2017, TPL offered the Commitments in lieu of proceeding to a Phase 2 review.

160. A copy of the Commitments can be found at **Annex A**. In summary,

   a. TPL undertakes to supply third party retailers the full range of books by the Publishers on fair, reasonable and non-discriminatory ("**FRAND**") basis, including pricing.[168]

   b. TPL will apply the same Distributor Recommended Retail Price to all retailers for the same title and same edition of the books by the Publishers.[169]

   c. The application of varying discounts to the Distributor Recommended Retail Price based on the objective discount criteria set out in Schedule 2 of the Commitments applied in a FRAND manner shall be an example of compliance.[170]

   d. TPL is not prevented from adjusting trading terms for the distribution of books by the Publishers, provided these adjustments are FRAND toward third party retailers.[171]

   e. The Commitment Period covers the term of the Distribution Agreement.[172]

   f. TPL shall provide CCS with cooperation, assistance and information as CCS may reasonably require to monitor compliance by TPL with the Commitments.[173]

   g. TPL shall appoint a Monitoring Trustee which will monitor the compliance of TPL with the Commitments and provide CCS with a

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[167] Refer to paragraph 43 on the assessment of the counterfactual, and to paragraphs 132 to 138 on the assessment of vertical effects.

[168] Paragraph 3.3 of the Commitments.

[169] Paragraph 3.4 of the Commitments.

[170] Paragraph 3.5 of the Commitments.

[171] Paragraph 3.7 of the Commitments.

[172] Paragraphs 2.1.6 and 3.8 of the Commitments.

[173] Paragraph 3.10 of the Commitments

written report every 12 months. The Monitoring Trustee shall be responsible for assessing all complaints regarding a potential breach of the Commitments, and providing its assessment in writing to CCS within 20 working days of the receipt of the complaint.[174]

161. Pursuant to section 60A of the Act, CCS conducted a public consultation of the Commitments between 26 July 2017 and 8 August 2017. CCS received feedback from Third Parties during the public consultation.[175] The feedback indicates that they do not object to the Commitments, and that the Commitments will assist to ensure that the book distribution and retail markets remain competitive after the Proposed Transaction is completed.

162. Following its consultation, according to the table below, CCS considers the Commitments to be sufficient to address the potential competition concerns that may arise from the Proposed Transaction, if it were carried into effect.

Potential Competition Concerns	**Commitments**
1) The merged entity may refuse to supply or restrict supply to third party retailers	TPL undertakes to supply third party retailers the full range of Publishers' books
2) The merged entity may discriminate by increasing price or offering unfavorable supply terms to third party retailers	With regard to pricing, TPL undertakes to supply the Publishers' books to third party retailers at pricing which is non-discriminatory, including to apply the same Distributor Recommended Retail Price to all retailers. The Commitments allow TPL to apply varying discounts to the Distributor Recommended Retail Price based on a set of objective discount criteria <u>only if</u> the criteria are applied in a FRAND manner. With regard to supply terms, TPL undertakes to ensure that their adjustments to trading terms are FRAND towards third party retailers.

[174] Paragraph 4.1 of the Commitments, and paragraphs 3.1, 3.1.1 and 3.1.2 of Schedule 1 of the Commitments.
[175] [✂].

3) The merged entity may raise prices at the distribution level for all retailers to foreclose competition at the retail level.	The commitment to supply books by the Publishers to third party retailers at prices which are fair and reasonable.

XIV. CONCLUSION

163. CCS concludes that, subject to the implementation of and compliance with the Commitments, the Proposed Transaction will not infringe section 54 of the Act.

164. In relation to the enforcement of the Commitments, conditions of acceptance of the Commitments are set out in section 60A of the Act. The effect and enforcement of the Commitments are set out in sections 60B and 85 of the Act together with consequences for any failure to comply. Those consequences include revocation of the clearance decision for non-compliance with the Commitments.[176] CCS may also apply to the District Court to have the Commitments registered with the Court such that the Commitments would have the same force and effect, as if they had been an order originally obtained in the District Court which shall have power to enforce it accordingly.[177]

165. In accordance with section 57(7) of the Competition Act, this decision shall be valid for a period of one (1) year from the date of this decision.

Toh Han Li
Chief Executive
Competition Commission of Singapore

[176] Section 60B(2)(b) of the Competition Act.
[177] Section 85 of the Competition Act.

ANNEX A

Allen & Gledhill

DATED 20 SEPTEMBER 2017

BEHAVIOURAL COMMITMENTS TO THE COMPETITION COMMISSION OF SINGAPORE

ALLEN & GLEDHILL LLP
ONE MARINA BOULEVARD #28-00
SINGAPORE 018989

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1. Introduction

1.1 Pursuant to paragraph 6.8 of the CCS Guidelines on Merger Procedures 2012, and in connection with the CCS' letter of 1 March 2017, TPL hereby enters into the commitments set out in paragraph 3 below ("**Commitments**") in order to enable the CCS to make a decision, pursuant to Section 60A of the Act, that:

1.1.1 the proposed acquisition by TPL of the entire issued and paid-up capital of each of the Penguin Group Companies, which are wholly-owned subsidiaries of PRH (the "**Proposed Acquisition**"); and

1.1.2 upon completion of the Proposed Acquisition, the entry into an exclusive distribution agreement by the Penguin Group Companies with Penguin Books Limited, The Random House Group Limited, Dorling Kindersley Limited and Penguin Random House LLC (the "**Publishers**"), subject to the terms and conditions of the distribution agreement ("**Distribution Agreement**"), as set out in Annex 6 to the Form M1, to distribute the English books titles (in physical format) published by the Publishers (or its subsidiaries) or in which the Publishers control rights, and products containing the Publishers' brands in Singapore, Malaysia and Brunei,

(the "**Proposed Transaction**"), if carried into effect, will not infringe Section 54 of the Act.

1.2 TPL enters into the following Commitments with the CCS with the objective of assuring the CCS that the Proposed Transaction would not result in a substantial lessening of competition in markets in Singapore, notwithstanding that TPL objects to the issues identified by the CCS in the CCS' letter of 1 March 2017.

1.3 TPL will use all reasonable endeavours to ensure the satisfaction of the Commitments set out below provided that this shall not give rise to an obligation on TPL to take such action which would, or would be likely to, have such a detrimental effect on the current or future development of TPL, and/or its respective related entities. TPL reserves the right, at any time during the Commitment Period, if it considers that any action is likely to have such a detrimental effect on the current or future development of TPL and/or its respective related entities, to make an application, supported by reasons, to the CCS as set out in paragraph 5.2 below.

2. Definitions

2.1 In the following Commitments, unless the subject or context otherwise requires, the following words, expressions and abbreviations have the following meanings ascribed to them:

2.1.1 "**Act**" means the Competition Act, Chapter 50B of Singapore;

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2.1.2 "**Approved Audit Plan**" shall have the meaning as ascribed to it in paragraph 3.1.1 of Schedule 1;

2.1.3 "**Audit Report**" shall have the meaning as ascribed to it in paragraph 3.1.2 of Schedule 1;

2.1.4 "**CCS**" means the Competition Commission of Singapore;

2.1.5 "**Commitments**" shall have the meaning as ascribed to it in paragraph 1.1 as set out above;

2.1.6 "**Commitment Period**" means the period starting from the Effective Date, during which the Commitments are in effect, which, unless the Commitments are terminated pursuant to paragraph 5.2 below, is the same as the term of the Distribution Agreement, or the term of any exclusive distribution arrangement between the Merged Entity with the Publishers for the distribution of the Relevant English Books in Singapore in place of the Distribution Agreement, provided always that such term, taken together with the term that the Distribution Agreement was in effect and any other period between the Distribution Agreement and any exclusive distribution arrangements between the Merged Entity and the Publishers for the distribution of the Relevant English Books by the Merged Entity in Singapore during the Relevant Period, does not in aggregate exceed 12 years from the Effective Date. For the avoidance of doubt, if the term of any exclusive distribution arrangement other than the Distribution Agreement entered into during the Relevant Period extends beyond the Relevant Period, the Commitment Period shall nevertheless be limited to the Relevant Period;

2.1.7 "**Distributor Recommended Retail Price**" means the recommended retail selling price set by the Penguin Group Companies, Pansing or Pansing Malaysia, as distributors, to retailers for the Relevant English Books;

2.1.8 "**Distribution Agreement**" shall have the meaning as ascribed to it in paragraph 1.1.2 as set out above;

2.1.9 "**Effective Date**" means the date of commencement of the first exclusive distribution arrangement entered into between the Merged Entity and the Publishers for the distribution of the Relevant English Books by the Merged Entity in Singapore, following the completion of the Proposed Acquisition, be it the Distribution Agreement or otherwise;

2.1.10 "**Existing Agreements**" shall mean agreements between any of the Penguin Group Companies, Pansing, and Pansing Malaysia with Third Party Retailers that has not been terminated or expired by the date of commencement of the Commitment Period, and does not include new agreements entered into, or existing agreements renewed, on or after the date of commencement of the Commitment Period;

2.1.11 "**F&N**" means Fraser and Neave, Limited;

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2.1.12 "**Merged Entity**" means all the entities falling within the F&N group of companies as at the date of completion of the Proposed Acquisition, including TPL, all of TPL's subsidiaries, and the Penguin Group Companies;

2.1.13 "**Merged Entity Retail Platforms**" shall have the meaning as ascribed to it in paragraph 3.3 as set out below;

2.1.14 "**Merger Decision**" means a favourable decision by the CCS within a Phase 1 Review that the Proposed Transaction will not, if carried into effect, infringe Section 54 of the Act;

2.1.15 "**Monitoring Trustee**" means one or more natural or legal person(s), independent from the Merged Entity, who is/are approved by the CCS and appointed by TPL and who has/have the duty to monitor TPL's compliance with the conditions and obligations as set out in the Commitments;

2.1.16 "**New Distributor**" shall have the meaning as ascribed to it in paragraph 3.6 as set out below;

2.1.17 "**Pansing**" means Pansing Distribution Private Limited;

2.1.18 "**Pansing Malaysia**" means Pansing Distribution Sdn Bhd;

2.1.19 "**Penguin Group Companies**" means Penguin Random House Pte. Ltd. and Penguin Books Malaysia Sdn. Bhd.;

2.1.20 "**Phase 1 Review**" means a preliminary assessment by the CCS pursuant to the CCS Guidelines on Merger Procedures 2012;

2.1.21 "**PRH**" means Penguin Random House Limited;

2.1.22 "**Pricing**" means the price payable by retailers to the Penguin Group Companies, Pansing and Pansing Malaysia for the Relevant English Books;

2.1.23 "**Proposed Acquisition**" shall have the meaning as ascribed to it in paragraph 1.1.1 as set out above;

2.1.24 "**Proposed Transaction**" shall have the meaning as ascribed to it in paragraph 1.1 as set out above;

2.1.25 "**Publishers**" shall have the meaning as ascribed to it in paragraph 1.1.2 as set out above;

2.1.26 "**Relevant English Books**" shall have the meaning as ascribed to it in paragraph 3.1 as set out below;

2.1.27 "**Relevant Period**" shall mean a period of 12 years commencing from the Effective Date;

2.1.28 "**Third Party Retailers**" shall mean third party physical book retailers in Singapore and online platforms which primarily retail to customers located in Singapore, which are not affiliated to the Merged Entity; and

2.1.29 "**TPL**" means Times Publishing Limited.

3. The Commitments

3.1 To address the issues identified by the CCS in the CCS' letter of 1 March 2017, TPL enters into the following Commitments in relation to access by Third Party Retailers to the book titles (in physical format) in the English language published by the Publishers (or its subsidiaries) or in which the Publishers control rights, which will be distributed by the Penguin Group Companies, Pansing and Pansing Malaysia (the "**Relevant English Books**") following the Effective Date.

3.2 The Commitments undertaken by TPL shall not be inconsistent with, and shall not make onerous or impossible the compliance with, any provision of the following:

3.2.1 any matters, undertakings or conditions unilaterally imposed by the Publishers, provided that TPL has exercised reasonable efforts to procure that the Publishers do not impose such matters, undertakings or conditions that may be inconsistent with the Commitments. Should there be any such matters, undertakings or conditions unilaterally imposed, or unilaterally proposed to be imposed, by the Publishers which may be inconsistent with the Commitments, TPL will inform the CCS in writing within 10 working days of TPL becoming aware of such matters, undertakings or conditions;

3.2.2 any Existing Agreements between any of the Penguin Group Companies, Pansing, and Pansing Malaysia with Third Party Retailers; or

3.2.3 any terms or conditions in the Distribution Agreement. Should there be any material changes made to the Distribution Agreement which may affect TPL's compliance with these Commitments, TPL shall obtain the CCS' consent prior to entering into any such changes to the Distribution Agreement.

3.3 TPL undertakes that during the Commitment Period, the Penguin Group Companies, Pansing and Pansing Malaysia will supply Third Party Retailers the full range of the Relevant English Books on a fair, reasonable and non-discriminatory basis, including Pricing which is fair, reasonable and non-discriminatory to Third Party Retailers, having regard to Pricing which applies to the supply of the Relevant English Books by the Penguin Group Companies, Pansing and Pansing Malaysia to physical and online platforms owned and operated by the Merged Entity (the "**Merged Entity Retail Platforms**").

3.4 With fair, reasonable and non-discriminatory Pricing, the Penguin Group Companies, Pansing and Pansing Malaysia will, during the Commitment Period, apply the same Distributor Recommended Retail Price to all retailers, including the Merged Entity Retail

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Platforms, for the same title and same edition of the Relevant English Books distributed by the Penguin Group Companies, Pansing and Pansing Malaysia.

3.5 In determining the Pricing to retailers, the application by the Penguin Group Companies, Pansing and Pansing Malaysia of varying discounts to the Distributor Recommended Retail Price, based on any one or a combination of one or more of the factors set out in the objective discount criteria in Schedule 2 applied in a fair, reasonable and non-discriminatory manner shall be an example of compliance with paragraph 3.3.

3.6 If, at any time during the Commitment Period, the Penguin Group Companies, Pansing and Pansing Malaysia assign the benefit of all or any of its obligations to distribute the Relevant English Books to any one or more entities within the Merged Entity ("**New Distributor**"), the obligations of TPL with respect to the Commitments shall endure, and TPL shall cause the New Distributor to observe the Commitments.

3.7 Nothing in these Commitments prohibits TPL, the Penguin Group Companies, Pansing and Pansing Malaysia from adjusting any of their trading terms for the distribution of the Relevant English Books, provided at all times that such adjustments are fair, reasonable and non-discriminatory toward Third Party Retailers having regard to terms applied to the Merged Entity Retail Platforms.

3.8 The Commitments shall remain in effect for the duration of the Commitment Period.

3.9 For the avoidance of doubt, the scope of application of the Commitments is limited to the distribution of the Relevant English Books to customers in Singapore.

3.10 TPL shall provide the CCS with all such cooperation, assistance and information as the CCS may reasonably require to monitor compliance by TPL with the Commitments, provided that any confidential information disclosed to the CCS will not be made available to any third parties unless TPL's prior express consent has been obtained.

4. Monitoring Trustee

4.1 TPL shall appoint a Monitoring Trustee on the terms and conditions approved by the CCS, and as set out in Schedule 1.

4.2 TPL shall procure that, following the appointment of the Monitoring Trustee, the Monitoring Trustee shall monitor the compliance of TPL with the Commitments set out in paragraph 3 above, in accordance with the terms of its appointment.

5. Term and termination

5.1 Subject to paragraph 5.2 below, TPL shall comply with the Commitments for the Commitment Period.

5.2 An application by TPL to the CCS, in accordance with paragraphs 6.14 to 6.16 of the CCS Guidelines on Merger Procedures 2012, may be made by TPL at any time during the Commitment Period to vary, substitute or release TPL from one or more of the

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Commitments pursuant to Sections 60A(3) and (4) of the Act, and such application must be supported by reasons, including but not limited to:

5.2.1 any material change in market and competitive conditions; or

5.2.2 circumstances where compliance with any of the Commitments exceeds the objective set out in paragraph 1.2 above or has such a detrimental effect on the current or future development of TPL and/or its related affiliates.

6. Governing Law

6.1 The terms and conditions of the Commitments shall be governed by, and construed in accordance with, the laws of Singapore.

7. Entry into force

7.1 The Commitments shall take effect upon the commencement of the Commitment Period.

SIGNED by

Siew Peng Yim, Chief Executive Officer

for and on behalf of

Times Publishing Limited

Dated: 20 September 2017

Schedule 1

Terms and conditions of the appointment of the Monitoring Trustee

1. General

1.1 The Monitoring Trustee appointed by TPL in accordance with the terms and conditions below shall monitor the compliance by TPL with the Commitments and carry out the functions specified in this Schedule.

1.2 The Monitoring Trustee shall:

1.2.1. be independent of the Merged Entity;

1.2.2. possess the necessary qualifications to carry out its mandate as a Monitoring Trustee; and

1.2.3. neither have nor become exposed to a conflict of interest.

1.3 Without limitation, the Monitoring Trustee is not independent if he or she:

1.3.1. is a current employee or officer of the Merged Entity;

1.3.2. is a person who has been an employee or officer of the Merged Entity in the past three (3) years;

1.3.3. is a person who, in the opinion of the CCS, holds a material interest in the Merged Entity; or

1.3.4. has or has had any other relationship with the Merged Entity which, in the opinion of the CCS, is likely to affect the ability of that person to act independently.

1.4 The Monitoring Trustee shall be remunerated by TPL in a way that does not impede the independent and effective fulfilment of its mandate.

1.5 No later than fourteen (14) calendar days following the date of the Merger Decision, TPL shall submit the name or names of one or more natural or legal persons whom TPL proposes to appoint as the Monitoring Trustee to the CCS for its approval. The list shall contain sufficient information for the CCS to verify that the proposed Monitoring Trustee fulfils the requirements set out in paragraphs 1.2 and 1.3 of this Schedule.

1.6 The CCS shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the terms and conditions of appointment of the Monitoring Trustee subject to any modification it deems necessary for the Monitoring Trustee to effectively fulfil its obligations:

1.6.1. if only one name is approved, TPL shall appoint or cause to be appointed, the individual or institution concerned as Monitoring Trustee, in accordance with the terms and conditions of appointment approved by the CCS; and

1.6.2. if more than one name is approved, TPL shall be free to choose the Monitoring Trustee to be appointed from among the names approved.

1.7 The Monitoring Trustee shall be appointed within seven (7) calendar days of the CCS' approval, in accordance with the terms and conditions of appointment approved by the CCS.

1.8 If all the proposed Monitoring Trustees are rejected by the CCS, the CCS shall nominate a Monitoring Trustee, subject to the same criteria set out in paragraphs 1.2 and 1.3 of this Schedule, whom TPL shall appoint, or cause to be appointed, in accordance with the terms and conditions of appointment approved by the CCS. The Monitoring Trustee shall assume its specified duties in order to ensure compliance by TPL with the Commitments.

1.9 The CCS may, on its own initiative or at the request of the Monitoring Trustee or TPL, give any orders or instructions to the Monitoring Trustee in order to ensure compliance of TPL with the Commitments during the Commitment Period.

2. Terms of Appointment

2.1 TPL must procure that the terms and conditions of appointment of the Monitoring Trustee include obligations on the Monitoring Trustee to continue to satisfy the independence criteria in paragraphs 1.2 and 1.3 of this Schedule.

2.2 TPL shall provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require to monitor compliance with the Commitments. Specifically, TPL will ensure that the Monitoring Trustee shall have full and complete access to any of TPL's books, documents, and information reasonably necessary for the Monitoring Trustee to verify compliance by TPL with the Commitments.

2.3 If the Monitoring Trustee ceases to perform its functions under this paragraph or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest,

2.3.1. the CCS may, after hearing the Monitoring Trustee, require TPL to replace the Monitoring Trustee; or

2.3.2. TPL, with the prior approval of the CCS, may replace the Monitoring Trustee.

2.4 If the Monitoring Trustee is removed according to paragraph 2.3 of this Schedule, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full handover of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 1.5 to 1.8 of this Schedule.

2.5 Unless removed according to paragraph 2.3 of this Schedule, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the CCS has discharged it from its duties or after the end of the Commitment Period, whichever is earlier.

3. Audit Reports

3.1 The Monitoring Trustee shall, following its appointment, during the Commitment Period:

3.1.1. monitor the compliance of TPL with the Commitments according to the audit plan provided by the Monitoring Trustee and approved by the CCS ("**Approved Audit Plan**"); and

3.1.2. provide to the CCS, with a simultaneous non-confidential copy to TPL, a written report within fifteen (15) working days at the end of every twelve (12) calendar months cycle, commencing from the start of to the end of the Commitment Period, concerning the compliance by TPL with the Commitments ("**Audit Report**"). In addition to these Audit Reports, the Monitoring Trustee shall be responsible for assessing all complaints regarding a potential breach of the Commitments, either received from the CCS or any third parties, and shall promptly report, within twenty (20) working days of the receipt of the complaint, in writing to the CCS, with a simultaneous non-confidential copy to TPL, if the Monitoring Trustee concludes on reasonable grounds that TPL is failing to comply with any of the conditions or obligations under the Commitments.

3.2 The Audit Reports, including the non-confidential copy to TPL, shall include:

3.2.1. the Monitoring Trustee's procedures in conducting the audit, or any change to audit procedures since the previous Audit Report, as the case may be;

3.2.2. an audit of TPL's compliance with the Commitments in accordance with the Approved Audit Plan;

3.2.3. all the reasons for the conclusions reached in the Audit Reports;

3.2.4. any recommendations by the Monitoring Trustee to improve the Approved Audit Plan, the integrity of the auditing process and TPL's compliance with the Commitments;

3.2.5. implementation and outcome of any prior recommendations by the Monitoring Trustee; and

3.2.6. statement declaring continued compliance with the independence of the Monitoring Trustee from the Merged Entity.

3.3 TPL shall implement any recommendations of the Monitoring Trustee made in the Audit Reports on TPL's compliance with the Commitments, and TPL shall notify the CCS of the implementation of the recommendations, within fourteen (14) calendar days, or such longer period as the Monitoring Trustee considers reasonable and practicable in the circumstances, after receiving the Audit Reports.

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Schedule 2

1. Pursuant to paragraph 3.5 of the Commitments, the application by the Penguin Group Companies, Pansing and Pansing Malaysia of varying discounts to the Distributor Recommended Retail Price, based on any one or a combination of one or more of the factors set out below, applied in a fair, reasonable and non-discriminatory manner shall be an example of compliance with paragraph 3.3 of the Commitments:

   1.1. cost of servicing (i.e. depending on negotiations, where a retailer has specific requirements that result in higher/lower costs of servicing the retailer, a lower/higher discount may apply);

   1.2. credit performance (i.e. depending on negotiations, where a retailer has good credit performance and has been making payments on time, a higher discount may apply);

   1.3. location and rental costs of the retailer (i.e. depending on negotiations, a higher discount is offered to a retail store located at prime locations due to higher rentals incurred by the retailer);

   1.4. potential for business development (i.e. depending on negotiations, where a retailer is closely affiliated with (in that the retailer directly or indirectly controls, or is directly or indirectly controlled by) other bigger retailers, higher discounts may apply);

   1.5. return rates (i.e. depending on negotiations, where a retailer has, on average, comparatively higher return rates, lower discounts may apply);

   1.6. returnability (i.e. depending on negotiations, where a retailer has, on average, a comparatively higher maximum returnable limit or no cap, lower discounts may apply); and

   1.7. volume of orders (i.e. depending on negotiations, where a retailer has, on average, placed a higher historical volume of orders by total purchasing volumes of English-language print trade books, higher discounts may apply).