

24 July 2017

PROPOSAL ON BEHAVIOURAL REMEDIES TO THE COMPETITION COMMISSION OF SINGAPORE

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Proposal on Behavioural Remedies to the Competition Commission of Singapore

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 provides this proposal (the "**Proposal**") containing 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 The Commitments are offered to assure 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, 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 this Proposal, 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;

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

- 2.1.3 “**Audit Report**” shall have the meaning as ascribed to it in paragraph 3.1.2 of Schedule 1 to this Proposal;
- 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 of this Proposal;
- 2.1.6 “**Commitment Period**” means the period during which the Commitments are in effect, which is the same as the term of the Distribution Agreement, or in the event the Distribution Agreement is terminated, the term of any exclusive distribution arrangement between the Merged Entity and the Publishers for the distribution of the Relevant English Books by the Merged Entity in Singapore provided that such term, taken together with the term that the Distribution Agreement was in effect, does not in aggregate exceed 12 years;
- 2.1.7 “**Completion**” means the completion date of the Proposed Transaction;
- 2.1.8 “**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;
- 2.1.9 “**Distribution Agreement**” shall have the meaning as ascribed to it in paragraph 1.1.2 of this Proposal;
- 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;
- 2.1.12 “**Merged Entity**” means, following the completion of the Proposed Transaction, all the entities within the F&N group of companies, 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 of this Proposal;
- 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 TPL, 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 this Proposal;

- 2.1.16 “**New Distributor**” shall have the meaning as ascribed to it in paragraph 3.6 of this Proposal;
- 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 “**Proposal**” shall have the meaning as ascribed to it in paragraph 1.1 of this Proposal;
- 2.1.24 “**Proposed Acquisition**” shall have the meaning as ascribed to it in paragraph 1.1.1 of this Proposal;
- 2.1.25 “**Proposed Transaction**” shall have the meaning as ascribed to it in paragraph 1.1 of this Proposal;
- 2.1.26 “**Publishers**” shall have the meaning as ascribed to it in paragraph 1.1.2 of this Proposal;
- 2.1.27 “**Relevant English Books**” shall have the meaning as ascribed to it in paragraph 3.1 of this Proposal;
- 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 proposes 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 Proposed Transaction.

- 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 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 in this Proposal shall endure, and TPL shall cause the New Distributor to observe the Commitments set out in this Proposal.

- 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, to vary, substitute or release TPL from one or more of the Commitments pursuant to Sections 60A(3) and (4) of the Act, 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 of this Proposal 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.

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 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 set out at paragraph 3 of the Proposal 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 15 working days at the end of every twelve (12) calendar months cycle, commencing from Completion 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 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 Report, 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 TPL.
- 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.

Schedule 2

1. Pursuant to paragraph 3.5 of this Proposal, 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 this Proposal:
 - 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).