



**Australian  
Competition &  
Consumer  
Commission**

GPO Box 520  
Melbourne Vic 3001

Level 35, The Tower  
360 Elizabeth Street  
Melbourne Vic 3000

tel: (03) 9290 1800  
fax: (03) 9663 3699

[www.accc.gov.au](http://www.accc.gov.au)

Our ref: 50475  
Contact officers: Fiona Sam (03) 9658 6450  
Gavin Jones (03) 9290 1475

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Dear interested party

### **Proposed combination of book publishing businesses of Bertelsmann (Random House) and Pearson (Penguin)**

The Australian Competition and Consumer Commission (**ACCC**) is reviewing the proposed combination of the Bertelsmann SE & Co KGaA (**Bertelsmann**) and Pearson Plc (**Pearson**) global book publishing businesses (**proposed transaction**). Bertelsmann and Pearson's respective businesses in Australia are carried out by Random House Australia Pty Ltd (**RHA**) and Penguin Group (Australia) Pty Ltd (**Penguin**). Some background to the proposed transaction is provided at **Attachment A**.

The ACCC is considering the proposed transaction under section 50 of the *Competition and Consumer Act 2010* (**Act**). Section 50 of the Act prohibits acquisitions that substantially lessen competition in a market, or are likely to do so. The purpose of this letter is to seek your comments on the proposed transaction.

### **Request for submissions**

The ACCC is seeking comments from interested parties to assist with its review and would welcome any comments that you have in relation to the competition effects of the proposed transaction. Some questions you may wish to address in your submission are provided in **Attachment A**.

If the information provided is of a confidential nature, you can be assured the details provided by you will be treated confidentially. That is, the ACCC will not disclose the confidential information to the merger parties or other third parties, other than advisors or consultants engaged directly by the ACCC, without first providing you with notice of its intention to do so, such as where it is compelled to do so by law. Please note that any information provided by you that you believe to be of a confidential nature should be clearly marked or identified as such.

Please provide your response by no later than **1 February 2013**. Responses may be emailed (preferably in PDF format) to [mergers@accc.gov.au](mailto:mergers@accc.gov.au) with the title: Submission re: **Penguin Random House proposed transaction** (attention Fiona Sam).

If you have any queries or would like to discuss a response by telephone, please contact Fiona Sam on (03) 9658 6450.

Updates regarding the ACCC's assessment of this matter will be available on the ACCC's public Mergers Register at [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Rami Greiss', written in a cursive style.

Rami Greiss  
General Manager  
Merger Investigations Branch

### **Background – book publishing**

The role of a book publisher involves a number of steps typically including funding authors to allow them to create content, editorial input, design, printing and binding, and promotion, marketing and sale of the book.

Random House and Penguin are two of the five larger international publishers with a presence in Australia, the others being Hachette, Harper Collins and Pan Macmillan. A wide range of other international and locally based large, medium and smaller sized publisher also operate within Australia.

Many publishers, including both Random House and Penguin, also undertake their own distribution and sales/marketing activities as well as offering these services to third party publishers who outsource these functions.

### **Random House Australia**

Random House Inc is a subsidiary of Bertelsmann, a German based media company. RHA is the Australian publishing subsidiary of Random House Inc. RHA publishes and distributes a range of Australian titles and distributes international Random House titles including adult fiction, non-fiction and children's books. RHA supplies books at a wholesale level to book retailers.

RHA also markets and distributes books published by third parties who outsource sales and/or distribution. Third party publishers who contract with RHA include Hardie Grant Publishing (distribution), ACP Magazines (sales and distribution) and Melbourne University Publishing (sales and distribution).

### **Pearson / Penguin Australia**

Pearson Australia's ultimate parent is Pearson Inc, an international media company operating across the education, business information and consumer section. Pearson Australia's business can be separated into the following divisions.

#### *Penguin Australia*

Penguin is a generalist publisher publishing print books and e-books across the children's, adult fiction and adult non-fiction categories. Penguin Australia publishes under the Penguin brand as well as a range of other imprints including Puffin, Lantern, Viking, Hamish Hamilton, Michael Joseph, Destiny Romance, Ladybird, Razorbill, Portfolio, Berkley and Dorling Kindersley. Penguin Australia generally supplies books at a wholesale level to book retailers, but also supplies a select range of e-books and related applications at a retail level via its website.

#### *United Book Distributors (UBD)*

UBD is Pearson Australia's book distribution business providing warehousing and distribution services to Penguin Australia and other members of the Pearson Group. UBD also provides distribution services to third party publishers including Simon & Schuster, Allen & Unwin and New Holland Publishers and sales and distribution services to University of Queensland Press, Working Title Press, Black Inc, Fremantle Press, Phaidon, Text Publishing and Hay House.

### *Bookworld*

In July 2011, Pearson Australia acquired the platforms used by REDgroup to operate the angusrobertson.com.au and borders.com.au websites together with their respective customer database, stock on hand and management teams. In August 2012 these businesses were relaunched as the “Bookworld” online store. Bookworld is an online retailer of books, e-books, audiobooks, DVDs, CDs, e-reader devices and software and accessories.

### *Educational businesses*

Pearson Australia also has an educational book publishing and services business, operated under the Pearson brand. The education business will not form part of the proposed transaction.

### **The proposed transaction**

The proposed transaction involves the combination of Bertelsmann’s and Pearson’s publishing division activities into two or more new entities which collectively will be called Penguin Random House. Penguin Random House will be 53% owned by Bertelsmann and 47% owned by Pearson. In Australia, the combined entity will include the Random House Australia publishing and distribution businesses and the Penguin Australia business, including Pearson Australia’s online retailer (Bookworld) and its book distribution business (UBD), but excluding Pearson’s educational publishing division.

**Questions for market participants**

*Background*

1. Please describe your business or organisation and any relationship you have with Random House or Penguin in Australia (e.g. customer, competitor etc).

*Relevant markets and competitive constraints*

Random House and Penguin are both vertically integrated publishers who:

- publish and supply a range of books across many categories in digital and paper-printed formats as well as marketing and/or distributing the book lists of other publishers, and
  - acquire the content necessary to publish books through acquiring authors' rights.
2. Please provide your view about the relevant markets for assessing the competition effects of the proposed acquisition, including:
    - a. Whether integrated publishers and distributors and publishers who outsource distribution and sales should be considered as operating in the same or separate markets.
    - b. The level of substitutability between print and digital books.
    - c. The level of substitutability between different categories of books, for example, adult fiction, non-fiction and childrens books, both from the suppliers (i.e. publishers) and customers (i.e. retailers and end customers) perspective.
    - d. The geographic area over which suppliers in these markets distribute their books and acquire authors' rights.
  3. Please comment on the degree of competition that currently exists between Random House and Penguin in acquiring authors' rights and producing and distributing books.
  4. Please comment on the degree of competition that is currently provided by other publishers. In responding, please comment on the closeness of competition between these publishers and Random House and Penguin respectively.
  5. Please comment on the extent to which large retailers such as department stores, chain bookstores and online retailers could exercise buyer power to constrain any attempted by the combined Penguin Random House business to increase prices or otherwise worsen supply terms.
  6. Please comment on the extent to which overseas based online retailers constrain the wholesale and retail prices of books.
  7. Do you consider that the proposed acquisition is likely to provide the combined Penguin Random House entity with an ability or incentive to increase prices or profit margins in relation to the provision of any services? If so, please provide supporting reasons.

*Barriers to entry/expansion*

8. Please comment on the barriers to entry and/or expansion in book publishing in Australia. In responding, you may wish to have regard to the following:
  - a. any examples of successful or failed attempts at entry or expansion,
  - b. the extent of sunk costs or capital requirements;
  - c. the importance of scale and scope;
  - d. the significance of existing relationships or agreements between publishers and authors, including the ease and extent to which authors are able to switch between publishers.

In responding please consider potential entry or expansion by vertically integrated publishers, the ability of publishers who are not currently vertically integrated to engage in their own sales and distribution services rather than acquire these services from other vertically integrated publishers and the ability of authors to self publish their works.

*Other comments*

9. Please provide any other comments or information that you consider may be useful to the ACCC in its assessment of the competitive effects of the proposed transaction.