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The Executive General Manager
Merger & Authorisation Review Division
Australian Competition and Consumer Commission
mergers@accc.gov.au

Dear Executive General Manager,

I am writing in response to the ACCC Statement of Issues on Cengage's proposed merger with McGraw-Hill (12 December 2019) and its implications for the wider industry. After further university-wide consultation, QUT does not have any additional substantive points to make beyond our original response (attached for your convenience).

For the sake of clarity, I would emphasise QUT's view that the merger proposal is likely to limit our freedom to make choices about the use and provision of educational resources that best suit our students, staff and wider community. We support the ACCC statement on 12 December 2019 that the proposed merger "will reduce the already limited number of major publishers with whom academics can publish their works". There is ample precedent to demonstrate that the merger of entities of this size and market share are very likely to enhance the merged entity's bargaining power to such a degree of asymmetry as to hamper the efficient functioning of the marketplace, by reducing or even eliminating universities' and authors' effective ability to negotiate and enter into fair contracts with publishers.

Thank you for the opportunity to comment on this proposed merger. QUT looks forward to the announcement of the ACCC's final view, and to its effects on competition in the publishing sector.

Best regards,

A handwritten signature in black ink, appearing to read 'John Byron', with a horizontal line extending to the right.

Dr John Byron
Director
Government Relations & Policy



Queensland University of Technology

Response to ACCC review of Cengage's proposed merger with McGraw-Hill

QUT has no comment on the proposed acquisition canvassed in Attachment A that is the proximate subject of the review, beyond the obvious point that a reduction in competition and a consolidation of market share will, all other things being equal, place pressure on open competition with the potential consequences of increased prices, reduced choice and impoverished amenity in the marketplace.

However, noting that the ACCC has taken the opportunity to ask broader questions in Attachment B regarding broader aspects of the educational publishing business, we do have some selected contributions to consideration of these more general issues.

6. Please describe whether digital educational publishing is an alternative to print educational publishing. You may wish to comment on the relative price for digital publishing, the functionality of digital books, the preference of students and educators for digital books.

Digital educational publishing is an alternative to print educational publishing that is likely to impact the cost and availability of textbooks.

The preference of students and educators for digital books reflects a reasonable perception that their digital nature enhances access and affordability. Digital book models are heavily marketed as affordable, accessible and learner-centred, but there are issues for authors, learners and educational institutions. The digital book model is typically a subscription or rental model. Due to high cost, concurrent user limits prevail, and access may be restricted to enrolled students for the limited period of a semester. Nicole Allen from the Scholarly Publishing and Academic Resources Coalition identified the impact: ‘...education isn’t like Netflix; knowledge isn’t something you subscribe to, but rather something you should be able to hold onto forever.’¹

Some commercial publishers are representing course-designed resources as “open access” or “inclusive access”, which may not fully reflect their actual status as limited access resources. Digital books in the curriculum also prevent students from accessing a second hand book market, but ‘guarantee high and predictable revenue via institutional licensing contracts’ for the publisher.²

Academics report that some commercial publishers are increasingly engaging in direct sales activities to academics and students for proprietorial books, by-passing libraries which are in a position to evaluate cost and access issues. There is evidence of publisher representations directly to academics to market digital books directly to their cohorts – examples of a publisher contacting academics directly in an attempt to limit the use of legally licensed versions of texts in favour of their own editions and, in the USA, of using students to promote textbooks. These sort of activities and contraction in the number of publishers will likely result in increased market control and less choice, which is counter to the opportunity provided by digital publishing. Research on the contraction in journal publishing illustrates this trend.

¹ Nicole Allen on Open Education and Textbook Affordability. (2019, August 14). Retrieved from <https://20mm.org/2019/08/14/nicole-allen-on-open-education-and-textbook-affordability/>

² Jhangiani, R. (2017, June 29). Just how inclusive are "inclusive access" e-textbook programs? Retrieved from <http://thatpsychprof.com/just-how-inclusive-are-inclusive-access-programs/>

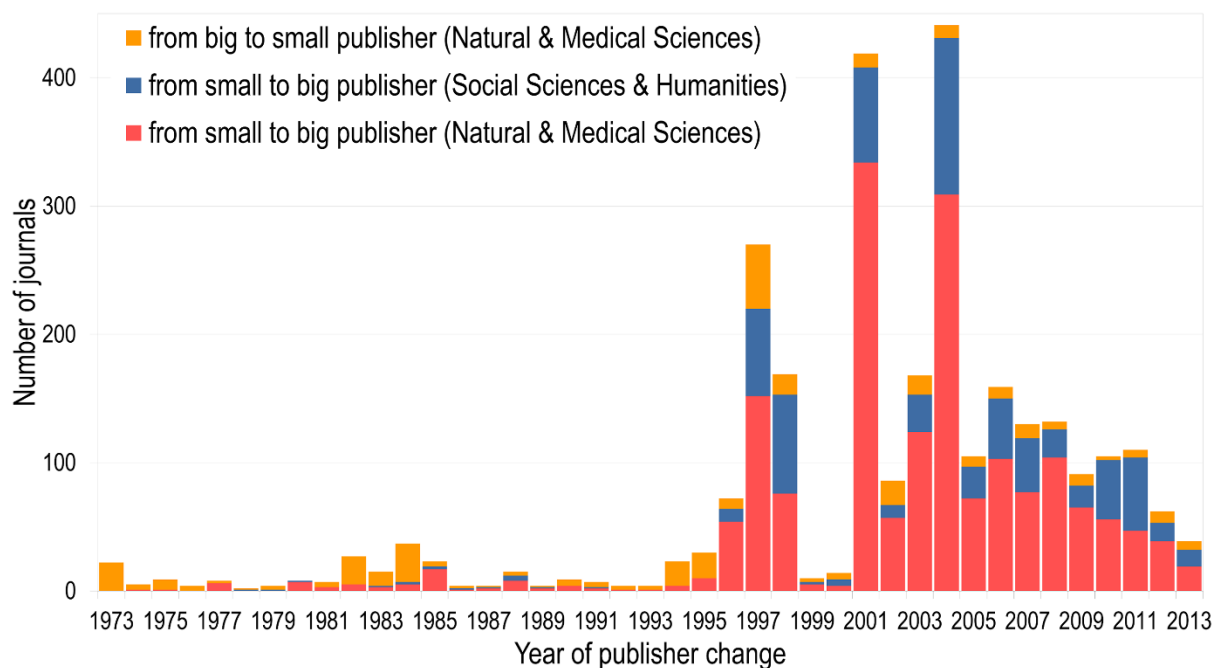


Figure 1 Larivière, V., Haustein, S., & Mongeon, P. (2015).³

From a copyright perspective, functional use of digital books is impacted by publisher agreements which may over-ride statutory rights to use educational material. The power of publishers to contract out of law was an identified issue for libraries in the Australian Libraries Copyright Committee's submission to the Productivity Commission Inquiry on Australia's Intellectual Property Arrangements. The consequence of this condition exercised by a large publisher would further limit functional use.

7. Please describe whether other non-traditional methods of delivering educational material have had an impact on educational publishing. In particular, you may wish to comment on the availability and use of Open Educational Resources.

Open Educational Resources (OERs) make a positive contribution by offering an alternative to commercial educational publishing. In North America, the availability and use of OER – particularly open licensed textbooks – has lowered the cost of textbooks to students, increased access to educational material by non-institutional learners and addressed the changing pedagogical requirements of teaching and curriculum. In Australia the use of open licensed textbooks is new. At QUT there is a current Learning Innovation Pilot to increase the use of OER.

There is no evidence that these methods impact negatively on commercial educational publishing. It is well established that publishers are attempting either to push back against the development of OER or alternatively to join it. Cengage and McGraw-Hill have moved into digital course material. Some have characterised this move by these publishers as an attempt to co-opt OER, as the big journals publishers (SpringerNature, Elsevier) are said to have attempted to co-opt open access. The economics are illuminating, as publishers are ceding the high-cost development of texts to the community at large (much of it in the not-for-profit sector) and focusing on the lower cost and higher margin business of selling materials around the core text.⁴

Furthermore, we would like to highlight the following points relating to competition in the marketplace, the digital textbook model and Digital Rights Management:

³ Larivière, V., Haustein, S., & Mongeon, P. (2015). The Oligopoly of Academic Publishers in the Digital Era. *Plos One*, 10(6). doi: 10.1371/journal.pone.0127502

⁴ Inside Higher Ed. (2018, February 14). Another Publisher Expands OER Footprint. Retrieved from <https://www.insidehighered.com/digital-learning/article/2018/02/14/another-publisher-macmillan-expands-footprint-open-textbook>

- Acquisition sections in academic libraries are dismayed by contractions in the number of publishers and vendors in the digital textbook marketplace, as it limits competition and therefore potential fair value. It also diminishes the student experience by limiting student access to scholarly information.
- Digital textbooks are generally sold as a 1:1 business model. This marginalises libraries, which traditionally offer all types of material using the 1:many model. This is especially important for textbooks, which are offered as a service by libraries to students who (whatever their socioeconomic situation) cannot afford to purchase every reading list item (whether required or recommended).
- Digital textbooks generally come with add-ons such as interactive quizzes, supplementary readings, and community zones. These add-ons are not licenced to libraries.
- Digital Rights Management (DRM): students at libraries which can offer digital textbooks are frequently subject to strict DRM. This limits by technological means the amount of the textbook that can be downloaded, copied, saved, or printed – often with restrictions well within the legal entitlement of the student. Print copies are often the only way to provide full access to students as they are entitled by law.