NOTICE 1002 OF 2013

COMPETITION COMMISSION

NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:

VAN SCHAIK BOOKSTORES, A DIVISION OF TIMES MEDIA (PTY) LTD

AND

JUTA BOOKSHOPS ("JUTA BOOKSHOPS"), A DIVISION OF JUTA AND COMPANY LIMITED

CASE NUMBER: 2013JUN0263

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings' in the Competition Commission, that it has prohibited the transaction involving the above-mentioned firms:

On 10 June 2013, the Competition Commission (Commission) received a voluntary notification of a small merger whereby the primary acquiring firm, Van Schaik Bookstores (**Van Schaik**), a division of Times Media (Pty) Ltd (**Times Media**), intends to acquire Juta Bookshops (**Juta Bookshops**), a division of Juta and Company Ltd (**Juta and Company**) as a going concern.

The primary acquiring firm is Van Schaik, a division of Times Media. Times Media is a wholly-owned subsidiary of Times Media Group Limited (**Times Media Group**), a public company listed on the Johannesburg Stock Exchange Ltd. The Times Media Group controls various firms. The primary target firm is Juta Bookshops, a division of Juta and Company. Juta and Company is controlled by Kagiso Media Limited (**KML**). The Juta Bookshops to be acquired comprise of 10 academic bookshops located in the following areas:

- University of Johannesburg (UJ) – Johannesburg;
- Carlton Centre - Central Johannesburg;

its understanding of the relevant markets and the likely effects of the proposed merger in each area of overlap. Finally, the Commission continuously liaised with the merging parties and their legal representatives. No further investigation was carried out in respect of the TUT Ga-Rankuwa Campus because the activities of the parties did not overlap in this area.

The merging parties submitted that the relevant product market is specifically the market for the retail sale of academic books. The merging parties excluded the sale of general books. The Commission agrees with the merging parties' view that the retail sale of academic books market is separate from the market for the sale of general, school and religious books since the different types of books are not substitutable.

The merging parties also sell school books in their bookshops. The Commission's investigation showed that there are sufficient suppliers and potential suppliers to the school books market and as such, it is unlikely that the proposed merger will raise competition concerns in this market. Therefore, the Commission did not assess this market any further.

The Commission also considered whether online sale of academic books is in the same market as brick and mortar. The Commission found that online sale of academic books do not form part of the same relevant product market for each of the areas of overlap. The Commission found that online sale of academic books does not provide a credible alternative to students because of a number of factors including the different route to market and payment methods. The Commission also found that online retailers mainly target distance education students, which is distinguishable from non-distance learning universities which are mainly covered in the areas of overlap. The Commission also found that online sale of academic books has not provided effective competitive constraint in the majority of the areas in which the activities of the merging parties overlap. For example, Van Schaik reported that its online sales of academic books account for far less than its total sales of academic books.

The Commission therefore agrees with the merging parties' view that the relevant product market is that for the retail of academic books through brick and mortar outlets.

Each university in South Africa prescribes different academic textbooks to students. The result is that students of a particular university turn to bookstores that stock their prescribed textbooks which are mainly located within their campus and a few kilometres (km) thereof. The

Commission considered evidence from various sources including results of interviews of students and competitors. Student interviews carried out by the Commission support the view that the geographic market is likely to be within a 5km radius of each university campus where the activities of merging parties overlap. During its investigation, the Commission asked students to indicate the bookshops they consider as viable options and in response the vast majority of students interviewed at each university campus indicated that they buy their books within a 5km radius from their campus. Students were also asked to indicate which bookstores is their first and second best option and the results showed that students' first and second choices are also located within a 5km radius from their campus. Competitors of the merging parties also confirmed that they compete within a close proximity of the university campus. The Commission therefore agrees with the merging parties that the relevant geographic market is localised and is limited to a radius of 5 kilometres from a university campus.

The Commission therefore assessed the likely effects of the proposed merger in the following markets:

- The market for the retail sale of academic books within SUN and a 5 km radius thereof;
- The market for the retail sale of academic books within UCT and a 5 km radius thereof;
- The market for the retail sale of academic books within UJ and a 5 km radius thereof;
- The market for the retail sale of academic books within UP and a 5 km radius thereof;
- The market for the retail sale of academic books within TUT Main Campus and a 5 km radius thereof;
- The market for the retail sale of academic books within TUT Arcadia Campus and a 5 km radius thereof;
- The market for the retail sale of academic books within the Parrow Centre and a 5 km radius thereof; and
- The market for the retail sale of academic books within the Carlton Centre and a 5 km radius thereof.

During its investigation, the Commission considered whether the implementation of the proposed merger will result in the removal of an effective competitor and lead to higher prices for academic books sold to students at each of the relevant markets. In respect of the Parrow Centre and the Carlton Centre areas, the Commission found that the proposed merger is unlikely to raise competition concerns in these areas in respect of the sale of academic books through brick and mortar outlets. These bookshops cater predominantly for UNISA students who are mainly distance learning students and benefit from a range of suppliers. The Commission therefore finds that the proposed merger is unlikely to raise competition concerns in respect of the Parrow Centre and the Carlton Centre areas.

However, in respect of the majority of the remaining markets, the Commission found that the proposed merger will reduce the number of sellers of academic books through bricks and mortar outlets from 3-2 players. The merged entity will account for high market shares in all of the affected markets for the retail sale of academic books and will be dominant in terms of the Competition Act No.89 of 1998, as amended (the Act). These market shares show that the merged entity will acquire market power as a result of the proposed merger. Each of the relevant markets is highly concentrated with an Herfindahl-Hirschman index that indicates that the proposed merger is likely to raise competition concerns in each of these markets. This fact has not been disputed by the merging parties. However, the merging parties submitted that the merged entity would not abuse the acquired market power position post-merger because *inter alia* there are low barriers to entry, countervailing power of customers and the role of online academic retailers.

The findings of the Commission's investigation did not support the contention of the merging parties that the proposed merger is unlikely to lead to a substantial lessening of competition concerns. Many of the entities interviewed by the Commission that sell academic books and some of the universities expressed concerns that the implementation of the proposed merger will result in a substantial prevention or lessening of competition.

The Commission's investigation shows that the implementation of the proposed merger is likely to result in the removal of an effective competitor from each of the SUN, UCT, UJ and TUT Main Campus areas, while it will result in the removal of a potential and credible competitor from TUT Arcadia area. The Commission's view is supported by the views of the merging parties' own bookstore managers, other academic bookstores, students and the Commission's analysis of pricing and volume data of the merging parties. The Commission found that the proposed merger is, however, unlikely to substantially prevent or lessen competition in the UP area as there are sufficient alternative academic textbook retailers that will continue to exercise a competitive constraint post-merger.

The Commission also found that barriers to entry are not as low as claimed by the merging parties. Factors considered by the Commission include access to the universities' booklist, capital investments and the importance of the bookstore being located close to university campuses. These are factors that are not easily surmountable. Potential entrants do not have access to trading sites located on university premises and the implementation of the proposed merger is likely to deter entry thereby increasing barriers to entry. Also, a review of the merging parties' lease agreements confirms that these can be extended and the merging parties have occupied certain premises for a long time. The lease agreements do not contain any provision that allow the merging parties' landlord to terminate the lease agreement in the event of an anti-competitive conduct by the merging parties.

The Commission found that not all customers have countervailing power, especially students who form the majority of customers of the merging parties. A significant amount of the merging parties' academic books are sold directly to students who are unable to exercise countervailing power in terms of the Act. Although institutional customers such as universities do have bargaining power, this is unlikely to protect students from unilateral price increases.

The Commission did not find evidence that support the merging parties' view that online academic retailers will constrain the ability of the merged entity from unilaterally increasing prices. Among the factors which restrict online sales is students' lack of access to credit card facilities which is the primary payment method. The vast majority of students interviewed by the Commission indicated that they do not buy academic books from online retailers and that they do not consider online academic retailers as a viable alternative. The Commission's view that online retailers exert only a very limited competitive constraint on brick and mortar retailers is supported by other academic bookshops.

The merging parties submit that the implementation of the proposed merger will create a number of pro-competitive efficiency gains that could be passed on to customers.

The Commission has interrogated the efficiency claims of the merging parties where after the merging parties conceded that it is not expected that any efficiencies will be generated. The claimed efficiency gains appear to be pecuniary efficiencies which are unlikely to offset the anti-competitive effects of the proposed merger. However, as the merging parties subsequently indicated that the claimed efficiencies are unlikely to arise, the Commission has concluded that the proposed merger does not result in any efficiency gains or pro-competitive effects, which will offset the competitive harm caused by the proposed merger.

The Commission also assessed the vertical relationship between Juta Bookshops and the Times Media Group which controls Van Schaik. The Commission has found that this relationship is unlikely to raise any foreclosure concerns.

The implementation of the proposed merger will bring about a change in the market structure in each of SUN, UCT, UJ, TUT Main and TUT Arcadia markets which will make each susceptible to anti-competitive conduct. The Commission and the merging parties agree that the merged entity will have market power post-merger. However, the Commission is further of the view that the merged entity will have the ability and incentive to profitably increase prices post-merger at the affected relevant markets. The efficiency claims of the merging parties are unlikely to off-set the likely anti-competitive harm arising out of the proposed merger. The proposed merger is most likely to be detrimental to students at the affected markets.

The Commission also considered whether the substantial prevention or lessening of competition identified could be remedied. The parties suggested structural and behavioural remedies but the Commission found that these will not address the anti-competitive harm that will result from the proposed merger.

The Commission is therefore of the view that the merged entity will have market power and the incentive to unilaterally increase the prices of academic books to students. On the whole, the Commission has found that the proposed merger will substantially prevent or lessen competition in:

- The market for the retail sale of academic books within SUN and a 5 km radius thereof;
- The market for the retail sale of academic books within UCT and a 5 km radius thereof;
- The market for the retail sale of academic books within UJ and a 5 km radius thereof;
- The market for the retail sale of academic books within TUT Main Campus and a 5 km radius thereof; and
- The market for the retail sale of academic books within TUT Arcadia Campus and a 5 km radius thereof.

Juta Bookshops employs several employees at its head office and a substantial number of people at the different retail outlets. The merging parties indicated that the implementation of the proposed merger is likely to result in employees at head office level being retrenched.

The merging parties also concluded an agreement that makes a provision that Van Schaik may restructure Juta Bookshops due to operational requirements. The merging parties however maintained that the rationale for the acquisition of Juta Bookshops is to continue to operate the bookstores with the bookstore personnel. The Commission is of the view that there is insufficient evidence to suggest that the implementation of the proposed merger will give rise to significant public interest benefits, which can justify the approval of the proposed merger.

The Commission therefore prohibited the proposed merger in terms of section 13(5)(b)(iii) of the Act. The Commission hereby issued a certificate in the prescribed form prohibiting the merger.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.