

**Case Summary****25 November 2020**

Thalia / Osiander merger

Sector:	Book retailing
File number:	V-27/20
Date of decision:	19 November 2020

On 19 November 2020, the Bundeskartellamt cleared the notified merger between the book retailers Thalia and Osiander in the first phase of merger control. The merger with Osiander allows Thalia to expand its strong position in the German book retail market. However, the merger project will not significantly impede effective competition with respect to consumers, publishers or book wholesalers. Due to online selling and numerous smaller and medium-sized book retailers in particular, good shopping and distribution alternatives still remain. When assessing the merger project, the particular role of the German Book Resale Price Maintenance Act was also taken into account.

Thalia is the largest German brick-and-mortar book retailer. Before the merger, the company already ran more than 300 bookshops in Germany as well as a number of shops in Austria and Switzerland. It also sells books online via its website Thalia.de. Osiander runs more than 70 brick-and-mortar bookshops mainly in Southern Germany as well as the Osiander.de website.

Project and proceeding

The project examined by the Bundeskartellamt concerned Thalia Bücher GmbH's acquisition of sole control over the newly established Osiander Vertriebsgesellschaft GmbH & Co. KG (OVG). OVG is to carry out Osiander's book retail operations including its online shop. The remaining company, Osiandersche Buchhandlung GmbH, will continue to run the Osiander bookshops and sell the products on behalf and for the account of OVG, a service for which Osiander will receive a commission. Thalia will provide procurement, IT and inventory management services to OVG. Ultimately, Osiander will continue to run the bookshops, but its post-merger book retail operations will have to be attributed to OVG and thus to Thalia.

Before notifying the planned merger in October 2020, the parties' representatives had already submitted a comprehensive draft notification including annexes to the Bundeskartellamt. The authority could thus start to examine the documents and prepare further investigations at an early stage. Some of the insights gained from the Thalia / Mayersche proceeding¹ could also be used in the assessment of this case as the former case had similar structural features and the respective investigations had only been concluded one and a half years ago. Upon receipt of the notification the Bundeskartellamt conducted talks particularly with several competitors of Thalia and/or Osiander as well as a book wholesaler and also analysed the latest press coverage in specialised media. Based on the authority's in-depth preparatory work the examination of the project could be concluded within the one-month first phase of merger control.

It has also been known for some time that Thalia intends to integrate other bookshops into a joint platform. The question of the extent to which such a cooperation will have to be assessed in terms of competition law will depend on the specific individual case and was not to be examined in the present merger control proceeding.

The sales side of book retailing

In defining the relevant product market on the sales side of book retailing it is crucially important to take into account the alternative options available to end customers. In the present case, the products to be considered generally included the typical range of products offered by book retailers, excluding side-line products (toys, videos, music products). In view of previous decisions the Bundeskartellamt also carried out an alternative, separate examination with regard to e-books, which, however, led to the same competitive assessment. As to the different distribution channels, the traditional (brick-and-mortar) book retail sector is usually included in the product market as are department stores and book clubs. In the present case, the Bundeskartellamt also took into account the online and mail order business in its investigation of the market volumes and market shares. On the one hand, this was appropriate because, in spite of the differences that can still be found, brick-and-mortar sales and online sales are becoming increasingly similar and interlinked services. Nowadays many brick-and-mortar retailers offer their customers services such as overnight orders, home delivery or 'click and collect' that are similarly convenient than the services provided by an online retailer. At the same time, online retailers such as e.g. Amazon attempt to match the advantages traditionally offered by the brick-and-mortar sector by providing

¹ <https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Fusionskontrolle/2020/B6-33-19.html?nn=3591568>

personal recommendations, offering free returns or inviting customers to take a virtual 'look inside' a book. On the other hand, the increasing share of online sales, which is achieved at the expense of bookshops, and the parallel use of both distribution channels by an increasing number of users and retailers demonstrate that substitutability actually exists nowadays and justifies the assessment of a joint market. In the present case, the Bundeskartellamt also carried out an alternative examination of exclusively brick-and-mortar sales, which, however, did not result in a different competitive assessment of the planned concentration. Book retailing via other outlets (petrol stations, supermarkets, etc.) or direct sales made by the publishing houses were not included in the product market but, as has so far been the case, were solely considered within the context of competition from substitutes.

For the geographic market definition on the sales side of the book retail sector, regional or local markets are analysed in accordance with the concept of demand-side substitutability. In the Thalia / Osiander proceeding the parties' representatives submitted detailed market data on all of Osiander's outlets overlapping with Thalia outlets within a radius of 15 km. In addition, the Bundeskartellamt took a closer look at all those cities or city districts in which the parties overlap as this definition provides a more accurate picture of the actual customer flows or catchment areas than a general radius-based analysis. On the basis of the respective population and the (weighted) amount of expenditure on books, the market volumes of 37 market areas and the respective market shares held by Thalia and Osiander were determined. Most of the market areas concerned are located in Baden Württemberg, some of them in Bavaria and Hesse.

According to the figures available, Thalia's and Osiander's total turnover from book retailing currently accounts for significantly less than one fifth of all German book retailing turnovers, regardless of whether or not online sales are included. When assessing brick-and-mortar and online sales in the individual market areas actually affected by the merger, a joint market share of more than 40% was found to exist in one case (Forchheim). In a separate assessment of brick-and-mortar sales this threshold would have been exceeded in four market areas. In individual cities or city districts critical overlaps between the parties were found to exist in two cases (Heidenheim, Weil am Rhein). However, a closer look at the critical market areas revealed that the concerns are offset by the specific competition situation in these areas, in particular due to the existence of independent bookstores, the locations of the bookshops or the developments expected to take place in the respective markets. Furthermore, the barriers to market entry for a new bookstore were considered to be relatively low. Not the least factor to be considered in the assessment of the competition situation was the fact that the uniform sales prices stipulated by the German Book Resale Price Maintenance Act protect smaller retailers from price competition

with the large bookstore chains. Some of Thalia's and Osiander's competitors that were surveyed within the context of the authority's investigations pointed out that Thalia might also make use of its increasing economies of scale to improve its store design and hire more employees. However, the competitors surveyed did not address any specific concerns with regard to the sales figures of their own bookstores. Against this background, it was all in all not likely that the concentration would result in a significant impediment to effective competition on the sales side.

Procurement side of book retailing

When defining the procurement side of the product market the suppliers' alternative options are decisive. In the present case, the question could be left open whether it would be useful to define separate procurement markets based on individual product categories (fiction, books for children and young adults, travel books etc.) or even specific literary genres. As to the book retail sector's different procurement channels the Bundeskartellamt examined the effects on competition for publishers and book wholesalers separately. In geographical terms, the Bundeskartellamt based its assessment on an at least Germany-wide market on the procurement side of book retailing. In the present case, it was not necessary to decide whether the German-speaking regions in Austria, Switzerland and Belgium should possibly be included in the assessment. Thalia's and Osiander's shares in the procurement markets under review were determined on the basis of the estimated total volume of books procured from publishers and wholesalers in Germany.

In the survey conducted within the context of the Thalia / Mayersche proceedings, some publishers had already criticised Thalia's growing buyer power while some also positively acknowledged the fact that this development strengthened the position of the important brick-and-mortar retail sector vis-a-vis Amazon. Competitors surveyed in the context of the present proceeding particularly emphasized the important role played by the large bookstore chains in improving the "visibility" of books and publishers and expressed their concern that standardising Thalia's and Osiander's range of products could in general reduce the wide variety of books presented in brick-and-mortar bookshops. It was also noted, however, that independent booksellers in particular were already very important for smaller publishers and titles. Some competitors also pointed out that although the practice of granting large retailers more favourable conditions was generally restricted by book resale price maintenance, this protection did not take effect in some cases due to special conditions separately granted by publishers.

With regard to the possible effects of the merger on wholesalers, market participants raised particular concerns in the talks about the possibility that Thalia and Osiander might further reduce

the volume of books purchased from wholesalers and instead make greater use of the option to purchase directly from publishers or use Thalia's own storage capacities, which might result in Thalia assuming the role of a wholesaler. According to market participants, weakening the position of the existing wholesalers would threaten the variety of the (available) titles and also jeopardise the competitiveness of the independent booksellers for which the wholesalers in some cases provided important functions (overnight delivery, website, Tolino connection). With regard to wholesalers it was also stated that the provisions of the Book Resale Price Maintenance Act (in this case: the rule that publishers may not grant book distributors less favourable conditions than those granted to final sellers) would no longer fulfil their protective purpose in all cases.

The Bundeskartellamt carried out an in-depth analysis of these concerns. However, also with regard to the procurement side, the authority ultimately concluded that the merger in question did not fulfil the requirements for a prohibition. The joint (nationwide) procurement share of Thalia and Osiander with regard to both publishers and wholesalers is (well) below 20%. The increase accounted for by Osiander, which is already included in this figure, amounts to less than two percentage points. Apart from this, both publishers and wholesalers are still able to use good alternative sales channels such as a host of other large and small book retailers, online retailers such as the large market player Amazon, and also other shops that sell books. Some of the publishing houses can also use the direct sale option. In its assessment of the planned merger the authority finally had to take into account that in most cases the market developments and the disregard for book resale price maintenance described by some market participants are not caused by the merger under review and thus cannot be stopped by merger control provisions.

Further markets affected by the merger

Apart from the book retail sector the merger of Thalia and Osiander also affected other markets such as the retail trade in printed press products, the distribution of e-readers or side-line products in bookshops (toys etc.). However, also with regard to these markets, the authority's assessment of the planned merger did not give rise to serious competition concerns.