

7 Views of third parties

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Introduction

7.1. This chapter summarizes the views of third parties, which were given to us in written submissions and at hearings.

Publishers' associations

The Publishers Association Ltd

7.2. The Publishers Association said that it was the representative body for book, journal and electronic publishers in the UK. It had approximately 200 subscribing members representing some 80 per cent of the total revenue from book, e-book and learned journal publishing in the UK.

7.3. The Publishers Association said that soundings taken across its membership indicated very positive support for the amalgamation of Book Data with VNU. Members saw the merger as being commercially logical and conferring considerable benefits within the sector in improving efficiency, the collation of market data and operation of the supply chain.

The Independent Publishers Guild

7.4. The IPG said that it represented independent publishers, namely publishers free from controlling ownership outside the immediate company. It had some 420 members, varying in size from small to large. It said that the comments which its members had made were varied and diverse, reflecting the complexity of the issue. The majority of comments focused on the commercial bibliographic data services provided by VNU and Book Data. The IPG said that only a small proportion of its members had experience of electronic book transactions; for many independent publishers, customer transactions were managed by their distributors.

7.5. The IPG gave us the following summary of the points which its members had raised:

- (a) With increased use of electronic ordering systems, bibliographic data was increasingly recognized as vital for publishers, particularly those wishing to make use of online sales channels.
- (b) A large amount of confusion existed among the smallest companies as to whether it was sufficient to submit bibliographic data to either VNU or Book Data, or whether submitting to both was essential.
- (c) Although VNU and Book Data were operating in the same area, namely the aggregation of bibliographic data, they had operated on different business models, which had added to confusion.
- (d) VNU and Book Data offered different levels of service. For many specialist and niche publishers, the enriched and added-value services were not appropriate. Any benefits would certainly not outweigh the increased costs. It was essential for the health of this sector of the industry that an efficient, ie timely, and free, or at least very low-cost, basic bibliographic listing service remained.
- (e) Historically, smaller publishers had had various difficulties in dealing with VNU and Book Data, with timeliness of data being a very vexed issue. The elimination of competition which would be brought about by the merger possibly meant an even poorer deal for smaller publishers.
- (f) One senior IPG member had expressed the view that it was unusual for a country to have more than one bibliographic data agency, and that the USA with a single agency generally had higher quality bibliographic data than the UK.
- (g) On the one hand, some publishers believed that dealing with a sole bibliographic data agency would be beneficial because of the reduced time and cost. Many IPG members, on the other hand, held the view that dealing with two such agencies was an acceptable price to pay to prevent

one agency having a monopoly. There was a good deal of concern and cynicism in the industry about the inevitability of price rises following the merger.

- (h) Bibliographic data was complicated to administer. The CC needed to consider any recommendations and action very carefully, to avoid causing more confusion. The direct impact on book sales of undoing the merger, if booksellers were unable to order titles effectively, could be very damaging for the industry.

7.6. The IPG made a number of other points to us at a hearing. These are summarized in the following paragraphs.

7.7. The IPG said that Book Data appeared to negotiate charges with individual publishers. Historically, Book Data had been ready to take bibliographic data in any form, whereas VNU had wanted the data structured in a particular way. The time taken to submit data to the databases of both VNU and Book Data was roughly an hour per book. Publishers that sent information to both VNU and Book Data did so from the same internal databases. Some IPG members preferred using VNU, because it had not charged, while others preferred using Book Data, because it offered a more timely service. VNU possibly had an advantage in that it ran the ISBN agency and therefore was known to publishers.

7.8. With regard to alternative sources of bibliographic data, there was no other obvious comprehensive source. Ottakar's had invited larger publishers to submit details to its own Intranet. Ottakar's did not see smaller publishers' representatives and therefore these smaller publishers needed to make Ottakar's aware of their books by sending bibliographic data to VNU or Book Data. Ottakar's had plans to develop its Intranet service for book retailers, using that service to replace contacts with publishers' representatives, but those plans were still at an early stage.

7.9. As to whether retailers could liaise directly with publishers to obtain bibliographic data, attention needed to be given to the structuring of the data. In theory, a search engine could find publishers' books on their web sites, but in practice, retailers needed to have the data structured in an efficiently searchable form.

7.10. Smaller specialist publishers frequently sold by direct channels, including direct mail and through specialist catalogue outlets, as well as via the established high-street retailers. For specialist publishers, such direct sales could be a much greater volume than retail sales. Publishers of local information tended to publicize their books locally rather than through VNU and Book Data. Most databases, including Amazon's, drew their information from VNU and Book Data.

7.11. As to whether VNU and Book Data had competed vigorously prior to the merger, Book Data had been seen as an engine for change, for example by introducing web-based services, with which VNU had had to compete. Until it was taken over by VNU, Whitaker had been perceived as a family firm and the view in the book trade was that the takeover by VNU had resulted in a more commercial approach to business. Following the merger of VNU and Book Data, there was a real danger that the merged entity could ratchet up prices as it sought to control the listing of bibliographic data.

7.12. As to the likelihood of new entry, start-up costs would be prohibitive. The one obvious possible entrant was Bowker.

7.13. As to why the merger had taken place, the IPG said that the merger seemed an obvious step for VNU, which no doubt wished to grow its business. Book Data had technological knowledge and expertise from which VNU would benefit. Furthermore, there was an expanding market for English-language titles all over the world. Comprehensiveness was what mattered in a bibliographic database.

7.14. We asked the IPG about hypothetical remedies, in the event of a finding that the merger would operate against the public interest. The IPG made the following points:

- (a) As to the possibility of the merger being undone, the IPG said that its main concern was that any action should not lead to confusion and difficulty over making book sales. The current uncertainty at VNU and Book Data was undesirable. The main point which should not be lost sight of was the need for an efficient and comprehensive database.
- (b) A possible remedy might be to make some stipulation forbidding price rises.

Publishers

AA Publishing

7.15. AA Publishing said that, in its view, the advantages of the merger substantially outweighed the disadvantages.

7.16. Whilst AA Publishing recognized that the merger would give VNU a monopoly over the supply of commercial bibliographic data and, as a result, the possibility of increasing charges exponentially, it would provide a far more consistent way of supplying data to the trade and Internet book retailers.

7.17. At present AA Publishing supplied data to two separate organizations, VNU and Book Data, with very different house styles, which then supplied the data, at various levels of completeness, to a disparate group of customers. Making this process more uniform could only be good for the industry as a whole. It also gave the new company the power to force through a stricter compliance with guidelines such as BIC, which would improve the BookScan analyses. It was difficult to say, however, how much VNU would use the merger to increase prices and what, if anything, could be done about such increases.

Hodder Headline Limited

7.18. Hodder Headline Limited expressed surprise that this merger had been referred to the CC. It considered that a single source of bibliographic data for the industry was a necessary efficiency that would be likely to be well received by a majority of participants. In the event that the merged entity did not provide a satisfactory resource, either a new competitor would probably emerge, or the industry would be able to make its own arrangements with VNU/Book Data to make improvements.

I B Tauris & Co Ltd

7.19. I B Tauris & Co Ltd (Tauris) described itself as a long-standing user and customer of the two bibliographic data services provided by Whitaker and Book Data. In Tauris's opinion its own interests, those of other publishers and those of the book industry in general would be best served by allowing the merger to proceed. It saw the current situation, whereby it had to maintain a supply of bibliographic information to two separate bibliographic services, as cumbersome and inefficient: a merged service would offer significant efficiency gains. These savings would offset the risk that the merged company would have increased leverage in negotiating prices with its customers.

Kogan Page Limited

7.20. Kogan Page Limited (Kogan Page) expressed general support for the merger. It said that medium-sized publishers like itself exported (mainly) specialist publications all over the world and were therefore heavily dependent on having available first-class systems to propagate bibliographical information. It cited China as an example of an overseas market where US distributors enjoyed a competitive advantage owing to what Kogan Page saw as their superior and more timely systems, with consequent preference for US books over UK publications.

7.21. Kogan Page saw the success of Book Data and its merger with VNU as providing a much-improved prospect for the UK book product in overseas markets. The merger would be extremely influential in keeping a grip on markets of increased importance in view of the increasing domination of the large retail chains following the demise of the Net Book Agreement.

7.22. Kogan Page also said that publishers would not be likely to accept unreasonable price increases. Whilst the professional handling of bibliographic information was much to their advantage, they could, if necessary, take it on themselves, though they would prefer not to.

Pearson Education Ltd

7.23. Pearson Education Ltd (Pearson) said that it was one of the world's largest educational publishers. It both contributed to and purchased the Book Data and VNU bibliographic data products and had come to rely on VNU's Book Track service (now Nielsen BookScan) for the analysis of market trends and its own performance.

7.24. Pearson said that in broad terms it was not opposed to the merger, provided that there were safeguards in place to ensure:

- (a) that the merged entity did not abuse its position and raise prices unfairly. Pearson said that although publishers could wield some power in preventing price rises, their instruments of negotiation were blunt and slow and much damage could be done to their business during the process. It would be helpful to have an undertaking from VNU not to raise prices and a commitment to transparency of pricing;
- (b) that the merged entity maintained levels of investment in technology and customer service in order that the products kept pace with the demands of the industry; and
- (c) that the merged entity did not employ predatory tactics against any potential new entrants that might react to the lack of competition in this sector, or any contiguous sector such as ordering networks.

7.25. On the question of whether alternative bibliographic databases existed apart from those of VNU and Book Data, Pearson said that Bowker had a database, but that this primarily contained US data. Pearson was not aware of any other services providing the same breadth of features as those offered by VNU and Book Data. It supplied data both to VNU and to Book Data; it was essential to provide information to VNU, which was globally entrenched, and desirable to provide data to Book Data, which was less well known internationally. The information provided to VNU was relatively limited, while the information provided to Book Data had many more marketing elements. Pearson thought that the merger could be of some benefit, as publishers would need to supply bibliographic data only to one company rather than two.

7.26. Asked what its reaction would be if, following the merger, the VNU service that was currently free to publishers was discontinued, Pearson said that that would create a major problem.

7.27. Pearson went on to say that VNU and Book Data offered quite different services. It had not therefore found that doing business with both companies had been important to its negotiations. On the question of competition between VNU and Book Data before the merger, Pearson thought that the advent of Book Data had had the effect of making VNU more aware of its customers' needs.

7.28. Pearson thought that the reason for the merger was probably to save costs. The merged entity was likely to be a strong provider of bibliographic data information, particularly in overseas markets. It was unclear that the UK market would be able to sustain two separate bibliographic data businesses. Also, the merger might lead to efficiency gains and better services.

7.29. As to the effect of the merger on prices, either in bibliographic data provision or in electronic book transactions, Pearson said that prices would have to go up significantly before publishers and booksellers might refuse to subscribe, although no increases above inflation would be well received.

7.30. As to the costs of entering the bibliographic data market, the biggest cost would be establishing relationships with publishers on the one hand and book retailers on the other. The other main category of expense was setting up the necessary technological infrastructure.

7.31. As to alternatives to the merged entity in the supply of electronic transaction services, Pearson said that the Internet was an alternative. An entrant would, however, need to persuade book retailers to sign up to an alternative service.

7.32. Asked about hypothetical remedies, if the merger were to be found to be contrary to the public interest, Pearson thought that it would be right to allow the merger to go ahead, possibly with some kind

of price monitoring. On balance, there were benefits for all to be gained from the merger, provided these really did accrue to the book industry.

Random House Group Ltd

7.33. Random House Group Ltd (Random House) said that it firmly supported the merger for the following reasons:

- It wished to have the most efficient company possible in the marketplace handling this business-critical information.
- It believed that competition between the two companies had led to unnecessary duplication and lack of investment in new business systems.
- It hoped to see the new company using its cost-saving synergies to keep investing in and improving its systems to the benefit of publishers.
- From the cost-saving point of view it further benefited Random House to have only one company to work with rather than two.
- The market in which VNU/Book Data operated was too small to sustain two healthy competitors.
- The newly-merged company was reliant on both publishers and retailers for the bibliographic and sales information that it collated and redistributed. Consequently, Random House felt that there was some recourse if the new company started to abuse its market position.

7.34. Random House added that it would not wish to see prices rise as a result of a lack of competition and would want to see rises linked to increased efficiency. It felt confident, however, that the merged company, even though it would lack competition, would not be able to force through unreasonable price rises.

Time Warner Books UK

7.35. Time Warner Books UK (Time Warner Books) said that it supported the merger most strongly and felt little concern about the disappearance of competition for the provision of bibliographic databases. The merged company knew that most major publishers would be able to supply data direct to key customers and would therefore not seek to raise charges to publishers beyond an acceptable level.

7.36. Time Warner Books said that Book Data had always had by far the better of the two databases, both in terms of the quality and timeliness of the information held, and found it reassuring that the Book Data team had become largely dominant in the new organization.

7.37. It believed that the new company was planning to bring together the two bibliographic databases into a single, high-quality database and offer an array of products to customers around the world. This would help the UK publishing industry to compete in open markets, most notably against the US publishing industry. Individual publishers' efforts could then concentrate on properly supplying advance information and maintaining backlist information to just one database.

7.38. Time Warner Books said that the merged company's ability to accept ONIX, the new worldwide standard for the receipt of bibliographic information, would encourage UK publishers to move to this standard and help them compete better against US publishers. Over 60 US publishers were already said to be supplying rival US bibliographic sources with information held in the ONIX format. Time Warner Books stressed the importance of receptive overseas markets for UK book publishers. It was vital that UK book publishers achieved a high proportion of export turnover, as a major contribution to their profitability.

The Stationery Office Ltd

7.39. TSO said that it was not a publisher in the conventional sense. Essentially it contracted with the government for the publication and sale of official information. However, TSO was also a distributor and a retailer. It submitted that the merger would bring significant benefits to the book trade for the following reasons:

- (a) An efficient supply chain demanded one perfect ISBN record for any product. The necessary investment to achieve this would be easier to finance in a monopoly environment, such as applied in other countries. Before the merger, neither VNU nor Book Data had been significantly profitable. The merger would provide better and more accurate bibliographic information from a single, reliable source; lower cost, because customers would pay one subscription rather than two; and a single working partner for supply chain improvement. More orders and sales should result.
- (b) There was little prospect that VNU/Book Data could exploit its monopoly to the financial disadvantage of the book trade. Publishers and booksellers, individually and through their very strong trade associations, could and did wield significant power and sanction over any supplier that tried to exploit its position. To be effective, a bibliographic database had to be comprehensive and up to date at all times. Disruption caused by disputes would damage all parties in the supply chain to no one's advantage; this was a very clear example of mutual interest in the supply chain.
- (c) Competition would continue for value-added services. Amazon currently provided a very comprehensive source of enriched bibliographic data. Bowker competed in the global English language market. TSO itself was a provider of services in the integration and management of bibliographic data.

7.40. Expanding on these contentions, TSO said that it subscribed currently to both VNU and Book Data. Following the merger, it was anticipating a significantly higher quality of service at a much reduced price. The merged entity would not be able to charge the sum of the currently separate subscriptions to its customers. The benefits of significantly reduced costs of production would be passed on to the customer. The merged entity would be more profitable than the two current providers.

7.41. TSO went on to say that the 1998 KPMG report (see paragraphs 4.67 to 4.72) had recommended better bibliographic data to improve the supply chain. In reality, multiple bibliographic databases existed. That was unfortunate. What was needed was an 'official' single supply of information. In the USA, the core bibliography was provided by Bowker, though enriched databases were also produced by Ingram, Baker & Taylor and Barnes & Noble. In the UK, the VNU and Book Data databases sometimes conflicted, and there was not an efficient process for establishing which version was correct.

7.42. [

Details omitted. See note on page iv.

]

7.43. TSO believed that Book Data was closer to the customer than VNU but was hugely under-capitalized and could not afford to make the necessary investment. [

Details omitted. See note on page iv.

]

7.44. As to the possibility that the merged entity might raise the price for bibliographic data services, TSO said that in its view, this would not occur. There were all sorts of 'monopolies' in the book industry.

If the merged entity were to try to abuse its position in any way, it would anger the publishers, with a potentially disruptive effect on the maintenance of a comprehensive database. The retail community too was very powerful and could find other sources of bibliographic information, such as wholesalers, Amazon, Bowker or the British Library.

7.45. As regards competition between VNU and Book Data before the merger, TSO said that VNU and Book Data had offered different services. VNU had been the definitive source of determining whether an ISBN was in existence, and had offered a reliable basic record. Book Data had offered enriched data. Before the merger, in TSO's view, VNU and Book Data had competed on value-added data, for example the supply of tailored data feeds to retailers. Competition had been largely on price.

7.46. As to potential entry into the bibliographic data market, TSO said that Gardners or Bertram might use their combined databases as a starting point, based on the information they had already received from VNU and Book Data; or Amazon might perhaps build on its database. It was difficult to say how long it might take an entrant to become profitable.

7.47. As to electronic transactions for the book trade, TSO said that there were many channels which would allow a retailer to order books efficiently. All that was needed to compete with First Edition was an EDI service focused on the book industry.

7.48. TSO estimated that several million pounds in capital investment would need to be spent by the merged entity on upgrading the basic databases. In addition, marketing expense would be needed.

7.49. As regards possible remedies, if we were to come to the conclusion that the merger would be against the public interest, TSO said that it saw no justification for imposing price controls or any other constraint on TeleOrdering. In the case of the bibliographic data business, TSO suggested that the merged entity be required to provide transparency in its operations. This could possibly be achieved by creating a governing body or editorial board of which the members would be representative of the book industry. TSO was opposed to any remedy which was intended to restore competition since it believed that there was room for only one bibliographic data provider.

7.50. Asked whether, if we were to decide that the appropriate remedy was to sell off some part of VNU/Book Data, [

Details omitted. See note on page iv.]

7.51. Commenting on our remedies statement (see Appendix 1.1), TSO made the following points:

- (a) The book industry needed a single source of bibliographic data which could be relied upon to be correct. TSO therefore denied strongly the hypothesis that adverse effects would flow from the loss of competition.
- (b) New entrants were most unlikely in the bibliographic data market; VNU and Book Data had separately been struggling to make money from the supply of bibliographic data and considerations of return on investment would rule out any sensible investor.
- (c) It would not be reasonable to require the merged entity to give away its database, which was its intellectual property, to a competitor without reward. It was highly unlikely that publishers would welcome a new entrant as they would have to incur costs in servicing the new entrant.
- (d) As to the protection of customers, there were sufficient market pressures to maintain an equitable position.
- (e) As to the possible divestment of the Whitaker bibliographic database, it would be unlikely to be attractive to any new entrant. The ISBN agency would have to be included in any such disposal.
- (f) As to possible remedies concerning electronic transaction systems for the book trade, TSO said that TeleOrdering was a transaction service while First Edition was a technology service allowing transmission of large quantities of data, including transaction data, between two defined parties. The two businesses were not in the same market.

An academic publisher

7.52. An academic publisher said that the merger would be anti-competitive and should not be allowed to proceed.

Bibliographic data providers

R R Bowker llc

7.53. Bowker's business is described in paragraphs 4.145 to 4.147 and its relationships with VNU and Book Data, including the role of its parent company, CIG, in bidding to acquire Book Data, are referred to in paragraph 3.93 to 3.98.

7.54. In its written evidence, Bowker expressed concerns about the merger. It said that, before the merger, VNU and Book Data were the only two comprehensive providers of UK bibliographic information and support services. VNU and Book Data used their data to produce similar products for the UK and global marketplaces. [

Details omitted. See note on page iv.

]

7.55. Bowker said that before the merger, competitive forces had ensured price competition, quality levels, customer service responsiveness and market responsibility. [*Details omitted. See note on page iv.*] Furthermore, Bowker's access to information supporting its business would be limited to one supplier. [

Details omitted. See note on page iv.

]

7.56. Bowker added that VNU, through its acquisition of Book Data, now owned an interest in BDS, which supplied CIP data to the British Library. [

Details omitted. See note on page iv.

]

7.57. [

Details omitted. See note on page iv.

]

7.58. [

Details omitted. See note on page iv.

]

7.59. At a hearing, Bowker gave us further details about the history of its business and of its relationships with VNU and Book Data. Bowker said that its sales of UK data represented about [X] per cent of its total bibliographic sales; [

Details omitted. See note on page iv.

].

7.60. [

Details omitted. See note on page iv.

]

7.61. [

Details omitted. See note on page iv.

]

7.62. Commenting on the auction for the sale of Book Data, Bowker said that it believed VNU could not afford not to buy Book Data. If Bowker had acquired Book Data, the future for VNU's bibliographic data business would have been very uncertain. [

Details omitted. See note on page iv.

]

7.63. [

Details omitted. See note on page iv.

]

7.64. [

Details omitted. See note on page iv.

]

7.65. As to possible benefits from the merger, Bowker said that it did not know if integration resulting from the merger would preserve the best of both databases. However, assuming that efficiencies were made, the merged company would have more flexibility to invest in quality improvements.

7.66. Asked to comment on the claim that the merger would give UK publishers better access to non-UK markets, including the USA, Bowker [

Details omitted. See note on page iv.

].

7.67. On the question of whether it was possible that an alliance of retailers or wholesalers could come together to maintain an alternative database, [
Details omitted. See note on page iv.]

7.68. On the question whether VNU had a competitive advantage because it was the keeper of the ISBN standard in the UK, Bowker—which is the agent for the ISBN operation in the USA—said that the ISBN operations were separate from the process of gathering bibliographic data information from publishers. In assigning ISBN numbers, the agency simply sent numbers to publishers, who subsequently assigned those numbers to books. It followed that the ISBN agency had a knowledge of who all the publishers were, but not necessarily of the products. Management of the ISBN agency did allow VNU to acquire information on publisher names and contacts before any other entity and in that respect it had an advantage.

7.69. On the question of possible entry, [
Details omitted. See note on page iv.]

7.70. On the question of possible remedies, should we conclude that the merger would be against the public interest, Bowker made the following points:

(a) [
Details omitted. See note on page iv.]

(b) [
Details omitted. See note on page iv.]

(c) [
Details omitted. See note on page iv.]

(d) [
Details omitted. See note on page iv.]

7.71. In response to our remedies statement (see Appendix 1.1), Bowker made the following points:

(a) [
Details omitted. See note on page iv.]

[
Details omitted. See note on page iv.]

(b) [
Details omitted. See note on page iv.]

Bibliographic Data Services Limited

7.72. BDS gave us information about recent bidding for the CIP contract awarded by the British Library in September 2002. It said that the Book Data director on BDS's board had avoided being involved in the preparation of the bids submitted by BDS and VNU so as to avoid any possible conflicts of interest. As to the future of the CIP contract, the British Library was migrating to the international

MARC 21 format in January 2004, and that would have an impact on the number of organizations eligible to bid for the CIP contract. Effectively, this change would make it easier for a US or European company to offer a credible bid, because they would be able to demonstrate transactions in the required data format. Since UK MARC, which the British Library currently used, was a format specific to the UK, it was unlikely that any organization outside the country would have experience in this format. Accordingly, the competition for the next tender process was likely to be more rather than less rigorous.

The British Library

7.73. The British Library, which is the UK national library, gave us information about its products. This is set out in paragraph 4.122 to 4.126. The British Library said that, in order to catalogue books for inclusion in the BNB, it needed to inspect the book itself. It used the VNU and Book Data databases for the purposes of checking publications and making acquisitions. The British Library also explained that its CIP programme (see paragraph 4.138 to 4.142) was part of the BNB. The customers for the BNB were essentially the library market, and the cataloguing standards in the BNB were library standards (see paragraph 4.120). The British Library said that libraries were not interested in price or availability information, except for the purposes of acquiring books. As to publishing industry standards, the British Library had not been involved in the detailed development of those, although a British Library representative sat on the board of BIC. The British Library stated that the BNB was not a substitute for the kind of bibliographic databases required by the book trade and the British Library had no plans to enter that market.

7.74. With regard to the history of the CIP programme, the British Library said that this had first been put out to tender in 1987. Book Data had held the contract to compile the CIP data from 1987 to 1991 and VNU had held it from 1991 to 1995. In 1995, the CIP contract was awarded to the newly-established BDS and it had been reawarded to BDS in 1998 and September 2002. In 1998, the main bidders had been BDS and Bowker. In 2002, the main bidders had been BDS and VNU: there had been a third bidder but it had quoted a far higher price than BDS and VNU.

7.75. On the question of competitors to VNU/Book Data, the British Library said that in reality there were no other companies providing the same service. Other bibliographic data providers such as wholesalers received data from VNU or Book Data. The British Library thought that new entry to the market would be unlikely.

7.76. As to the recent tendering of the CIP contract, the British Library said that Book Data had not been a bidder. BDS had won the contract on the grounds of competence and cost. The British Library added that it was on those grounds that BDS had won the contract in 1995 and 1998. In future CIP contracts, the British Library wished to be able to use MARC 21, an international (but US-derived) standard for the format of catalogue-quality data. In theory that meant that US companies could tender for the CIP contract, but in practice any successful contender for the contract would need to be familiar with the UK publishing scene.

7.77. The British Library considered that there had not been strong competition between VNU and Book Data before the merger. In effect, VNU and Book Data had been offering different products. The British Library thought that the merger had occurred because the market was small and there was not really room for two providers of commercial bibliographic data. As to the effects of the merger, the British Library doubted if prices would rise. It thought that the collection of enriched data, which Book Data had carried out before the merger, might not be pursued as vigorously after the merger.

7.78. The British Library said that the bibliographic data business was highly labour intensive, and therefore new entry had occurred rarely. Book Data had found a niche in the market in 1987 and BDS had found a niche in 1994.

7.79. As regards possible remedies, in the event that we were to conclude that the merger was against the public interest, the British Library said there was a risk that, if VNU were required to divest Book Data, Book Data might not be able to stay in business. As to a possible price control remedy, the British Library thought that this had some merit.

Wholesalers

Bertram Group Ltd

7.80. Bertram said that it was a significant purchaser of bibliographic data, which it used as a primary source of information both for its trade book wholesaling activities and for its library supply business, known as Cypher. Bertram said that it was not entirely content with, and found it necessary to improve, the quality of the purchased bibliographic data, without which its ability to trade would be diminished. It thought that there might be an opportunity for a single supplier to invest greater resources in improving the quality and richness of the data.

7.81. On the other hand, Bertram said that it was very concerned that if the merger was allowed to go ahead, it would have no opportunity either to source data or negotiate terms with competing suppliers. Both Bertram and Cypher could be held to ransom with the only alternative a costly implementation of their own database based on direct data feeds from publishers. Bertram believed that, at most, this would cover about 70 per cent of its current business requirements.

7.82. At present, Bertram was able to negotiate terms with and agree specific uses for the data with one or other of the suppliers. For example, it was a reseller of both sources of data to independent booksellers, Bertram's customers, who used the information with their computer systems to enable them to identify and source books from Bertram. Bertram feared that this might not be possible if there was only one supplier, which might either charge for or forbid such an arrangement. This could result in economic loss to Bertram and higher costs to its customers.

7.83. Bertram said that it had been possible to work with the two data suppliers to develop specific improvements. It feared that the merger might mean that a single supplier would not have the incentive to continue such an arrangement.

7.84. Bertram said that it had considered whether there might be any mechanism that could reduce some of the potential risks which it had identified. It thought it possible that some form of price maintenance could be put in place for current products. Against this, there would be no alternative should these products be phased out or their development cease, and there would be no challenge to the pricing of any new products. Most importantly, there might not be any impetus to develop the products that customers really needed.

7.85. On balance, Bertram said that, while it could see clear benefits from a better run and better invested business, it felt that these were outweighed by the concerns and the potential risks outlined above.

7.86. Bertram said that it used ordering systems provided by the two suppliers of bibliographic information, but whilst it was not reliant on them just to transmit orders, its business efficiency with some partners could be harmed if services were adversely affected.

7.87. Commenting on our remedies statement (see Appendix 1.1), Bertram said that, although there was an advantage in a high-quality single bibliographic database serving the industry, service quality and improvement might be difficult to achieve unless there were competitive pressure. Abuse of monopoly power would be difficult to restrain and so users might not, in the long run, benefit from such a single source.

7.88. As to whether licensing might be an appropriate remedy, Bertram said it was difficult to see how the economics of such an arrangement might work in the long run, either for a third party or VNU. It was difficult to see how price competition could be encouraged if potential competitors had to pay an underlying licence fee. Further, unless maintenance of databases were conducted by competing suppliers, it was difficult to see how competition on quality could be encouraged. Bertram therefore considered that licensing would not work in practice.

7.89. In Bertram's opinion, the best solution would be an industry database, compiled by the publishers and paid for by them, with free access to all users. Such a database could then be enhanced or utilized by any number of competitive services.

Gardners Books Ltd

7.90. Gardners described itself as Great Britain's leading book wholesaler. It said that it received data from both VNU and Book Data but also took some information direct from publishers. It offered its own database to its retailer customers based on all these sources.

7.91. Gardners had started in the 1940s and had been owned by Whitaker for a short time in the 1980s. Although the business was successful, the net profit was not large—about 5 per cent on turnover. Its agreements with retailers were individually negotiated and included discounts related to turnover. Some retailers purchased stock from more than one source if their principal supplier did not have particular titles in stock.

7.92. Asked how it would react if the merged entity raised prices for its commercial bibliographic data products, Gardners said that it had its own good links with publishers and might switch to relying on publishers' information. However, it would have problems in finding information about books which were not in its own stock range. Gardners thought that the merged entity would be aware that it would need to provide a good service to wholesalers and other customers and that unreasonable price rises were unlikely. Gardners added that it had considered the British Library as a source of bibliographic data. However, the British Library provided catalogue-quality data, which Gardners did not need. Furthermore, the British Library records tended to lag some months behind the publication of the books.

7.93. If the merged entity were to raise prices for the electronic transaction services to the book industry, Gardners said that it could use its own EDI links with publishers to order books. It mentioned that First Edition had an exclusive arrangement with the GXS network and that Gardners would like to be able to deal directly with GXS.

7.94. As to competition between VNU and Book Data before the merger, Gardners said that VNU and Book Data had produced different products, and prices had been largely individually negotiated, but it thought that the two companies had competed with each other on price. For example, both VNU and Book Data had tended to exhibit at the London Book Fair, offering discounts to entice potential customers.

7.95. As to the reasons for the merger, Gardners said that the merger appeared to give opportunities to combine the databases of VNU and Book Data, and customers might be able to argue that they should pay less than they had been paying for two separate databases. Asked if it had considered making a bid for Book Data, Gardners said that it had not considered this seriously: its basic business was selling books to book retailers.

7.96. As to whether book retailers and others might form an alliance to provide bibliographic data if the merged entity were to raise prices significantly, Gardners was unsure if in practice book retailers and others would work in concert, though it said that the Booksellers Association was a strong industry body. As to the electronic links with publishers, Gardners considered that these ought to be readily accessed provided that the would-be entrant was able to undertake the work of contacting all the publishers. Gardners said that the provision of bibliographic data services was not on the whole a profitable business.

7.97. On the question of possible remedies, if we concluded that the merger was against the public interest, Gardners said that price control would be difficult to apply. It would prefer the remedy of undoing the merger. However, its overall view was that the merger, on balance, was not against the public interest.

7.98. Commenting on our remedies statement (see Appendix 1.1), Gardners was not sure that the possible remedy of requiring the merged entity to grant licences for the commercial exploitation of its data to a third party would be workable. Rules would be difficult to apply fairly and were likely to need changing as a result of changing market conditions and technology.

7.99. Gardners said that there were many complications and variations to the sourcing and processing of bibliographic information. The price of a licence would therefore be difficult to set fairly in the light of the fact that some bibliographic data information was freely available from publishers, and it was not clear who would set the price.

Total Home Entertainment Ltd

7.100. THE said that it was a wholesaler and distributor of entertainment products, particularly music CDs, videos and DVDs, computer games and books.

7.101. THE purchased goods and services from VNU, principally *The Bookseller* magazine and the TeleOrdering service. THE's spend with Book Data covered the provision of bibliographic information and included the subleasing of that data in the form of CD-ROMs for its customers. THE was also a purchaser of EDI services from First Edition.

7.102. THE was not aware of any other company that could provide these services, with the possible exception of EDI. However, even though there were other companies providing EDI services, the fact that the vast majority of the book trade used First Edition would make changing providers very difficult.

7.103. THE said that it would be possible to obtain bibliographic information electronically from the big publishers and distributors. However, the key to the Book Data or VNU bibliographic services was that they covered all books available in the UK, not just those from the large organization. Partial information was of very limited value and did not represent a viable alternative.

7.104. THE guaranteed to obtain any of the 1.1 million UK books in print on behalf of customers. This operation was dependent on access to a database of all titles in print and THE produced a CD-ROM for use by its customers based on data purchased from Book Data. THE also used this bibliographic information to set up titles and thus alleviate redundant keying.

7.105. THE said that creating a comprehensive bibliographic record of book titles available in the UK was an expensive undertaking and the merger would undoubtedly result in a net reduction in the cost of the two companies performing this task separately. However, there was a degree of apprehension that service levels could drop and costs rise without the benefit of competition to help regulate the service. Before Book Data had emerged as a rival to Whitaker, the effective cost of the information had been higher, and the level of service and the degree of customization lower, than in recent years. Quality, cost and cooperation had all improved when there was competition.

Library suppliers

Cypher Group Ltd

7.106. Cypher, which is owned by Bertram, said that it was a supplier of books, video and audio products to schools and to public and academic libraries. It purchased bibliographic data from VNU and BDS. Cypher said that this data was fundamental to its business operations and could be divided into two forms. 'Standing' data was largely purchased from BDS and described the attributes of a book, ie title, author, publisher, class etc. This data was used by its customers to maintain their catalogue and run the library. 'Dynamic' data, largely purchased from VNU, was information about a book's availability and price. This information allowed Cypher to keep its customers informed about publication dates and the availability and the price of books in the backlist.

7.107. Cypher was not aware of any other organization that could provide these services to the required level. It would be possible for it to gather the information directly from publishers, but that would be costly and unlikely to be as comprehensive.

7.108. The acquisition might have some benefits for Cypher because the combined group should be able to take the best from both sets of bibliographic data and produce a single, comprehensive database. Cypher's concern was that, with no obvious competition, prices would start to rise in the medium term.

The Holt Jackson Book Company Limited

7.109. Holt Jackson told us that it purchased specialist data services from BDS and paid a further sum for the production of a weekly catalogue on CD-ROM. It knew of no other organizations that could supply a comprehensive bibliographic searching tool for British books without being connected to book

purchase. It also said that First Edition provided EDI networking services as a value-added reseller of a major international network; Holt Jackson knew of no other value-added reseller that specialized in the book trade.

7.110. Holt Jackson said that Book Data's e-haus division, which provided specialist software and web-hosting facilities, relied heavily on the BookFind database. This link, together with the very close working relationship between e-haus and BDS, had encouraged Holt Jackson to use e-haus for web-site software and web hosting.

7.111. Holt Jackson said that it gathered some bibliographic information from publishers but the big advantage in using Whitaker's BookBank or Book Data's BookFind products was that they covered a much wider range of material from many more publishers than Holt Jackson would normally deal with and which would otherwise be extremely expensive and time consuming to acquire.

7.112. Holt Jackson said that Book Data and VNU offered a range of services loosely connected by the book product. The two bibliographic databases each had their strengths and weaknesses. The Book Data product had more detail about individual titles but VNU's had a wider coverage. The functionality of the products also varied: in Holt Jackson's view the production of book lists on specific subjects was easier using BookFind, whereas a specific bibliographic search for individual titles was easier using BookBank.

7.113. Holt Jackson said that it would not make much difference to it, from a functionality point of view, if there were just one product combining the strengths of the two existing databases, but it noted that there would be no competition to control the price of this service.

7.114. Commenting on VNU's argument that publisher influence would tend to keep prices of bibliographic products down to reasonable levels, Holt Jackson said that the effectiveness of this control, if it could be described as such, would be diminished in the medium term.

[Details omitted. See note on page iv.]

7.115. [X], a substantial library supplier, submitted views as follows. It said that it was a specialist library supplier, supplying books and bibliographical services to public libraries. It told us that it supplied libraries with shelf-ready books, and also with catalogue-quality bibliographic records which it purchased from BDS. This information was received three months in advance of publication. It did not buy bibliographic data from VNU or Book Data but before the merger it had been talking to VNU about the possibility of VNU supplying catalogue-quality bibliographic data.

7.116. TeleOrdering could easily be expanded to include an EDI service. [X] had been pleased when the rest of First Edition had been acquired by Book Data in 2001 because it thought that Book Data would have expanded First Edition to include an order-routing service comparable to that offered by TeleOrdering. Moreover, Freeway would be able to offer EDI services to the publishing industry and was holding discussions with publishers and customers. The Internet also offered a potential alternative means of transacting business electronically.

7.117. Before the merger, there had been differences in quality between VNU and Book Data, and the two companies had competed on quality as well as on price.

7.118. As to the likelihood of a group of retailers or publishers starting a new bibliographic data agency, this was unlikely. Customers and library suppliers did not want to get into the business of creating data. If some publishers wished to cooperate with each other, they might be able to achieve such a business to some extent, but there could be difficulties in establishing links with all publishers. BDS had managed to establish such links when it was set up in 1994.

7.119. It was unclear if progress towards the MARC 21 standard (see paragraph 4.149) would be as rapid as had sometimes been predicted. It was doubtful if the standard could be introduced in all public libraries by 2004.

7.120. On the question of possible remedies, if we were to conclude that the merger was likely to be against the public interest, the ISBN agency should be separate from VNU, so that there would be a

source of raw ISBN data available without the need to use VNU. As to new entry, that would be quite difficult. A new entrant would need time to establish links with publishers. The bibliographic data business was not particularly profitable. As to the possibility of requiring VNU to sell the basic content of its database to would-be entrants, that was an interesting possibility. As to possible divestment of First Edition or TeleOrdering, it would be practicable to divest either of them and competition could be maintained whichever of the two were divested.

Booksellers' associations

The Booksellers Association of the United Kingdom and Ireland Limited

7.121. The Booksellers Association said that its Council had met VNU on 12 September 2002 in order to listen to its proposals and raise any concerns over the merger. Following this meeting the Booksellers Association issued a press statement on 17 September, which it told us reflected its position on the merger.

7.122. In the statement, the Booksellers Association said that booksellers were concerned that the merger might lead to price rises, a reduction of services and/or a slowdown in the development of new services. The VNU representatives had explained to the association that the merged company relied on receiving support from the association's members and it would not be in the company's interests to upset booksellers by instigating unpalatable price rises. VNU would rely on book retailers to supply EPOS data to Nielsen BookScan. VNU maintained that the best of the original Whitaker and Book Data services would be combined to offer enhanced coverage, accuracy and depth, and the integration of the two companies would enhance development through greater investment.

7.123. The statement added that the Council had discussed the existing services with VNU at some length and made a number of recommendations for improvement. Following the meeting, the Council had decided not to make representations to the OFT, whilst recognizing that individual booksellers might wish to do so.

Book retailers

Amazon.co.uk

7.124. Amazon said that it had been trading in the UK since 1998 as an Internet retailer and had no physical 'bricks-and-mortar' presence on the high street. It aimed to be able to offer for sale all books in print in the UK. Its business was not focused solely on bestsellers; it was also a popular source of professional and academic books and also limited availability and out-of-print book titles. In Amazon's opinion, before the merger there had been only two comprehensive sources of 'rich' bibliographic data information in the UK: VNU and Book Data. Since Amazon traded over the Internet, it was essential that it had comprehensive rich bibliographic information as such data underpinned its web site both operationally (by, for example, enabling detailed searches functionality) and from a customer viewpoint in terms of web site content (for example, synopses of books).

7.125. Amazon said that if as a result of the merger prices were to increase, it would have no alternative source of rich bibliographic information. Publishers' information was not a proper substitute, as Amazon did not have the systems or resource to aggregate such data. Amazon said that because the rich data was so important to its catalogue, in the event that the prices for it increased, it would likely either have to absorb the costs itself or pass such costs onto its customers.

7.126. Amazon made the point that before the merger it had deliberately dual-sourced its bibliographic data in order to avoid dependency on one provider. Amazon expressed the view that after the merger there would be only one comprehensive source of rich bibliographic data in the UK.

7.127. Amazon said that the entry of Book Data into the UK book market segment in 1987, offering enriched records, had in due course galvanized VNU into improving its bibliographic data. Amazon had endeavoured to offer encouragement and assistance to VNU in this process. Just before the merger, VNU and Book Data were offering similar catalogues of bibliographic data.

7.128. Amazon used the rich bibliographic data, together with information from publishers and wholesalers and content from its own editorial team, on its web site. The rich bibliographic data was of particular importance as it contained elements such as prepublication data for books (price and release date) and synopses, which Amazon could not realistically source from elsewhere and without which its web site could not function as it currently did. Based on its understanding of data aggregators, Amazon said that it would be difficult for an alternative supplier to offer a comparable service to that of the merged company within a reasonable time period.

7.129. Amazon commented on the published advice of the DGFT to the Secretary of State published on the OFT's web site on 8 November 2002. It made the following points:

- (a) The British Library was not a supplier of commercial bibliographic data, as distinct from catalogue-quality bibliographic data, and in Amazon's view would be very unlikely to try to enter the commercial bibliographic data market.
- (b) It was not the case that the merger would necessarily lead to more comprehensive coverage.

7.130. Amazon added that it already had its own systems for dealing with conflicts and inconsistencies between the databases of VNU and Book Data and on this basis it did not see any advantage to itself in the two companies merging their databases.

7.131. Amazon said that, essentially, it was licensed to use the bibliographic data which it obtained from VNU and Book Data on its web site; it was prohibited from selling the data to third parties.

7.132. Amazon said that it did not use VNU's TeleOrdering service or Book Data's First Edition and therefore was not in a position to express a view about the effect of the merger on these two services. Amazon ordered books principally from wholesalers and a small number of large publishers, with all of which it had its own links.

7.133. Amazon said that it had not considered bidding for Book Data as commercial bibliographic data services were not its core business. Amazon focused on retailing, not data aggregation services.

7.134. As to bibliographic data providers in other countries, and the argument that had been put to us that in most countries there was only one bibliographic data provider, Amazon said that to the best of its knowledge in the USA there were at least two principal wholesalers (Baker & Taylor and Ingram) together with a data aggregator, Bowker, providing rich bibliographic data. It also said that, to the best of its knowledge there was more than one provider in some other European countries.

Blackwell Ltd

7.135. Blackwell's told us that it was a UK-based retailer and international library supplier and that it bought bibliographic data services from both VNU and Book Data to supplement its own bibliographic services.

7.136. From VNU it primarily bought database products to support its retail operations. From Book Data it bought bibliographic data to supplement its online and library services products.

7.137. Blackwell's said that much of the data supplied by VNU and Book Data was also available from Bowker. Blackwell's also obtained data direct from publishers and from its own internal bibliographic data department. However, it had been its practice to use VNU as a key bibliographic source given the economies of scale and the tried and tested information supply chain from publisher, through to VNU, through to distributors.

7.138. Blackwell's welcomed the merger as there had been significant overlap in the services provided, while at the same time each service had lacked key features of the other. Blackwell's hoped that the combination of the two companies would simplify meeting its bibliographic needs and provide information at lower cost.

Borders (UK) Ltd

7.139. Borders (UK) Ltd (Borders) said that it was the UK subsidiary of Borders Group Inc, a leading global retailer of books, music, video and other information and entertainment items, with more than 1,200 stores around the world. Borders Group Inc also offered online shopping in conjunction with Amazon.

7.140. Borders purchased bibliographic data from Book Data on CD-ROM, by direct data feed and through the Internet. It also purchased EDI services through First Edition and purchased TeleOrdering services, plus some bibliographic data, from VNU.

7.141. Borders said that, as a US-owned company, it could obtain bibliographic data through Bowker or Ingram in the USA, though it was aware that either Book Data or VNU was the original source of the data on UK-published books. Alternatively, data could be sourced through wholesalers such as Gardners or Bertram in the UK.

7.142. Borders said that it was unable to obtain much of the data direct from publishers. Borders was developing a data repository which would combine data from bibliographic agencies, publishers, wholesalers and other sources from which it could select the best match to its requirements.

7.143. Borders submitted that, while any reduction in competition was to be regretted, there were alternatives that would limit the ability of VNU to monopolize the market. There might also be some benefits in having a single major supplier developing the standards for bibliographic data.

Browsers Bookshops Ltd

7.144. Browsers Bookshops Ltd (Browsers) told us that it was a small independent bookseller. It said that the existence of competition in the bibliographic data market since the inception of Book Data had contributed to major technical advances and brought about 'head-to-head' price competition between the two companies. Access to investment funds had not been held back by competition in the sector.

7.145. Large chains had considerable purchasing power but it was smaller independents with little negotiating power, such as itself, which had previously benefited from the competition and had been able to use one company as a bargaining counter against the other. Bibliographic data supply, at around £1,100 a year per shop, was not a marginal cost for small independent booksellers.

7.146. Browsers thought that VNU viewed a merger as a means of restricting price competition and thus raising profits. It said that the book industry, although small by retail standards, was highly visible in the UK, with strong media interest. The public welcomed the mix and character which competition from independent booksellers brought to the consumer book market. That competition could only be maintained if independents were able to plan their management of overhead costs against a fair and competitive background.

Faculty Books (Schools and Libraries) Ltd

7.147. Faculty Books (Schools and Libraries) Ltd (Faculty Books) said that it used both Whitaker's BookBank and Book Data's BookWise products but found neither bibliographic database to be totally comprehensive. It usually found the information it required by using the two systems in conjunction with each other.

7.148. Faculty Books' main concern was that the quality of bibliographic information provided by the merged company might decline. Though neither database was perfect, the availability of both allowed for cross-referencing, which might not be possible in the future.

7.149. Faculty Books said that it might view the merger in a negative light unless steps were taken to ensure that any future bibliographic products supplied by the merged company were of an equivalent standard to those currently available, and that standards were not compromised by a lack of competition.

Foyles

7.150. Foyles said that it was in favour of the merger but nervous about having a single supplier of bibliographic data. It recognized, however, that there was probably not room in the book industry for two bibliographic databases and that one of the two current suppliers would go out of business, leaving a sole supplier.

7.151. Foyles said that its knowledge of the individuals leading VNU and Book Data inclined it to believe that the merged company would supply the industry with a good product at a reasonable price as long as the industry remained vigilant and maintained pressure for it to do so. Nevertheless, Foyles still had reservations as to whether the merged company's stated good intentions would be maintained in the longer term.

7.152. Foyles felt that the most satisfactory way forward would be for the merger to be approved subject to certain conditions, with the application of sanctions if such conditions were not met.

Hammicks Bookshops Limited

7.153. Hammicks Bookshops Limited (Hammicks) said that it was a medium-sized chain of 29 bookshops with total retail sales of £42 million in the year ended March 2002. The company operated two e-commerce web sites provided and supported by Book Data. It was also a user of First Edition for the electronic importation and settlement of supplier invoices; of Book Scan which provided detailed data on market size and share; of TeleOrdering which it used to submit electronic orders to direct suppliers; and of the Whitaker Book Bank CD-ROM, which also supported the company's EPOS and customer ordering systems.

7.154. Hammicks said that there were numerous other companies besides First Edition that provided EDI services; few were geared to the book industry, though Hammicks thought that Batch and Freeway might be two exceptions. Equally, there were numerous other companies that provided web-site services, but again most were not geared to the book industry—all book e-commerce systems were based on bibliographic data from VNU and Book Data.

7.155. Hammicks said that there was no real alternative to BookScan either before or after the acquisition and that the same applied to TeleOrdering, though PubEasy and Buyline might be potential alternatives along with other wholesaler proprietary systems. However, the merger had not altered this situation.

7.156. Hammicks said that the only viable bibliographic information systems were BookWise (from Book Data) and BookBank (from VNU). Whilst technically feasible, it would not be cost-effective for Hammicks to gather its own bibliographic information directly from publishers and wholesalers, owing to the volume of data involved.

7.157. Overall, Hammicks thought that the scope for economies of scale could allow the new combined business to play a key role in improving the efficiency of the book industry. This would benefit consumers and all other parties engaged in the industry by establishing common standards and by providing superior supply chain and customer service systems. However, it would be counterproductive for the entire industry if the combined business used its monopolistic position to increase the cost of providing bibliographic information, which booksellers and other parties would then have to pass on to the consumer.

John Smith & Son (Glasgow) Ltd

7.158. John Smith & Son (Glasgow) Ltd (John Smith) believed the merger made good commercial sense, and was therefore in favour of it. The book trade was reliant upon good and accurate bibliographic information. Despite obvious concerns about having only one provider of such information, the history of the trade indicated that it was better to have one reliable source rather than two competing without either being totally reliable.

7.159. John Smith said that the future structure of the new group indicated that the best features of the services of both companies would be combined to provide a far more comprehensive database that would also be cheaper than subscribing to both databases.

7.160. John Smith believed that, for the first time, the UK book trade had the opportunity to be provided with a truly comprehensive and innovative information provider. Publishers and booksellers would have a single entity to deal with, and history indicated that the trade would be unlikely to allow standards to fall.

Ottakar's Plc

7.161. Ottakar's said that it was a high-street book retailer with 93 shops in smaller cities and towns. It was concerned that the merger would remove competition from the supply of bibliographic data and also from electronic transaction services for the book trade. As to the former, Ottakar's said that it did not have the market presence or resources to acquire comprehensive bibliographic data from any source other than VNU or Book Data. As to the latter, it said that currently all financial transfer systems within the book industry made use of TeleOrdering and/or First Edition: there was no viable alternative. Ottakar's suggested that VNU/Book Data should be forced to divest either TeleOrdering or First Edition or alternatively should be prevented from merging these services for at least three years so as to allow alternatives to be developed within the trade.

7.162. With regard to electronic transaction systems for the book industry, Ottakar's said that it used both First Edition and TeleOrdering. First Edition was used by large distributors and was significantly cheaper than TeleOrdering. TeleOrdering was used by Ottakar's stores for replenishment ordering from any publisher where the store had the ISBN number. The value of TeleOrdering lay in the ISBN routing service.

7.163. Ottakar's said that VNU and Book Data had competed for its business in the past. Currently, it bought products from both companies but it bought bibliographic data only from Book Data. It considered that to buy two slightly different databases would be confusing. Book Data provided 'non-book' information, such as posters and point-of-sale material; VNU did not provide such information. Ottakar's had also created its own database for an Intranet which was based on data from Book Data but also had significant levels of information from publishers, wholesalers and Ottakar's itself. Ottakar's told us that the Intranet system was significantly more efficient than existing methods of purchase.

7.164. Ottakar's said that there had been some new entry in the EDI market: for example, two publishers/distributors had switched to Freeway. Ottakar's added that if a book retailer wished to use more than one EDI provider it might have to bear interconnection costs and that interconnection could adversely affect the reliability of EDI communication.

7.165. As to the possibility of the large book retailers coming together to encourage publishers to produce data to an acceptable standard, thus possibly bypassing VNU/Book Data, Ottakar's thought such cooperation was unlikely. It recalled that a group of companies in the book trade had tried to lay down a code of practice for dealing with returned books, but had found it difficult to put this into practice.

7.166. In response to questioning about the amount of leverage over VNU/Book Data that Ottakar's would have, if the merged entity put up prices, Ottakar's agreed that it could in theory refuse to supply data to Nielsen BookScan, but did not think that it would in fact behave in that way. It supplied data to BookScan because it needed to receive information on which books were being sold.

7.167. Ottakar's main concern about the merger was that TeleOrdering and First Edition would no longer be separate entities. If the electronic systems underpinning the ordering of books were to break down, Ottakar's business would suffer immediately. Ottakar's would therefore like to see an independent IT audit undertaken so as to ensure that the IT infrastructure of any merged company was sufficiently robust to minimize disruption to the transmission of supply chain messages.

WHSmith Retail Ltd

7.168. WHSmith said that, as from 1 October 2002, it had entered into a one-year agreement with Book Data, having previously purchased its bibliographic data from VNU.

7.169. It said that, so far as it was aware, VNU and Book Data had been the only sources of bibliographic data in the UK and, therefore, the merger would create a single monopoly supplier. However, it believed that the provision of bibliographic data had traditionally been a 'cottage' industry and that the

merger might bring greater efficiencies and cost savings, which the merged company could pass on to its customers.

7.170. VNU/Book Data would, however, have the opportunity to increase its charges for the provision of bibliographic data given that it would be the only source of such data. WHSmith said that, if prices were to rise by 5 per cent, it would either have to absorb the increase or review the additional services that it purchased from VNU/Book Data. However, it had no reason to believe that VNU/Book Data would increase its charges as a result of the merger.

Sussex University Bookshop

7.171. Sussex University Bookshop said that it was a customer of both VNU and Book Data, and the latter housed its web site. It thought the merger would be against the public interest and feared that the new company would have too strong a monopoly in relation to both its trading terms and pricing policy. It did not think that there were any other companies in the UK that could offer the same services.

Waterstone's Booksellers Ltd

7.172. Waterstone's said that it had been founded in 1982 and was now part of the HMV Group. It had just under 200 stores. It submitted that, before the merger, competition between VNU and Book Data had been an important factor in keeping down the cost of bibliographic data services and electronic book ordering, and in ensuring that both companies were under pressure to innovate and develop new products and services. However, Waterstone's said that, as it was an important customer and a significant supplier of data to Nielsen BookScan, it believed that it would have substantial leverage in preventing abuse of the merged company's position.

7.173. Waterstone's saw no point in subscribing to the databases of both VNU and Book Data; it used Book Data, which provided a dedicated team to manage bibliographic data in a form that Waterstone's needed. Prior to the merger, VNU and Book Data had competed for contracts such as Waterstone's on both price and quality. As to electronic ordering of books, Waterstone's used both TeleOrdering and First Edition. Waterstone's considered that TeleOrdering and First Edition were not direct competitors because their functions were slightly different.

7.174. Waterstone's doubted if it would be able to collect data itself from publishers. It said that the quality of data from publishers would be very variable and that a large editorial team would be needed to manage the data. As to whether Waterstone's and other book retailers might come together to set up their own bibliographic data agency, Waterstone's said that it was difficult to judge if that was ever likely to happen. It said that the most likely new entrant was Bowker.

Library associations

Consortium of University Research Libraries and Society of College, National and University Libraries

7.175. The CURL and the Society of College, National and University Libraries (SCONUL) said that they represented the UK academic library sector. SCONUL had 100 per cent membership of universities and a majority of the higher education colleges. CURL was the association for research-led university libraries. They were concerned that the merger might produce a monopoly situation, which could lead to higher prices and a loss of the competitive stimulus that had existed in the recent past.

7.176. CURL and SCONUL said that libraries needed to use commercial bibliographic databases for acquisition purposes and catalogue-quality bibliographic databases for research purposes. In practice, libraries tended to obtain books from library suppliers, which made use of both commercial and catalogue-quality bibliographic databases. Usually academic libraries subscribed to either VNU or Book Data. The BNB did not provide essential acquisition information, such as price and availability, and was not likely ever to do so. It would be very difficult for libraries to do without such ephemeral acquisition data because the alternative of getting information direct from publishers would greatly increase internal

workloads, and hence costs. For this reason a monopoly supplier of commercial bibliographic data could probably raise prices significantly without choking off demand.

7.177. With regard to book ordering, CURL and SCONUL said that academic libraries did not use TeleOrdering but many of them used First Edition. However, there were alternative EDI systems which could be used instead of First Edition, for example a US system called Innovative Interfaces Inc.

7.178. With regard to competition to VNU/Book Data and the position of Bowker, CURL and SCONUL said that Bowker dealt primarily with English-language books for the US market. It would need to set up a new database for UK-published books. This would probably take a long time and involve significant up-front investment, with little revenue at first.

7.179. Asked about possible remedies, if we were to conclude that the merger was against the public interest, CURL and SCONUL suggested that VNU might be required to keep price increases in line with the RPI for a number of years.

National Acquisitions Group

7.180. The National Acquisitions Group (NAG) said that it drew its membership from all quarters of the library book trade, including academic, public and special libraries, publishers, and suppliers of both library materials and support systems. It currently had some 460 (mainly institutional) members, including both VNU and Book Data.

7.181. The NAG said that it existed to promote good practice and the exchange of information, and to provide a forum in which representatives of the different sectors could meet on equal terms to discuss issues of mutual interest outside their normal commercial relationships. It did not purchase goods or services from either party to the merger.

7.182. The NAG emphasized that its views were not likely to be representative of all its diverse membership. It said that there was some concern within the library world, though falling short of an outcry, that higher prices would result from the removal of competition between the two main service providers in the UK.

7.183. The NAG also thought there might be some anxiety among committed users of one or the other service that specific functionality in their preferred product might be lost if the services were, in due course, amalgamated. In principle, the NAG thought that amalgamation should lead to a pooling of the best features of the products and a reduction of wasteful duplication of development effort. However, it remained to be seen whether the combined company would continue to provide products that represented better value than the alternatives of direct sourcing of information from publishers or bibliographic data services developed by library materials or systems suppliers.

Libraries

The University of Bath Library

7.184. The University of Bath Library said that it had fears about the long-term effects of this merger, chiefly that VNU would use the ‘added value—higher prices’ ploy in charging for the merged database and that lack of effective competition might lead to loss of impetus for the development of the service.

7.185. BDS provided competition in some respects but VNU/Book Data would also be a likely bidder for the British Library’s CIP contract.

7.186. The main alternative open to The University of Bath Library, were the commercial services to become unaffordable, would be to fall back on free access to other libraries’ online catalogues, but this would not give access to price information, which would have to be separately sought from publishers’ catalogues.

Durham University Library

7.187. Durham University Library said that the merger would have no impact on it because it did not use the products of either company. It obtained bibliographic data from Bowker's *Global Books In Print* and from the CIP service of the British Library. Book suppliers such as Blackwell's and Dawson also provided bibliographic information.

7.188. Durham University Library said that libraries were generally concerned about corporate mergers, particularly where this limited choice. This was a very sensitive area for libraries following the Reed/Elsevier merger that had adversely affected the periodicals market. It said that the merger between VNU and Book Data was not on the same level because libraries' exposure to Book Data services was very limited.

University of the West of England Library

7.189. The University of the West of England Library found it difficult to offer views regarding the merger, as it thought there were many unknown factors to consider. It said that, as libraries had automated and outsourced more services, they had reduced staff, particularly cataloguers, and become more heavily dependent on external cataloguing support. This meant that there was potential for mergers such as this one to have a positive impact by allowing companies to improve, streamline and develop services. There was also the potential for services to be larger and therefore more economical and on some occasions a merger prevented a company from failing. On the other hand, frequently the impact of such mergers was that prices rose to the higher education institutions, where budgets were already stretched.

The book industry standards body

Book Industry Communication

7.190. BIC said that it was the e-commerce standards body for the book industry, set up and sponsored by The Publishers Association, The Booksellers Association, The Chartered Institute of Librarians and Information Professionals and the British Library.

7.191. BIC said that, over the last several years, it had developed and promoted implementation of standards for the electronic transmission of both commercial messages and rich product information. These standards were used by all the major publishers and were supported by the bibliographic agencies, wholesalers and booksellers.

7.192. It was BIC's belief that the adoption of these standards had considerably reduced the barriers to entry into the markets for both bibliographic databases and electronic commercial transactions. They had also enabled the development of distributed databases of information on publishers' own web sites.

7.193. BIC said that, should the merged company attempt to abuse its position at any time, competitive services would be developed to take advantage of the opportunity presented.

D PARKER (*Chairman*)

J BAILLIE

C DARKE

C GRAHAM

H SHOVELTON

R FOSTER (*Secretary*)

6 February 2003