

5 Views of third parties

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Introduction

5.1. This chapter summarizes the views of third parties. Fourteen of the 18 pharmaceutical companies from which we received comments opposed the merger. A competitor and a potential competitor, three trade associations, three retailers, one software supplier and one other company opposed the merger. There were also many adverse comments on the cost of IMS's services, its record on innovation and its commercial policies, for example the bundling of its services, even before the merger, and which were attributed to its dominant position.

Public sector bodies

Department of Health

5.2. The DH had no formal representation to make to the MMC on the merger of IMS and PMSI. It explained for us, however, its guidance issued in July 1997 (now subject to judicial review), which discouraged any GP or NHS pharmacist from disclosing prescribing or dispensing information to data companies. Its concerns were based on both legal and policy grounds. On legal grounds, related to the common law on patient confidentiality, the DH believed that data about patients were provided in confidential circumstances, and, unless the patient consented to the use to which data were to be put, were subject to confidentiality even if the patient would not be identified.

5.3. The duty of confidence might in certain circumstances be outweighed by the public interest in disclosure: but the DH had severe reservations whether disclosure to data companies particularly of information identifying prescribing GPs could be argued as in the public interest; it might be against the public interest if the information on doctors' prescribing habits allowed the pharmaceutical industry to target individual GPs from the knowledge gained about dispensing. The DH's interest was in encouraging prescribing that was effective in delivering care to patients and that did not incur unnecessary costs. It promoted this by means of a number of activities, including publications from independent sources. The DH acknowledged the major contribution that the pharmaceutical industry made to people's health, and recognized the legitimate interests of the industry in attempting to sell its products. However, the industry's interest in the marketing of pharmaceuticals did not, in the DH's view, equate with the public interest which would outweigh the duty of confidence. The DH declined to comment on what it would do if it lost the judicial review, beyond saying that, if it came to that, a lot would depend on the terms of the judgment.

5.4. The DH said that it was Government policy to leave the development of new pharmaceuticals to pharmaceutical companies. The Government did not seek to influence or direct where they invested their pharmaceutical R&D money (save in the areas of 'orphan drugs' where the Government supported the European Commission proposals to develop drugs which were not commercially viable).

5.5. The DH was aware of concerns about the possible monopoly in the market for prescription data. It had been suggested that the PPA might enter the market and sell NHS prescription data to pharmaceutical companies (hence the merger would not lead to a potential monopoly). However, as the DH oversaw the PPA, it would prohibit the PPA from selling prescription data, on both the legal and policy grounds outlined in paragraphs 5.2 and 5.3. The DH pointed out that pharmaceutical companies obtained data from the *GPRD* indirectly from two parties with licensed access.

5.6. Nor was the DH concerned that costs to the NHS could be adversely affected by any increase in the cost of pharmaceutical business information in general or other consequences for costs of marketing that could result from the merger. There was a limit on product promotion costs allowed under the PPRS, which included such costs, and companies already spent over that limit: hence any increase in data costs, or any other increase in promotion costs, would not affect the level of pharmaceutical prices charged to the NHS.

The Scottish Office

5.7. The Scottish Office Department of Health had no particular Scottish concerns regarding the merger between IMS and PMSI and said that the DH would take the lead on this.

The Welsh Office

5.8. The Welsh Office believed the merger would create a monopoly and could lead to increased prices for pharmaceutical information, which in turn could be reflected in increased prices for medicines. Single control of this information could also influence the future direction of pharmaceutical research. The merger could also lead to reduced access to data for researchers. It was doubtful that any company could enter the market and compete.

5.9. However, the Welsh Office said it was recognized that reliance on information from companies of this nature was not as great as it had been because of advances in audit processes in the pharmaceutical industry. The monopoly on information in the market place would also be counterbalanced by information held by the territorial prescription pricing bureaux in the UK. The Welsh Office said that if the merger went ahead, the independence of those bureaux would need to be preserved.

Trade and professional associations

British Association of Pharmaceutical Wholesalers

5.10. The BAPW is an association of all 17 full-line wholesalers which supply the full range of pharmaceutical products. Its evidence had been agreed by all members.

5.11. The BAPW thought it appropriate to distinguish between the market for supply of wholesale data and the market for supply of prescription data. The different forms of data tended to be used for different purposes. Wholesale data gave manufacturers an overview of the sales performance of a particular product, usually relative to competitive products, and tended to inform the broad strategy to be adopted by pharmaceutical manufacturers. Wholesaler members of the BAPW were required to supply information on sales made by them to SDA Pharmaceuticals Limited, the commercial arm of the BAPW which centrally administered and supplied the data to IMS and PMSI. Prescription data, being focused on actual sales, enabled pharmaceutical manufacturers to gauge where they ought best to deploy their sales and marketing activities at the micro level so as to maximize revenues.

5.12. The *WSDS*, now marketed by Source, was first set up by the BAPW in 1994. It was developed to meet the needs of those pharmaceutical manufacturers wishing to have an alternative source of information on product sales to IMS, and who had previously complained both of tardiness in delivery of reports and a lack of flexibility on the part of IMS in product format, but who were deterred by the time and cost involved in establishing separate arrangements with wholesalers for the supply of such data. It was developed to complement the IMS service by providing manufacturers with weekly sales data of the sales achieved for each subscribing manufacturer's products alone. It did not allow subscribing manufacturers to compare their product sales with those of other manufacturers since the terms of the contract by which the BAPW and its members supplied IMS with the data to compile the IMS reports prohibited the BAPW and its members from supplying the relevant data to any person or organization who might wish to launch a competing service. The emergence of the *WSDS* led to greater innovation on the part of IMS in its dealings with pharmaceutical manufacturers, making its products available in electronic form.

5.13. Under the terms of its contract with IMS, the BAPW had given a notice that would enable it to terminate the contract on 31 December 1999, believing that the exclusivity in the contract was no longer legal under EC competition legislation, but also that it could obtain better terms for the data, given the new products introduced by IMS which made use of them. Given the existing presence of PMSI in the supply of one form of wholesale data, PMSI could be regarded as capable of competing

directly with IMS, should the current BAPW contract with IMS be withdrawn. As a result of the merger, therefore, IMS would have effective exclusive use of wholesale data even if the formal exclusivity was discontinued.

5.14. The BAPW believed the prescription data market was best described as a developing market, although as it developed it could become the main source of information on the pharmaceutical sector. This market involved other suppliers such as TNS and AAH, but IMS and PMSI were the market leaders. The merger would result in a significant reduction of competition within this market.

5.15. The BAPW thought the absence of competition in the supply of wholesale data services had operated against the public interest before the introduction of *WSDS*. PMSI/Source was now the most significant competitor to IMS. The merger would therefore eliminate a potential competitor to IMS in the wholesale data market, as well as an actual competitor in the prescription data market, and IMS would have an insuperable advantage over any other player. Should the merger proceed, IMS would use its monopoly position in the wholesale data market and its dominant position in the prescription data market to enjoy freedom from the forces of competition.

5.16. The BAPW told us that a Cognizant press release claimed the merger would give rise to cost synergies in areas such as data supply contracts. However, in circumstances where IMS was either a monopolist or dominant supplier, there was no guarantee that the benefits from the synergies would be passed on to the customer. The same press release referred to attractive revenue growth rates expected to arise from the merger. The BAPW said that the implication was clear. The combined IMS/PMSI would use its monopoly or dominant position to reduce prices paid to wholesalers for data supplied, while simultaneously extracting as much revenue as possible from its customer base who, having no other alternative source of supply, had no choice but to pay.

5.17. The BAPW thought that removal of PMSI as an independent supplier of wholesale data services would also be against the public interest as it was currently the only source of information against which IMS data could be checked and verified. Removal of PMSI as a competitor not only denied pharmaceutical manufacturers a choice as to the source of their data, it removed a check on IMS to ensure that its data maintained the highest standards of accuracy. The incentive to innovation would also be much reduced as a result of the merger.

5.18. The BAPW thought the adverse effects arising from the merger were unlikely to be remedied, at least in the short term, by new market entry. The relevant markets were characterized by the following significant barriers to entry:

- (a) Pharmaceutical manufacturers' computer systems were specially adapted to receive and process IMS data. Accommodation by manufacturers of any service competing with IMS was likely to involve a relatively high level of capital investment.
- (b) The IMS brand enjoyed a high degree of recognition and was currently regarded as the most authoritative source of information on sales of pharmaceutical products. A new entrant would have to persuade manufacturers that its data were as informative as IMS data and would be recognized as such by other industry participants.
- (c) To supply a service directly competing with the IMS service, a new entrant would have to enter into agreements with the relevant distributors for the provision of information on pharmaceutical product sales, which would take time and money, without any guarantee of success.

5.19. The BAPW said that it should also not be supposed that pharmaceutical wholesalers with access to the data which formed the subject matter of IMS's and PMSI's services were in a position to foster new market entry should the need arise. First, the wholesalers would face the same barriers to entry as faced any other potential entrant. These barriers to entry arose from manufacturers' information systems being tied to IMS as well as the recognition of IMS as a brand. Secondly, supply of wholesale and prescription data services was a non-core activity for wholesalers and it might be difficult to justify devoting the necessary capital investment, personnel and marketing resources to develop a business in the face of competing demands for the same resources from core businesses. If

wholesalers decided to commence the supply of these services there would be a significant time lapse before any business capable of competing with IMS/PMSI could be launched on any scale.

5.20. The BAPW firmly believed that the adverse effects of the merger could not be remedied otherwise than by outright prohibition. PMSI was still, in its view, an attractive proposition for another owner.

British Medical Association

5.21. The BMA believed that the merger would remove the present competition for the provision of sample-based data. IMS would then have the potential to control prices that the industry had to pay for such information, which could increase the cost of drugs to the NHS as a consequence. It was also concerned about the downward pressure on further development of quality data services for GP prescribers.

5.22. The PPA was at present the only source of comprehensive prescription data. It had been considering marketing these data to provide additional funding to enhance the quality and extent of the data that it produced as a service to doctors in the NHS, a service which was free to all GPs. If the merger were upheld, the combined strength of the two firms would make it difficult for the PPA to enter the market.

5.23. There was currently a judicial review of the guidelines produced by the DH on the use of prescription data by individual GP practices and whether these constituted a constraint on trade: the BMA believed that the merger should not be permitted until this matter had been resolved.

Surgical Dressing Manufacturers Association

5.24. The Surgical Dressing Manufacturers Association (SDMA) believed that the merger would give IMS a monopoly in the provision of information on the supply of surgical dressing products.

5.25. The SDMA was concerned that the merged company would have no restriction on its pricing policy and any increase in costs would be passed on to purchasers of surgical dressings. Information which proved difficult to obtain could be deleted from IMS's reports regardless of its importance, without fear of losing business to a competitor who still provided such information.

Pharmaceutical companies

Amgen Limited

5.26. Amgen Limited (Amgen) believed the merger would reduce competition and was against the public interest. IMS was the dominant supplier of certain types of information and could use the merger to create composite services that other companies could not compete with. The merger could therefore reduce competition beyond the loss of PMSI, affecting other smaller companies operating in the UK. This would have an impact on the cost of services as well as limiting the choice of supplier, leaving pharmaceutical companies open to poor service and increasing costs.

CP Pharmaceuticals Limited

5.27. CP Pharmaceuticals Limited felt the merger would neither advantage nor disadvantage it.

Elan Pharma Limited

5.28. Elan Pharma Limited was opposed to the merger as the provision of audit data for the UK pharmaceutical industry was already highly concentrated under IMS's ownership. It was likely that barriers to entry would be raised and, given the relative lack of competition, prices might be increased.

Glaxo Wellcome UK Limited

5.29. Glaxo Wellcome UK Limited (Glaxo), being the UK operating company of Glaxo Wellcome plc, told us that it used pharmaceutical business information for supporting commercial decision-taking in sales and marketing. Among the applications were performance measurement and monitoring for different brands, understanding competitive performance, measuring the impact of competitor activity on its brands, reward management for staff, financial and resource planning including deciding on the size of the sales force, and assessing the optimal mix of promotional activities. It acquired such information predominantly from IMS; since sales and marketing were devolved to each national company, it dealt with IMS mainly through its local companies, but its corporate analysis group also purchased international data through MIDAS. It was, however, necessary to subscribe to national data, as in the BPI, in order to access corresponding data on MIDAS.

5.30. Glaxo said that IMS had been a monopoly supplier of pharmaceutical data for many years with its wholesaler audit, resulting in high prices and poor service, with little attention to customers' needs. IMS had used its agreements with wholesalers and pharmacists, coupled with its information infrastructure investment, to create barriers to entry to the data supply market. Source, a subsidiary of PMSI, was the only major new entrant in Europe to challenge IMS, other than which there was competition only in niche European markets.

5.31. Glaxo had been one of a number of pharmaceutical companies which financed the development of prescription data services by Source, in return for future discounts off products. Some of Glaxo's investment had been refunded owing to delay in delivering the product. Glaxo had regarded prescription data services as of particular value in focusing marketing efforts and providing better service and support to GPs using its products. It had considered the plans of both IMS and PMSI to develop the services, but PMSI had appeared more likely to develop the services first. It had also seen advantages from introducing some competition into the market and an opportunity to stimulate the market in terms of innovation, bringing in new ideas and developing new information and data products.

5.32. Once 50 per cent of GPs were included, Glaxo's expenditure with IMS would have been reduced as Glaxo switched from IMS wholesaler-based audits—in particular from the *RSA*—to Source's pharmacy-based audits. In order to switch investment into other data products, and to reduce its cost base, Glaxo had indeed reduced the volume of data it was acquiring by 90 per cent, but reducing its costs by only about 50 per cent given the new Sunrise pricing structure introduced by IMS. It would still, however, have been necessary to subscribe to the *BPI*, and also thereby access such data on MIDAS. Development of the Source prescription data service could also threaten TNS's *Scriptcount* service, which was based on only a small sample of pharmacies. Glaxo would, moreover, have expected PMSI to have continued to expand into other areas of pharmaceutical business information.

5.33. The emergence of Source had provided a strong competitor to IMS, spurring IMS to develop its own prescription-based audit to become more customer focused, and to moderate proposed price increases. It was difficult to see where future competition would come from, if the merger was allowed, given the need to invest heavily in IT infrastructure such as data warehousing and data processing and to deliver the large volumes of data. There was also the difficulty in gathering the data from a geographically dispersed group of sources, some of which were believed to be subject to exclusivity to IMS or Source. Glaxo was, however, aware of some companies rumoured to be interested in the UK market.

5.34. Glaxo was unlikely to wish to develop such services itself, since it was not part of its core business. Nor would it wish to enter into any consortium of pharmaceutical companies to do so. As to whether Glaxo could exert any countervailing power in its relationships with IMS, there was now no alternative supplier of such information available, it had to have the information, and the cost of the information being relatively small compared to Glaxo's turnover, there was a limit to the effort that could usefully be spent on trying to obtain better terms.

5.35. Glaxo said that it expected the elimination of competition and a slowdown in the rate of innovation, should the merger be allowed. Glaxo believed the development of pharmacy-based audits would be delayed, because it would jeopardize IMS's dominant market position if they were developed too soon. These audits were likely to be developed only when it was in IMS's best commercial interests. Glaxo was also concerned that there would be no alternative to IMS as a partner, if any industry or government body (such as the BAPW or the PPA) wanted one in this market. The merger would therefore result in adverse effects on the quality of the information available, and in turn on the efficiency of Glaxo's business.

5.36. On possible remedies, Glaxo believed PMSI was no longer a viable business given the loss of staff since the merger, but it was possible it could be acquired by companies interested in entering the UK market. Commercialization of PPA data on a non-exclusive basis would help to remedy the adverse effects of the merger. Licensing of IMS data to competitors would also help, if this was on reasonable terms. One alternative divestment, however, was of prescription data in its entirety, both the Source and IMS activities, the infrastructure for which had already been merged.

Norton Healthcare Limited

5.37. Norton Healthcare Limited (Norton) was opposed to the merger since IMS already held a near-monopoly position in the supply of pharmaceutical market data. PMSI, through its contract with the BAPW, had supplied data which could be used to some extent in place of IMS data. The existence of PMSI had meant that there was some possibility of negotiation with IMS on terms. Norton believed the merger would lead to a lack of competition and higher costs.

Novartis Pharmaceuticals UK Ltd

5.38. Novartis Pharmaceuticals UK Ltd (Novartis) was in favour of the merger on two grounds. First, it had the potential to produce better integrated information which was of more value to the customer, and secondly, there were potential economies of scale which could benefit the consumer.

5.39. However, Novartis said that the merger also had the potential for changes in prices and quality which would not be in the consumer interest. It therefore believed IMS should be required to:

- (a) keep data quality at the standard of the best supplier before the merger;
- (b) ensure that contracts with retailers and wholesalers to supply data were not exclusive;
- (c) ensure that the agreements with the BAPW for use of data on individual wholesalers did not prevent individual companies gaining access to their wholesale data and were not used as a barrier to entry; and
- (d) ensure that current contracts with IMS and PMSI, negotiated on the basis of competitive tender, were honoured on the most favourable terms for the consumer.

Regent GM Laboratories Ltd

5.40. Regent GM Laboratories Ltd had no objection to the merger.

Rhône-Poulenc Rorer Limited

5.41. Rhône-Poulenc Rorer Limited (RPR) believed the market could be divided into:

- (a) *Prescription database services.* Prescription databases contained information collected from pharmacies or doctors, on a regional and/or national basis, about the number of prescriptions made for specific drugs and other information used by companies to track the use of their brand and those of competitors. The information generated was particularly useful in enabling management analysis and follow-up of sales efforts.
- (b) *Distribution database services.* Distribution databases contained sales data collected from wholesalers and pharmacies, again on a national and/or regional basis, and tracked the cash and volume sales of drugs at the point of sale. The information enabled analysis of use of brands and market shares.
- (c) *ETMS*, which enabled data entered by sales representatives to be manipulated with background data provided by producers of ETMS, facilitating the efforts of pharmaceutical companies to match the efforts of its sales force to the needs of customers and potential customers.

Both prescription and database services in electronic form enabled easy manipulation and merging with other data to provide powerful management tools, and also had corresponding audit services (output in paper format for quick reference). Prescription databases and distribution databases were, in RPR's view, complementary and not substitutable; ETMS was also complementary to rather than substitutable for prescription and distribution database services. The data were important to RPR's business, and to do without them in the longer term would be seriously detrimental to RPR: hence its vulnerability to any dominant supplier.

5.42. IMS was the major supplier in the UK and throughout Europe of prescription databases and prescription audits. Compufile had set up a prescription database service in the UK, but this was not comparable, in terms of reporting or possibilities for integration with other services, with that of IMS. TNS offered a top-line prescription audit of overall numbers of prescriptions, but not broken down to representative level or further categories such as diagnosis: its strategy was oriented more to market research than manipulation of large databases, where IMS was strong. RPR had intended to undertake a feasibility study of PMSI's Source system; in RPR's view, this offered a credible and better alternative to the IMS *RSA* service, by, for example, monitoring GPs' prescriptions in an area rather than the dispensing of prescriptions which could take place elsewhere. RPR's expenditure on national data and the *RSA* would over time have been reduced in consequence, even though this may have required some cost in adapting systems which were currently set up to handle IMS's data. The Source database could also over time have replaced the PMSI *Scriptrac* and TNS *Scriptcount* services.

5.43. IMS was the major provider of distribution databases and audit services on a European basis; in the UK, Medicare Audits, in which IMS had an interest, offered services in the hospital business area.

5.44. On a worldwide and EU basis, there were or had been four providers of ETMS systems: IMS, having acquired Walsh, PMSI (which RPR believed to be formerly associated with Walsh), Dendrite and Cégédim, but with other companies offering local services. RPR had used Walsh and had been glad to be using a company separate from IMS, given the extent of business already conducted with IMS.

5.45. As well as the above three categories of data services, RPR used PMSI's market research services, particularly *Generator*, an 'Omnibus' study of 400 to 800 GPs interviewed each month, in order to find out more about RPR's markets and products. Such surveys were used to define the marketing strategy to grow RPR's brands. There were, however, about ten companies in the UK which were asked to quote for such studies; IMS did not have such pure market research services.

5.46. RPR was therefore concerned about the effects of the proposed merger, combining the two dominant suppliers, on the market for database services, particularly the possible reduction in competition. It believed that any such reduction in competition would affect the innovation and continuous improvement in products and services, price, attitudes to customer service and the flexibility of combination of services (for example, by tying-in or bundling). Although IMS had recently become a little more customer focused, such concerns were supported by past experience: for example, RPR was required to purchase data in paper form from IMS before being able to gain access to the same data, paid for additionally, in electronic form, and to buy a number of different services (for example, *BPI* national data, *SALEStab*, *RSA* including hard copy, and *ADAM*), plus the usage fees for data, in order to obtain access to the electronic data required. The recent Sunrise pricing policy proposed by IMS would also lead to a very substantial increase in cost to RPR. Since the merger, IMS had withdrawn its *Meditext* product, without consultation with users, which was an alternative to PMSI's slower and less flexible *Generator* service.

5.47. RPR said that the barriers to entry in both prescription and distribution database services were considerable. In the case of prescription databases, it would be necessary to set up a panel of a sufficient number of pharmacies or GPs, and collect several years of historical data. RPR estimated that the minimum start-up period, involving significant investment, would be two years.

5.48. In comparison, setting up a new distribution database would require the collection of data from wholesalers, manufacturers and individual pharmacies. RPR estimated that a start-up period of several years, with significant investment before any return could be expected, would be required before a real competitor could be established.

5.49. RPR believed it would be less difficult to establish a rival ETMS system in terms of the software. The difficulty would be in gaining access to the data for the system, particularly if the providers of these data made access difficult by asserting proprietary rights or encryption.

5.50. In RPR's view, an increase in costs of data information services would reduce research expenditure or ultimately increase prices for pharmaceuticals. RPR believed that if the merger were to proceed, safeguards in respect of pricing of services and the flexibility of product offerings should be set. The combined business should be required to offer better-integrated services, without tying in parts of the service which customers might wish to take separately. Other possible safeguards included requirements to license data and to ensure that data were not provided to IMS on an exclusive basis.

Schwarz Pharma Limited

5.51. Schwarz Pharma Limited (Schwarz) said that the businesses of IMS and PMSI were complementary. IMS covered supply to retailers, PMSI covered retail sales. There was, however, the possibility for pharmaceutical companies to choose to rely on the data of one of the companies to the exclusion of the other, which maintained healthy competition between them.

5.52. PMSI was the only effective competitor with IMS in the supply of pharmaceutical market research data, so after the merger competition no longer existed.

5.53. Schwarz believed there should be safeguards on the quality, fairness and pricing of services if the merger were allowed.

Searle

5.54. Searle, a division of Monsanto plc, was in favour of the merger. Although the merger would reduce competition, Searle believed it was in the industry's long-term interests to have only one company providing the service of GP-level prescriber data, rather than for costs to be unnecessarily doubled and the development of the service consequently constrained. It therefore believed a useful

service could be provided by the merged company, that may not have been viable if the two companies had continued to compete for revenue.

Smith & Nephew Healthcare Limited

5.55. Smith & Nephew Healthcare Limited (Smiths) said that it used both IMS and PMSI for the supply of pharmaceutical market data. The merger appeared to create a monopoly; it could weaken Smiths' ability to negotiate favourable terms; and could create a barrier to potential competitors entering this market.

SmithKline Beecham Pharmaceuticals UK

5.56. SmithKline Beecham Pharmaceuticals UK (SB) is part of SmithKline Beecham Plc, a leading healthcare company which discovers, develops, manufactures and markets human ethical pharmaceuticals, OTC medicines and consumer healthcare products. SB is a major consumer of pharmaceutical market information and, as an organization, spends approximately £2.2 million a year on it in the UK alone. In the UK over 54 per cent of SB's UK data acquisition expenditure on pharmaceutical business information goes on IMS. Following the merger, this would rise to over 74 per cent. Although the SB group used IMS in many countries, its relationships with IMS tended to be decentralized to managers in the separate national markets.

5.57. SB told us that it had been a client of IMS since the company was formed in 1989. SB was dependent on IMS and considered its information, sales and prescribing data vital management tools in assessing the performance of its products and identifying niches in the market place for new products. The market information also helped SB and other pharmaceutical companies to evaluate and improve their drug-marketing efforts. However, the data IMS provided were not accessible in any other way and so SB had no commercial option but to acquire them via IMS.

5.58. Audits (reports containing data on the sale, marketing and prescription of all pharmaceuticals, not just those of the client) were the most important of the services available. SB believed that IMS held around 85 per cent of the UK market in the four main categories of audit, namely:

- (a) pharmacy sales audits, including the *BPI* and the *RSA* produced by IMS. There was no real competition in respect of these products. *Source Dispenser* (a PMSI product) was its nearest rival but only gave own company sales data collected from 70 per cent of wholesalers (as opposed to the 97 per cent coverage of the *BPI*);
- (b) hospital sales audits, the IMS service, a joint venture with Medicare in which IMS had an interest, covering over 90 per cent of hospital beds;
- (c) audits of prescriptions written by doctors—the *Medical Data Index* of IMS; and
- (d) promotional audits—the *IMS Medical Promotion Index*—covering pharmaceutical promotions offered to doctors by sales representatives, direct mail and journal advertising.

5.59. Audits of prescriptions dispensed by pharmacies were a new service providing information about individual GP prescribing activity. These were micromarketing tools used to measure promotional response and return on investment decisions and which allowed SB to target its marketing resources most effectively. If a very high sample size of clinicians was eventually developed, this data source could replace the *RSA*. IMS offered its *Xtrend* product in the UK, which competed directly with PMSI's product, *Source Prescriber*, at present the UK market leader. SB used both the IMS and Source prescription data services, partly to increase the sample of pharmacies covered. It believed there was scope for competition to supply prescription data services and that competition would serve as a stimulus to their development, although there were no other providers of such services in the UK or other main European customers. TNS collected some information from pharmacies, but for a very small sample, and did not appear interested in developing those activities further; this was shown by their supply to IMS of information from the software system of JRC.

5.60. Among other relevant products:

- (a) IMS offered OTC audits, which monitored sales of OTC products through pharmacies.
- (b) Walsh, now also owned by IMS, supplied ETMS, used by pharmaceutical sales representatives to access and input data, to provide sales representatives with up-to-date information to support the sales efforts, and to monitor their performance. Walsh was the market leader in supply of ETMS data, but ETMS was also supplied by Cédégim and Dendrite; IMS had withdrawn its UK ETMS service in 1993 as it had proved uncompetitive.
- (c) IMS supplied data delivery software—named Dataview and MIDAS.
- (d) IMS offered ad hoc primary market research services (where its market share was about 15 per cent, with considerable competition), and mailing services (where Walsh was the market leader, supported by its ETMS database position). The IMS customer profiling services had been withdrawn and PMSI was the market leader.

5.61. SB argued that before the merger IMS had a dominant market position in almost all of its audit product markets except that for prescriptions dispensed, both by virtue of its market share and the range of services it offered. Having acquired PMSI and Walsh, IMS was also now dominant in audits of prescriptions dispensed, ETMS, mailing services and customer profiling. Main barriers to new entry to the market were the costs of acquiring information and marketing, and the need for knowledge of this particular market. The pharmaceutical companies themselves, given the competitive relationships between them, were unlikely to collaborate on developing an alternative to IMS. Wholesalers were unlikely to attempt to obtain such information from pharmacists, for whose business they competed.

5.62. SB believed that IMS had already abused its dominant position,¹ for example:

- (a) IMS engaged in product tying and bundling, in that SB had on many occasions found itself obliged to purchase products, which were not required in their own right, in order to access another service. Among the examples were that SB could not have access to IMS's *RSA* unless it purchased the *BPI*. It was permitted electronic access to data only if it purchased the corresponding audits in hard copy, although it had no need for the data in hard copy form. If it wished to purchase the *RSA* in electronic form (*RSA ADAM*) it must also purchase a licence to use *SALEStab*, a data accessing tool for use with *ADAM* which it did not necessarily require. MIDAS data were also not available for particular European markets unless SB subscribed to the relevant local audits. SB believed there was no commercial need, either economic or technical, for IMS to link products in such a way, and where it faced competition in the USA, it did not do so (for example, MIDAS access in the USA where there was competition from Scott-Levin was available to parties who did not subscribe to the audit on payment of one-third of the audit price).
- (b) SB considered that IMS charged excessively or unfairly for its products. For example, it effectively double charged for certain products while unnecessarily linking the right to purchase one type of audit to the purchase of another, or by creating unnecessary links between the hard copy and electronic versions of the audits. Charges were calculated for the data at the time hard copy data were purchased, plus additional charges for access to the data reflecting only the additional cost of electronic access and data processing, plus a fixed fee for use of MIDAS. If the electronic access charge were to reflect only the processing costs, then the charges for it were excessive. Furthermore, when SB sought quotations from IMS and PMSI for their competing prescription services (*Xtrend* and *Source Prescriber*, respectively), IMS quoted a price three times that of the corresponding PMSI products. Finally, IMS had introduced in 1997 a new pricing regime, Project Sunrise, which it claimed could not be published on the grounds that it was too complex and worked only from a software package

¹We noted that SB made similar complaints about IMS's conduct to the Belgian competition authorities.

which client companies were not allowed to access directly: larger customers would in practice be required to pay as much as 75 per cent more for the same data.

- (c) SB criticized IMS's behaviour in relation to competitors. It understood that IMS entered into exclusive contracts with providers of raw data to ensure that no other competitors could enter the market. IMS had also attempted to prevent the use of an alternative software company called PADDs in Germany, by saying that it would not allow clients to deal with PADDs for manipulation of MIDAS data. When IMS introduced its own competing software, Sales MIDAS, IMS said that it would not prevent its clients from dealing with PADDs, by which time, however, PADDs had already lost business. IMS had also once had a monopoly in the UK over hospital sales data, which was less accurate than its equivalent retail service, but which it claimed it was unable to improve; when a small UK-based market research company Medicare succeeded in gaining over 80 per cent of hospital bed coverage, IMS responded by trying to purchase the company. It subsequently entered into a co-promotional agreement with Medicare and withdrew its own hospital services, causing disruption to its client base.
- (d) SB believed IMS acted with little regard to the requests of its clients. For example, it was unwilling to develop its services in a more flexible way with the result that clients were obliged to acquire information they did not require. The *BPI* audit, for instance, had to be purchased in its entirety, even though a company might be marketing only in four or five therapy areas. The facility for direct access to national databases had been recently withdrawn. Furthermore, IMS was not planning to make all its current systems year 2000 compliant, forcing SB to purchase its more expensive replacement systems; and SB's requirements had been largely ignored in the development of the recently-launched *Xtrend* service, as a result of which that service was of less interest to SB or most other clients. PMSI, in contrast, had consulted more closely with its clients in developing new products.

5.63. SB was therefore concerned that the acquisition of PMSI's assets in the UK would further strengthen IMS's dominance in many if not all of its business areas. It was particularly concerned about the future of the prescriber-level data which was the most significant breakthrough in pharmaceutical business information in the last ten years. IMS had already demonstrated a poorer service development both on a technical and value basis, as shown by the fact that it had fewer clients investing in its services than the PMSI service. SB was concerned that IMS's traditional practices in respect of business culture, pricing, reduction or elimination of competition in key areas and poor quality of service development would prevail in a larger organization. This would directly affect the productivity and success of SB in the UK market.

5.64. A possible safeguard against a monopolistic position in relation to the prescriber-level data would be to make these data accessible to competing companies. SB's preference, however, was to prevent the merger. It believed that PMSI had scope to be very profitable in the UK, and could survive in its own right.

Trinity Pharmaceuticals Ltd

5.65. Trinity Pharmaceuticals Ltd (Trinity) said that it was concerned about the monopoly that IMS would have in the supply of specific data to the pharmaceutical industry, and the effects it would have on pricing, customer choice and quality of service. But Trinity added that, if the quality of service were to be improved continually, without the price increasing out of proportion, its concerns might be allayed.

Zeneca Pharmaceuticals

5.66. Zeneca Pharmaceuticals (Zeneca) told us that it was one of a number of companies which had financed the establishment of Source's prescription data services in Europe. Once the service became operational the cost of products supplied by Source was deducted from Zeneca's initial investment: if the initial sum had not been recovered in that way by 2000, the remaining balance would have to be repaid to Zeneca. It said that prior to the merger IMS and PMSI were the only

undertakings known to Zeneca which were supplying prescription data services at the prescriber or distribution level. Zeneca did not see TNS, for example, being primarily a market research company, as a competitor to IMS, and its *Scriptcount* service was totally different in scale and product to the prescriber-level data of IMS and PMSI, providing information at a national level only. Zeneca believed that the prescription data services initially developed by Source, being available at GP level, would displace some of the requirements for the purchase of distribution data of IMS once 50 per cent of GPs had given consent to their use.

5.67. Competition between IMS and PMSI had significant benefits for the pharmaceutical industry, resulting in price competition and in choice and quality for pharmaceutical companies since competition put suppliers under pressure to increase the levels of data made available. That competition also benefited customers of the pharmaceutical companies, since they enabled the companies to adapt products to meet their customers' needs. Zeneca believed the merger would give IMS a monopoly in the supply of prescriber-level and distributor-level data. There would be no competition in the supply of such data, and the benefits from competition between IMS and PMSI would be lost.

5.68. Zeneca believed there was no likelihood of new entry into the markets affected by the merger. A new entrant would have to invest heavily in software in order to collect and process data and to supply it to customers, would have to seek consent from GPs and pharmacies, and would also have to build up its historical data in order to provide a meaningful service—a process that would still take up to five years. Zeneca thought this was a significant barrier to entry. The removal of competition between IMS and PMSI was more significant in the light of such a barrier, as there was a risk that IMS would have a permanent monopoly. Nor was it feasible for a company such as Zeneca itself to produce such information, since it lacked the in-house expertise to do so.

5.69. Zeneca said that IMS operated a rigid pricing policy and applied no volume discounts as part of its pricing structure. Its prices were not transparent, but in some cases were based on an assessment of value to the user rather than cost; prices tended to increase above the RPI (as was recently proposed for 1999) and discounts be reduced. The licensing structure also meant that the same raw data often had to be purchased separately by each company requiring access within the Zeneca Group: the operating unit in each country had to purchase the national data, in order for Zeneca's headquarters to be able to use the international summary data through MIDAS for that country. The *RSA*, moreover, was charged according to the number of sales forces using it, operation of an additional sales force increasing the cost. These factors resulted in Zeneca having to pay a high royalty fee relative to the value of the information it was licensed to access.

5.70. With increasing consolidation in the pharmaceutical industry through mergers and acquisitions, IMS's revenue base was reducing. Zeneca perceived that IMS, in order to maximize its revenue return, was channelling its development expenditure towards new product development rather than existing products, with the development and timing of these products dictated by IMS rather than customers' commercial needs. Zeneca envisaged that the merger would result in the following adverse effects:

- (a) no competitive pressure on IMS to support, maintain or develop its current range of products (in particular its *Xponent* range) in accordance with the needs and requirements of the industry;
- (b) IMS repositioning its *Xponent* product range so it would not be a direct replacement for IMS audit data, protecting IMS's audit revenue;
- (c) IMS developing its product range to run on specific IMS software, which would have to be purchased from IMS with the product; and
- (d) reinforcement of IMS's dominant position in supply of audit data, to the extent that competition would not be feasible as a result; Zeneca believed that IMS was already attempting to stop use of third party software to access those data.

Although there could be benefits to the development of prescription databases from combining those of IMS and Source, Zeneca believed these were not significant.

5.71. With specific reference to Source/*Xponent*, Zeneca also feared that rather than develop existing products to meet the needs of the industry, IMS would invest in the development of new products and its dominant position would enable it to command high fees from the industry for access to these new products, and to increase prices above the levels which would otherwise be expected. Zeneca also believed that marketing by sales representatives was important in educating GPs and in encouraging them to adopt new drugs to the benefit of their patients: adverse effects on the development of pharmaceutical data services would result in less efficient marketing, and reduce the ability to allocate marketing resources to provide the right information and data to the right people. It believed divestment was necessary to reintroduce competition into the market and provide the incentive to product development; divestment of PMSI as a whole, rather than just Source, would be necessary to make the independent company viable. It also believed IMS should be required to apply volume discounts across territories, to allow use of other software, to adopt non-discriminatory pricing, and to allow access to international data without being required to buy the national product.

Another pharmaceutical company¹

5.72. The company is a buyer of basic market research and a customer of both IMS and PMSI. It uses data provided by IMS both at the strategic level to decide on major investments in R&D, and at the tactical level to appraise the deployment of sales forces and the evaluation and reward of individual salesmen.

5.73. The company identified two different kinds of market research: primary basic survey sales and prescription data (known to the industry as secondary data), which were available to any company which subscribed, and bespoke research (known to the industry as primary research), which was commissioned by a particular pharmaceutical company and was confidential to that company. Such data were used in different ways. IMS provided mainly basic research data, although it also offered some bespoke services. PMSI provided both basic and bespoke services.

5.74. Categorization of basic market research data and products stemmed from different sources of data for the products and the different uses to which the products were put. Sales data were captured at a local level, and could be presented in different ways. As a result there were significant overlaps between the products available. This overlap made it difficult to split the products into categories, for example:

- (a) On sales data for prescription products, IMS produced the *BPI*. PMSI had no current competing product, but if data from *Source Dispenser* were aggregated to a national level, Source would ultimately have a product to compete with the *BPI*. IMS also produced the *WSM*. PMSI had *Source Dispenser* giving weekly sales data, cash and prescriptions by retail pharmacy.
- (b) On sales data for OTC medicines, IMS produced the *OTC WSM*. PMSI had *Source OTC Adviser*—weekly sales data on OTC products by retail pharmacy.
- (c) On sales data and sales aids for prescription products, IMS produced *RSA*. PMSI had *Source Territory Manager*—projected prescription volume and value within client-defined territories.
- (d) On sales data and sales aids for OTC medicines, IMS produced *OTC RSA* (Intrak). PMSI had *Source OTC Territory Manager*.
- (e) On sales aids for prescription products, IMS produced a similar service to PMSI's *Call Link*, a strategic tool to measure return on investment across marketing mix. IMS also produced *Compass*, a detailed relational database of GPs. PMSI had *GP Prospect*, a GP attitudinal database, and *Scriptrac*, a GP behavioural database. IMS also marketed *Tactician* mapping

¹[*Details omitted. See note on page iv.*]

software, a map of the UK which could be broken up into postcodes or *RSA* bricks, then populated with data. PMSI had a product which was to be launched soon.

- (f) On prescription data, IMS had *Xtrend National Overview*, which showed monthly prescription volumes and value by product, manufacturer and therapy class. PMSI had *Source Prescription Audit*, which also provided monthly prescriptions by volume, value, manufacturer and therapy class. IMS also had *Xtrend*, on monthly doctor prescribing, whilst PMSI had *Source Prescriber*, both products giving monthly named prescriber, volume and value by product. Such prescription level data was the ultimate targeting tool, which, if based on sufficient coverage of GPs, could make a lot of other audits redundant, although this company would continue to use other (higher-level) data services. IMS also had *Mediplus Fast RX*, a national level weekly script monitor, derived from GP computers that fed into *Mediplus* database. PMSI had *Source Launchtrac*—a weekly report by identified prescriber recording scripts of named products derived from recording pharmacies.

5.75. IMS was the largest provider of basic market research services and its acquisition of PMSI would maintain its virtual monopoly in sales data and prescription data. The company believed this was a market in which there was scope for competition, but PMSI had been the only credible competitor to IMS and could in time have competed in supply of data at a national level. Any new entrant into the market would incur very high fixed and sunk costs to develop a database with historical data or would need to rely on IMS for those data. It was possible that many sources of raw data had existing contractual relationships with IMS, making it extremely difficult for another entrant to obtain statistically sound representative and relevant samples from which to sell meaningful data. It was also possible that even in the absence of exclusive contracts the software might be set up so that data could be supplied to only one company. It would not be feasible for the pharmaceutical companies themselves to process such data, without incurring significantly higher costs, whilst competition legislation would prevent them from co-operating in developing such services. The company therefore believed that new market entry was extremely unlikely and the merger had eliminated the sole potential source of competition to IMS in the relevant market.

5.76. Pharmaceutical companies could not do without market research should it become more expensive. IMS was already dominant in the market for basic sales and prescription data: it lacked customer focus and its products were expensive. It had previously changed product specification for the worse at short notice, sought to charge extra sums for services which were required to achieve the adequate performance level missing from the original product, prevented the use of third party software to manipulate data and raised the prices of its products unreasonably. Its behaviour was likely to have become constrained by the need to compete on price and service with PMSI: if that potential constraint were removed, and the incentive to innovate reduced, it was likely that it would further raise the prices of its products, or not face downward price pressure.

5.77. The company was also concerned about the effects of the merger on export of services. It believed the merger was likely to have the same effect on prices of bundled, global services as on IMS's purely UK-based services. In removing the only potential competitor, IMS would have removed its only constraint on the pricing and quality of its services.

5.78. With regard to R&D, the company believed that, since IMS would have no competitors, it would have little incentive to improve its products.

5.79. The merger was not therefore in the public interest. In response to our questions on possible remedies, the company told us that the simplest and most effective remedy would be divestment, but this would only be possible if PMSI remained as a feasible business entity. PMSI had already, however, lost staff, and if it proved impossible to disentangle the IMS and PMSI businesses, then efforts should be made to establish a competitor to the merged businesses to address the effects on pricing and quality. This could be done by requiring IMS and PMSI to release a sufficient number of data sources to enable a competitor to establish itself, to license PMSI software to such a competitor, or license data to such a competitor. Alternatively, the provision of data should be unbundled from the provision of the software to analyse and manipulate the data, with the imposition of price controls on

access to data. Dependency on IMS would also lessen if data held by the PPA were to be made available.

Another pharmaceutical company

5.80. The company said that there were few alternative suppliers of audit data on ethical pharmaceutical products in the UK. They were much smaller than IMS and supplied data only in one specialized area. This restricted the company's options in obtaining data, and the merger would limit its suppliers still further.

5.81. Prescriber-level data were available only from IMS and Source Informatics, and the merger would make IMS the monopoly supplier of these data. The cost of these data was already high and the company was concerned that costs would rise much further if the IMS and Source data were combined. The value of having a larger data sample was more than offset by the disadvantage of having only one supplier. The company said that in general, despite the high cost of IMS's data, the quality of service was variable. IMS tended to resist reducing prices to compensate for sub-standard levels of service.

5.82. The cost of entry to supply national and regionalized audit data was high, which restricted the potential for other companies entering the market. The merger could further limit entry to the market. The company therefore believed that, as a result of the merger, the pharmaceutical audit industry would be dominated by one player, which already supplied monopoly products at high prices.

Another pharmaceutical company¹

5.83. This company said that the merger would reduce competition and operate against the best interests of the pharmaceutical industry.

5.84. In some areas IMS had been the sole supplier of pharmaceutical data, potentially leading to poor service and higher costs. However, in other areas both IMS and PMSI had supplied data to the industry and were the only two companies to have done so. If they were allowed to merge, there would be a monopoly in the supply of pharmaceutical data; it was unlikely that any third party would be able to offer a competitive service; and there could be unjustified price increases and further reductions in the level of service.

5.85. The company said that if the merger were allowed, there should be safeguards on price increases and anti-competitive actions by the merged company.

Another pharmaceutical company²

5.86. The company believed the merger would remove price competition for data services showing sales at local level, which were provided by the IMS *RSA* and the PMSI *Dispenser* services. IMS and PMSI were also involved in establishing GP-level prescribing databases such as *Xtrend* and *Prescriber*, and the company believed there would be a reduction in the possibility of competition for such data as a result of the merger. These data were of great interest to the pharmaceutical industry, and there would currently be no alternative supplier to IMS as a result of the merger.

5.87. The company acknowledged that the GP-level prescribing database service needed to recruit a nationally distributed panel of retail pharmacists, and that a single large service might provide better-quality data than services that were competing to recruit pharmacists. However, concerns about monopoly pricing would remain and restrictions regarding price increases should be placed on IMS, at least in the short term.

¹[Details omitted. See note on page iv.]

²[Details omitted. See note on page iv.].

5.88. The merger would also strengthen IMS's position in the provision of customer lists (for example, of GPs, nurses etc) to the pharmaceutical industry in which both IMS and PMSI had been active. Competitive sources of this information already existed, however, so there were no immediate price concerns in this area.

Competitors and potential competitors

NDC Health Information Services (Arizona) Inc

5.89. NDC was a wholly-owned subsidiary of National Data Corporation and in the USA offered integrated healthcare information for all sectors of the healthcare industry. In 1997 it had itself merged with the US operations of Source Informatics (the European operations of which were acquired by PMSI) and with the US operations of PMSI except Scott-Levin.¹ Since NDC itself only supplied database services, in order to provide a competitive service in the USA it partnered Scott-Levin, which supplied audit services, and Dendrite, which supplied ETMS services. It currently owned three UK-based pharmacy software companies with a view to future development of pharmaceutical information services in the UK. It would itself have been interested in acquiring PMSI's European activities, if the terms had been favourable.

5.90. It told us that Cognizant, the parent of IMS, announced in April 1998 its intention to acquire PMSI on a worldwide basis, in exchange for shares of IMS. Following an investigation by the US Federal Trade Commission, the transaction was modified. The transaction now consisted solely of the acquisition by IMS of the non-US assets of PMSI. NDC had brought the transaction to the attention of the competition authorities in Belgium, France, Germany, Ireland and the UK and had also made an application to the European Commission for the initiation of a procedure under Article 86 of the EC Treaty. The Belgian Competition Council had made a decision to open a second-stage proceeding in relation to the transaction.

5.91. The specific markets concerned in the merger were those for the provision of pharmaceutical data. Such markets included those for the provision of:

- (a) prescription and distribution database services;
- (b) prescription and distribution audit services; and
- (c) ETMS.

Prescription and distribution database services

5.92. NDC said that there were two basic types of database services. The first, wholesale distribution data, was collected at the wholesale level and measured sales from wholesale pharmaceutical warehouses into the pharmacy or hospital. IMS offered its database in Europe under the MIDAS label. The second, prescription data, was collected directly from pharmacy chains and mail order houses and could link actual prescriber information to drug sales. PMSI, through its UK subsidiary Source Europe, offered a prescription database service; Source had initiated prescription data in the USA, and six of the major pharmaceutical companies subsequently had supported the development of similar services by Source in Europe. Prior to the merger, IMS had commenced entry into this market in Europe with its own product *Xtrend*.

5.93. The two database services—distribution database services and prescription database services—generally competed closely with each other and indeed, the closest substitute for IMS's MIDAS database was Source Europe's prescription database. Both databases were used to measure the

¹We understand that, as part of this acquisition, NDC agreed not to compete with the non-US activities of PMSI but this provision lapsed with IMS's acquisition of those activities.

sales performance of proprietary drugs across geographic territories, and targeting customers of specific pharmaceutical products. Moreover, the sales administrations of the pharmaceutical industry were the purchasers of these databases. If, however, a customer wished to track sales at a more local level, information from the prescription database was preferable because it was more accurate and useful (for example, where a prescription was filled by a pharmacist at some distance from the location of a GP) and the development of prescription databases therefore posed a considerable threat to their distribution counterparts. The databases were interchangeable for most purposes and to a great extent they were cross-elastic with regard to price. Such cross-elasticity was evident by the fact that Source Europe's entry into the EU market with its prescription database service had the effect of reducing IMS's prices for wholesale distribution services by as much as 20 per cent. NDC believed for these reasons that the two database services constituted a single product market. Prior to the merger IMS and PMSI were the only competitors in the market for prescription and distribution database services in the UK.

Prescription, distribution and survey audit services

5.94. Prescription audits supplemented the basic prescription database with information gathered from surveys of various panels of doctors; distribution audits similarly supplemented the distribution database with survey information. Survey audits were based exclusively on survey information. The data for these three types of audits were based on a statistically significant number of doctors who provided a demographically representative sample of the relevant population. The audits followed survey participants over a period of time. Almost all of the top pharmaceutical market analysts relied on these audit products for their marketing, planning and budgetary purposes.

5.95. Under the name of MEDICAL MIDAS IMS had provided an audit based on distribution data in the UK and other European countries. IMS also produced survey-based audits. Source Europe and IMS had been competitors in a race to introduce an audit based on prescription data. Source Europe's prescription audit produced a monthly report, reflecting prescription volume and value, based on a representative sample of pharmacies throughout the country.

5.96. Wholesale distribution and prescription-based data were similar to wholesale distribution and prescription-based audits to the extent that they measured market performance: wholesale distribution audits indicated national sales to classes of trade, while prescription-based audits showed the number of prescriptions issued nationally for a particular product. Wholesale distribution, prescription- and survey-based audits, however, went beyond the measurement of market performance. They provided valuable information on, for example, how diseases are treated therapeutically, the duration, frequency and dosage prescribed. For these reasons such audits were purchased by market research departments of pharmaceutical manufacturers, rather than by their sales administrations, and thus constituted a different relevant market. Database and audit services which were not based on pharmaceutical data (such as retail database and audit services used by supermarkets) served entirely different purposes and were based on different data; they were sold to different customers.

5.97. IMS was the only provider of pharmacy audit services, hospital audit services, OTC reports, survey-based audits (except for one company with a very small market share) and promotion audits in the UK. Prescription audit services were provided by IMS, PMSI and TNS whose main activity, however, was in consumer information and who did not wish to be a dominant competitor in pharmaceutical information; medical audits by IMS and TNS (in the cardiovascular sector).

ETMS

5.98. ETMS was used by pharmaceutical sales representatives to access and input data gathered as a result of sales visits to directors and hospitals. Walsh International was the main supplier in Europe, but ETMS systems were also supplied by IMS (through its subsidiary Sales Technology Inc (STI)) and Dendrite. ETMS had become an indispensable tool for evaluating the performance of pharmaceutical sales representatives, providing them with access to up-to-date information to support their sales

efforts, and obtaining information about doctors' prescribing habits based on the relevant pharmaceutical company's database; data could also be entered regarding individual GPs following each sales call. Services based on ETMS were therefore, in NDC's view, highly complementary to the database services and audits offered by IMS and PMS, and the merger enabled the combined firm to bundle ETMS services with either database services or audits or both.

The relevant geographic market

5.99. NDC said that data from one country could not be substituted for data from another: the databases were therefore country specific, as were also the regulatory requirements for data protection. Nonetheless pharmaceutical companies operated throughout Europe, and wanted data in a standardized form, and the technologies used to produce and prepare database services were also international. Significant market power could therefore be both at the national level (through control of essential data) as well as internationally through control of proprietary technology. Depending on how the various factors were weighed, the relevant geographic market for prescription and distribution database services could be either the UK or Europe. The relevant markets for audit services were also both national and European in scope; that for ETMS was the EU, the same ETMS being sold across Europe, tailored to each pharmaceutical manufacturer rather than country of origin.

Effects of the merger on suppliers and customers

5.100. NDC believed PMSI's Source Europe was the only viable competitor to IMS in database services and audit services in the UK. PMSI's entry into the European markets was originally sponsored by six pharmaceutical companies, out of a desire to create a source of services additional to IMS.

5.101. The customers of the relevant services operated in many different countries and required distribution and audit services for each of these countries. Many customers required a combination of database and audit services, but there was no need for such services to be provided by the same provider in each country. To compete effectively, undertakings had to be able to offer a combination of such services and geographical areas. NDC had therefore teamed up with PMSI, which provided complementary services. However, with the removal of PMSI as an independent undertaking, NDC could no longer offer combined services, removing it as an effective competitor or potential competitor.

5.102. The acquisition of PMSI by IMS would create a monopoly in the UK market for wholesale distribution and prescription database services and a virtual monopoly in distribution, prescription and survey audits. IMS would also acquire valuable intellectual property rights. UK customers would not have an alternative source for the database services, and the same was likely to occur in the short term in the audits market. This was because IMS would be able to offer bundled packages of products on the back of its market power, and IMS would be able to bundle any two or more of its products geographically.

5.103. NDC believed that the geographic and product tying practices of IMS, combined with the removal of PMSI, would remove the possibility of competition from NDC, or from any other undertaking which did not operate at international level. Competition would be limited to the minor presence of TNS and Oncalex in two small niche markets. When the removal of PMSI and Walsh, and the tying practices of IMS, were viewed in context of the very high barriers to entry, NDC believed that the prospects of competition were removed.

Barriers to entry

Prescription and distribution database services

5.104. NDC believed that a new entrant would have to secure prescription data from the same sources currently providing data to Source Europe and IMS. NDC said that in many cases IMS had

exclusive arrangements with data suppliers and had entered into long-term exclusive contracts with at least 800 independent pharmacies in the UK, many of which were necessary to avoid bias in projections. Moreover, even in the absence of such lock-out arrangements, it would take years to develop the necessary statistical information to format the data so that it could be offered within a homogenous data set, and develop sufficient historical data so that meaningful time-series comparisons could be made. This was shown by Source Europe's slow entry since 1994, despite having a superior product with substantial customer support, requiring years of losses or very low profits. NDC, therefore, believed new entry into the market would be viewed as both costly and unattractive. The presence of entry barriers was also shown by the years of high prices, profits and inferior service offered by IMS prior to Source Europe's entry, and only when it faced actual entry did IMS lower prices and introduce more innovative products that better met its customers' needs. These same barriers prevented the pharmaceutical companies themselves from building up their own services, or collaborating with wholesalers to do so.

Prescription, distribution and survey audit services

5.105. Entry barriers were also high in the market for prescription, distribution and survey audit services in Europe. IMS's ability to market all three audits added to the existing barriers to entry. In order to enter the market for prescription or distribution audits, it was first necessary to build a historical prescription or distribution database. The only viable two prescription databases in Europe were at present in the hands of IMS and Source Europe.

Research and development

5.106. NDC told us that after PMSI's introduction of prescription-based database services, IMS lowered its prices and introduced new products in competition. However, the removal of PMSI as an independent undertaking would leave IMS with no incentive to maintain lower prices or to invest in innovation or technological change in the provision of services.

5.107. Faced with higher prices for database and audit services, the pharmaceutical companies, for whom these services were essential, would transfer the increased cost base to purchasers of pharmaceutical products. If such transfer were impractical (due to controls over pharmaceutical prices), the pharmaceutical companies would be forced to evaluate the possibility for offsetting the increased costs of IMS's services by reducing their spend on activities such as research, employment or consumer-related services.

5.108. NDC understood from IMS's customers that its prices were currently increasing in the UK and Belgium. NDC was concerned that prices may also be increasing in other countries.

Public interest

5.109. NDC therefore believed that the merger would operate against the public interest. With the removal of effective competition there would be a monopoly situation in the market. Barriers to entry, which were already extremely high, would be further raised. Anti-competitive practices carried on by IMS, involving tying practices and exclusive arrangements for the supply of data, further removed the possibility of new entry. With the absence of effective competition, the merged company would be in a position to increase prices, reduce investment in innovation and reduce the quality of services offered. These adverse effects could be passed on to consumers in the form of less spending on R&D, or higher prices where not subject to price controls.

5.110. NDC believed that the most effective means of avoiding the inevitable adverse effects on the public interest would be to require IMS to divest the PMSI assets in a manner which would ensure that PMSI would speedily be re-established as an independent and effective competitor. Such a remedy would provide the discipline of competition that was essential to prevent IMS from exploiting its market position through an increase in prices, reduced investments in innovation and deterioration in the quality of the services provided. In the absence of divestment, the prospects of new entry into the

affected markets were remote; there was therefore no other means of establishing a market structure, which provided the minimum level of competition consistent with the public interest. Although as a result of the merger IMS would already have acquired knowledge of, for example, PMSI's projection methodologies, NDC believed it would be feasible to divest PMSI, which had retained a sufficient core of staff and key contracts, and which could be run more efficiently than before the merger.

5.111. NDC believed that alternative remedies would not be as effective as divestment, nor would they re-establish a competitive market structure. It did, however, suggest behavioural remedies to address some of the principal adverse effects of the merger, namely:

- (a) to repudiate IMS's exclusive arrangements with pharmacies;
- (b) the compulsory licensing of IMS databases on reasonable terms and for two years, which would most quickly and effectively facilitate entry into the market. NDC might also benefit from a compulsory licence to IMS's standardized repository of data integrated from multiple sources. This would prevent tampering with the data and also would not involve a licensing of IMS's intellectual property rights in data projections and applications. As a minimum, NDC suggested a licensing of IMS's raw data with full documentation, including historical data, for two years. A compulsory licence would apply if the data were covered by copyright or database rights and in default of agreement on reasonable terms they would be settled by the Copyright Tribunal under its statutory powers. In so far as the data were not protected by an intellectual property right, a transfer of data and an undertaking not to prevent their use would be appropriate. The Copyright Tribunal would have no statutory jurisdiction to set the royalty. NDC suggested that in these circumstances the royalty might be set by an expert or arbitrator appointed by the parties, or appointed by the parties' experts or arbitrators; and
- (c) to prohibit IMS from tying the provision of database, audit and ETMS services or products offered in relation to one geographical area to those offered in another.

Taylor Nelson Sofres plc

5.112. TNS is the fourth largest market information company in the world following the merger between Taylor Nelson AGB plc and Sofres SA in December 1997. It told us that it was the principal competitor of IMS and PMSI in the UK.

5.113. It said that IMS was already, by a substantial margin, the largest provider of research in the healthcare information market (both in the UK and globally). The merged companies would dominate the UK market for continuous prescription data services with 85 per cent of the market.

Types of research

5.114. TNS believed there were generally three different types of market research:

- (a) continuous research, the purpose of which was to provide quantitative information on trends within a market. It was used to analyse movements in market share of products and companies;
- (b) ad hoc surveys, the purpose of which was generally to provide quantitative information on purchasing habits, attitudes or awareness of products, social issues or political parties; and
- (c) qualitative research, the purpose of which was to obtain qualitative as opposed to quantitative information relating to products or services.

Ad hoc and qualitative research were more volatile than continuous research, since revenues were largely project dependent and could fluctuate. Fixed costs for continuous research were higher than those for ad hoc research, where the main costs were variable.

5.115. TNS believed that continuous and ad hoc research could be viewed as separate businesses, since they had different applications and very differing economics. The two end-uses for continuous research within the prescription data market (which TNS took as the market for all information on prescribed medicines, not only that derived from prescriptions at pharmacies) were for sales management information and for sales research and prescription market monitoring. However, many of the services involved were built from the same data collection approach and had common factors and delivery systems, hence TNS believed that all national and regional prescription data services could be treated as one market for current purposes.

UK healthcare market

5.116. TNS believed the value of the UK healthcare information market, on the widest possible definition including continuous research services as well as ad hoc studies and international studies generated from the UK, to be some £75 million to £80 million. The total UK revenue from continuous healthcare research was about £47 million, of which around £28 million was for prescription-orientated services, and the balance for other services such as OTC, promotional, hospital and veterinary data. TNS estimated that the effect of the merger was to increase IMS's share of continuous prescription data services from 70 to 85 per cent.

Prescription data services

5.117. TNS distinguished three types of prescription data services: GP prescribing data services; retail pharmacy prescription services; and ad hoc prescription-related services.

GP prescribing data services

5.118. These were collected from a rotating sample or panel of doctors or practices. IMS and Compufile collected their data primarily electronically. The PMSI *Scriptrac* service provided, on the basis of personalized questionnaires completed by GPs (often from recall rather than actual records), a source of market research information on general prescribing patterns over time, and a means of selecting and targeting individual GPs. More accurate information for this purpose, however, was provided from prescriptions being dispensed at pharmacies. PMSI was able to feed the *Scriptrac* data into the sales representative call reporting services of Walsh, putting it in a unique position to compete with IMS.

Retail pharmacy prescription services

5.119. Historically these were derived mainly from information provided by wholesalers. Through agreement with the BAPW and Boots, IMS had near census data on sales to all outlets at postcode level, which was the main source of data for both the national market research services and the regional sales management services. It was extremely difficult for competitors to compete with these interrelated IMS services, and they tended in consequence to develop complementary services. PMSI had, for example, taken over the *WSDS* from the BAPW and developed it, providing data on an immediate end-of-week basis on deliveries of manufacturers' own products to individual pharmacy accounts.

5.120. TNS had developed the fortnightly *Scriptcount* service, monitoring the dispensing of prescriptions at a sample of 300 pharmacies rather than deliveries dispatched to the retailer, but supplemented by surveys of parallel imports and use of generics. It regarded *Scriptcount* as complementary to IMS wholesaler information. More recently, IMS and PMSI started to collect the same type of pharmacy data as *Scriptcount* (*Xtrend* and *Source* respectively), but also collecting the prescriber number, allowing the identification of the prescribing GP. This information would also allow verification of PMSI's *Scriptrac* data, considerably strengthening IMS's position. With *Xtrend* and *Source* data likely to be collected from over half of pharmacies nationwide, TNS's ability to innovate

successfully and develop further niche products would be inhibited as the existing *Scriptcount* service and revenues would be adversely affected. It had decided not to develop more local or regional prescription data on account of the cost and difficulty in entering these markets; because it believed there was not room for three or four players in those markets; and because it regarded its core competency as market research rather than producing data for use by sales representatives. Its former subsidiary JRC had itself provided prescription data to IMS on an exclusive basis, although the exclusivity had recently been withdrawn. TNS said that if IMS and PMSI had remained competitive in the market and prescription data were being collected from more than 50 per cent of the outlets, then prescription data services would compete directly with wholesale data, because of the costs associated with purchasing and supporting these services and the need for clients to work from one definitive data set. However, if IMS was the sole supplier of prescription data services, TNS believed that both wholesale and prescription data services would be commercially marketed and supported by IMS in such a way as to benefit its own business objectives. This belief was supported by IMS's marketing practices in the USA.

Ad hoc prescription-related services

5.121. TNS and other market research companies, such as National Opinion Polls Limited (NOP), with the necessary level of know-how in the pharmaceutical and healthcare market, carried out ad hoc studies for clients; PMSI had been a strong player in this market, but IMS had preferred to concentrate on continuous research. TNS, NOP, IMS and PMSI all carried out 'Omnibus' surveys in this market—regular ad hoc interviews of doctors on a monthly basis—and the merger would allow IMS to lock together related packages of information which went beyond the continuous research data services, reducing competition in ad hoc research.

Barriers to entry to continuous research

5.122. TNS believed that barriers to entry in continuous research were high. Specialist skills to understand the market were required. Information was continually being gathered and added to databases and considerable investment was necessary in computer systems and services, producing a considerable technological barrier to entry. Investment was also necessary in the sources of the information. The high fixed costs involved in producing continuous research made it important to receive early committed revenue to cover these costs. Costs of entry for the larger international services, which clients were increasingly demanding, could therefore exceed £20 million.

5.123. By comparison, barriers to entry in ad hoc research were considerably lower. Face-to-face interviews or interviews by telephone could be conducted relatively easily. However, ad hoc research was carried out for a single client and could not be syndicated to many different clients, as was the case with continuous research.

5.124. There were additional barriers to entry specific to the healthcare sector because of the dominance of IMS. Multinational healthcare companies expected a standardized global product offering, partly as a result of the existing IMS approach of providing international data together with a standardized delivery system to disseminate all its information. TNS believed that, following the merger, there would be even more pressure in the UK to take an industry standard data delivery system from IMS as part of its data offering. Furthermore, the IMS infrastructure of common support files, their data integration and analysis systems all gave IMS a powerful strategic advantage on national and international continuous research services that went beyond prescription data services into the related areas of hospitals, OTC and promotional data services. The existence of multi-country contracts made it more difficult for a new provider to enter the market for a localized continuous service.

5.125. TNS said that no company apart from PMSI had sought to overcome this combination of barriers to entry. PMSI had a strong portfolio of products (including Source and, through its sister company, Walsh), and was well positioned to compete with IMS and erode its business over time. Other competitors were all significantly smaller in this market than PMSI, which was itself much

smaller than IMS. It was unlikely that wholesalers could enter the market, other than in partnership with a company to provide the necessary market research and information analysis skills. TNS believed, however, that there was scope for two companies such as IMS and PMSI to compete, and the presence of PMSI had also allowed other companies to compete and sustain their niche products. If the merger were allowed, barriers to entry would be reinforced.

The effects of the merger

5.126. TNS believed that if the merger were allowed IMS would have a dominant position in the provision of all prescription data services, including all the related analysis systems and services. The potentially entrenched position of the merged IMS/PMSI would reduce or eliminate any countervailing buyer power, resulting in IMS marketing and pricing products to protect and grow their position in the market. Anti-trust constraints in the USA also limited the extent to which the US-owned pharmaceutical companies could collaborate to produce an alternative to IMS.

5.127. Trends towards purchasing a packaged solution of data and analysis systems would further entrench the power of IMS. TNS firmly believed that it would become increasingly difficult to unravel attributable prices to all the different services and systems with consultancy fees built in. Such bundling of prices made it very difficult for other suppliers to compete effectively.

5.128. TNS feared that IMS would use its dominance of this market to offer international pharmaceutical companies packages of similar standardized data across a number of countries, and either tie in purchase of UK national data from Source/*Xtrend* or cross-subsidize to erode *Scriptcount* to an unprofitable service. This would restrict TNS's ability to continue to invest in developing new niche products in the market and stay abreast of technological changes.

5.129. TNS believed that the UK market could not be considered in isolation from the international market for data research, where the major clients were multinational. If competition was stifled in the UK from the merger, the opportunities for companies to develop even a global niche product was further diminished.

5.130. Among other competitive threats, the merger, through enhancing the marketing advantage of the IMS/Walsh call-reporting systems with IMS's monopoly control of regional and territorial prescription data services, would also enable IMS to dominate the call-reporting system market.

5.131. TNS therefore believed the merger would operate against the public interest. Of possible remedies, it felt divestment would be feasible at the right price despite the loss of staff from PMSI since the merger. Behavioural remedies such as price controls would be difficult, given the international character of IMS.

Pharmaceutical wholesalers

AAH plc

5.132. AAH said that at present IMS and PMSI were in competition to supply data from pharmacy retailers and wholesalers. The proposed merger between them would lead to a monopoly situation, resulting in reduced income to the pharmacy sector.

Pharmaceutical retailers

The Boots Company PLC

5.133. Boots said that it had specifically requested that IMS and PMSI competed with each other on price. Competition was essential because it ensured the lowest price to buyers and a fair price to data suppliers.

5.134. Boots said that the acquisition of PMSI by IMS would effectively create a monopoly in the UK for the supply of prescription data, resulting in an increase in prices for IMS's services. There could also be a decline in service levels and in the quality of data which IMS provided.

National Co-operative Chemists Ltd

5.135. National Co-operative Chemists Ltd (NCC), a retail pharmacy chain, was concerned about the effect of the merger on competition between data collection agencies. At present NCC held agreements with both IMS and PMSI and the terms of the agreements were negotiated in the light of full and fair competition between the two agencies. If the two agencies merged, the element of competition would be removed.

5.136. NCC believed that entry into the market would be costly and difficult. Therefore, in the absence of a new entrant, the merged company would be in a powerful position with regard to control of the price of data collected and supplied to future customers.

Another pharmaceutical organization

5.137. This organization (a customer of Source) believed that the merger would lead to a reduction in competition and a monopoly situation. This would in turn lead to an increase in the price to those organizations to which data were sold and a reduction in price to those organizations from which data were bought.

Software suppliers

Park Systems Ltd

5.138. Park Systems Ltd (Park), a pharmacy software house, had developed data extraction software so that its customers could provide data to both IMS and Source. For this, it received a management fee and payment for the data provision.

5.139. Following the merger, both these data capture agencies would be under the same ownership with a virtual monopoly on this type of data. Park believed this might lead to the merged enterprise discontinuing one of the data agencies thus reducing revenue to Park and its users who provided data. PMSI also owned a competitor pharmacy system supplier, Mediphase, and Park was concerned that following the merger it would be the only company whose users would be able to supply data, giving it an unfair marketing advantage over competitors.

Others

Another company

5.140. The company said that IMS had used cross-service or national discounts to compete unfairly with local suppliers. For example, IMS sold the prescription monitoring service called *MDI* in many countries. If the subsidiaries of a pharmaceutical company in all countries where the service was run purchased *MDI*, then the headquarters received the amalgamated service free; if any local subsidiary of a company in any one country did not purchase, the headquarters had to pay a punitive fee to continue to receive that service. Hence *MDI* was taken widely in preference to similar local services. The acquisition of PMSI provided IMS with more opportunity to behave in an anti-competitive way. Prior to the acquisition IMS had also discounted aggressively to try to force PMSI out of prescription monitoring in the USA, and expansion in the UK gave IMS more opportunity to act in this way.

5.141. The company told us that IMS had purchased and closed down several services, so reducing the number available to the pharmaceutical industry. Where such services required historical data, it was usually uneconomic for another agency to attempt to reinstate these services because of the delay in marketing whilst collecting sufficient historical data. There might be services—for example in pharmacy data collection—which similarly would disappear following the acquisition of PMSI by IMS. Clients of IMS would have to meet the cost of the acquisition and any subsequent rationalization of support staff.

5.142. The costs of competing with IMS would be very high and market dominance after the acquisition might prevent competitors from entering. This would almost certainly raise prices.

5.143. The company could see no benefits for the pharmaceutical industry from IMS's acquisition of PMSI.

A former director of PMSI

5.144. A former director of PMSI believed that IMS had acquired PMSI in order to remove the main competitor in the provision of prescription data services in the UK. It was clear that IMS intended to combine *Xtrend* and Source to provide a single service. The effect would be to reduce the choice of supplier of data services available to the UK pharmaceutical industry.

5.145. The former director also commented that some steps had been taken to integrate the businesses of IMS and PMSI before the merger was referred to the MMC. Although plans for further integration had been put on hold once the reference had been announced, the two companies were no longer functioning independently. Furthermore, IMS now had possession of PMSI's commercially sensitive information and the employment of seven of PMSI's most experienced directors, who had been instrumental in building the company's image and reputation, had been terminated. Therefore, even if the merger were not allowed, PMSI would no longer be a commercially viable competitor to IMS.