

2 Conclusions

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The reference

2.1. On 23 October 2002 the Secretary of State for Trade and Industry (Secretary of State) referred to the Competition Commission (CC) for investigation the acquisition of Book Data by VNU in July 2002 (see Appendix 1.1 for our terms of reference). The reference was made on the advice of the Director General of Fair Trading (DGFT) who considered that the merger might be expected to result in a substantial lessening of competition in the supply of commercial bibliographic data services to the UK book industry.

Background

2.2. The activities of VNU and Book Data are related to the supply chain of the UK book industry. Books reach the public in two main ways: through booksellers (the book trade) and through libraries. On the trade side publishers (and distributors acting for publishers) supply books either to wholesalers or direct to retail booksellers. For the library sector, publishers/distributors supply books to library suppliers—who perform for libraries a broadly similar function to that which wholesalers perform for the trade—or direct to libraries.

2.3. VNU and Book Data supply databases of UK-published books as a service to the book industry. Their products are used by wholesalers, retailers and the library community for identifying and ordering books to be sold or lent to customers. Although both databases are broadly comprehensive, neither is complete. VNU and Book Data also supply electronic communication systems for use in order-placing and other transactions within the industry.

2.4. In 1998 KPMG, in response to a commission from the Publishers Association Ltd (the Publishers Association) and the Booksellers Association of the United Kingdom and Ireland Limited (the Booksellers Association) with financial support from the Department of Trade and Industry (DTI), published a report¹ analysing the book industry supply chain. The report concluded that the supply chain was complex and costly, being characterized by fragmentation and few economies of scale.

2.5. To illustrate this point, VNU told us that the generally accepted estimate for the number of active publishers in the UK was 40,000. VNU also estimated that some 132,000 new titles would be published in the UK in 2002. The number of records of UK books in print on VNU's main database is 1.2 million.

2.6. A description of the various elements of the book industry, particularly those aspects where VNU and Book Data are active, is given in Chapter 4 of this report.

The parties to the merger

VNU

2.7. The ultimate holding company of VNU is VNU nv, a public company listed on the Amsterdam Stock Exchange. The VNU group is active worldwide in markets for consumer and professional information. In the year to 31 December 2001, the group had net revenues of £2.6 billion and operating income of £450 million.

¹*Unlocking the Supply Chain's Hidden Prize*, KPMG, 1998.

2.8. The business carried on by VNU has its origins in the UK book industry in the 1850s. Towards the end of the nineteenth century the business published its first reference catalogue of books in print, the forerunner of VNU's current bibliographic products. In 1901 the company now named VNU Entertainment Media UK Limited was incorporated under the name J Whitaker & Sons Limited (Whitaker). VNU nv acquired Whitaker in 1999 and the company's name was changed to its present style in January 2002.

2.9. VNU's principal activities before the acquisition of Book Data were:

- (a) the supply of commercial bibliographic data services to the book industry under the name Whitaker;
- (b) the supply of transaction services to the book industry, principally an electronic order-routing service, under the name TeleOrdering;
- (c) a sales monitoring service for the retail book trade under the name Nielsen BookScan;
- (d) administration of the International Standard Book Number (ISBN) agency for the UK and the Republic of Ireland; and
- (e) publication of business magazines, notably *The Bookseller*.

2.10. In the year to 31 December 2001, VNU reported an operating profit of £2.1 million on sales of £12.5 million, a margin of 17 per cent on sales.

Book Data

2.11. Book Data was incorporated in 1986 and began trading in 1987. It was initially backed by financial institutions and managed by three individuals with backgrounds in the publishing industry. Their strategy was to attract subscription fees from publishers for the generation and dissemination of data on their products, which VNU described to us as a form of outsourcing of marketing activity by publishers. In 1991 Book Data formed an alliance with Baker & Taylor Inc (Baker & Taylor), a major US wholesaler of books, which involved Baker & Taylor taking a 38 per cent shareholding in Book Data. Baker & Taylor's holding subsequently increased to 55.6 per cent. Following the merger Book Data's name was changed to Nielsen BookData Limited (Nielsen BookData), in September 2002.

2.12. Book Data's principal activity before the merger was the supply of commercial bibliographic data services to the book industry. In addition, Book Data had the following other interests:

- (a) It supplied web services to the publishing and bookselling industries through a division called e-haus.
- (b) It owned 100 per cent of First Edition, which provides electronic data interchange (EDI) services to the book industry.
- (c) It owned 40 per cent of BDS, which provides catalogue-quality data on existing and forthcoming publications to the library community (see paragraph 2.32 for an explanation of the difference between commercial and catalogue-quality data).

2.13. In the year to 31 March 2002 Book Data reported an operating profit of £120,000 on sales of £4.9 million, a margin of 2.4 per cent on sales. These figures do not include the results of First Edition, which reported an operating profit of £76,000 on sales of £690,000 in the nine months to 31 March 2002. BDS reported an operating profit of £7,000 on sales of £530,000 in the 12 months to that date.

2.14. There are differences in the accounting policies followed by Book Data and VNU in reporting on the financial results of their bibliographic data businesses. We discuss these when considering the financial performance of the respective bibliographic businesses later in this chapter (see paragraphs 2.87 to 2.89).

Events before the merger

2.15. VNU told us that there had been two earlier attempts to merge the Whitaker bibliographic business with Book Data. In 1997, before VNU nv acquired Whitaker, Book Data had proposed a merger but the shareholders of the two companies had been unable to agree on an equity split within a merged group. Whitaker then pursued negotiations with Baker & Taylor, Book Data's majority shareholder, but these eventually foundered at the end of 1998. Whitaker then decided to dispose of its bibliographic business and initiated the process which led to VNU nv, through a US subsidiary, acquiring the whole Whitaker company in June 1999. The consideration for the acquisition was around £[redacted] million.

2.16. Immediately after its acquisition of Whitaker, VNU nv made an offer for the whole of Book Data. The offer was acceptable to Book Data's financial shareholders [*Details omitted. See note on page iv.*]. Negotiations then took place with a view to creating a joint venture company but these were abandoned at the end of 2000.

2.17. VNU submitted that the reasons for these previous attempts were the same as those underlying the merger itself, namely that in the view of both companies' managers and shareholders, neither bibliographic operation was sufficiently profitable to justify meeting future investment needs.

The merger

2.18. VNU told us that in 2001 Book Data's financial shareholders, which together held 42.6 per cent of the shares, wished to realize their investment in Book Data. Baker & Taylor was now prepared to dispose of part or all of its 55.6 per cent stake as long as it could maintain a commercial relationship with Book Data's new owners. Book Data therefore appointed merchant bankers to seek a buyer for the company. Several potential financial buyers were approached but none expressed sufficient interest. Bids were, however, received from the three potential trade buyers approached, namely Cambridge Information Group (CIG), a US company which owns Bowker, a US-based bibliographic agency; [*Details omitted. See note on page iv.*

]; and VNU.

2.19. After three rounds of bidding, [redacted] was eliminated because its bid of £[redacted] million was the lowest. The other two bids were close (£6.2 million from VNU, £[redacted] million from CIG). VNU told us that Book Data's shareholders preferred the VNU bid because:

- (a) it was the highest;
- (b) Book Data's senior managers, who held the remaining 1.8 per cent of the shares, saw attractions in merging the company with VNU's Whitaker bibliographic business; and
- (c) Book Data's major publisher clients were expected to support a VNU acquisition because of potential improvements that the merged group could provide.

Moreover, Book Data had concerns about [⌘] bid. [

Details omitted. See note on page iv.

]

2.20. Accordingly VNU was granted exclusivity with a view to completing negotiations. On 16 July 2002, it entered into an agreement to acquire the whole of Book Data, including Book Data's interests in First Edition and BDS. The sale was completed on the same date. The agreed price was £6.24 million [

Details omitted. See note on page iv.

].

At the time of our inquiry, while some aspects of the two companies had been integrated, Book Data continued to operate its own database separately from VNU's bibliographic business.

Jurisdiction

2.21. Our terms of reference (see Appendix 1.1), taken together with the merger provisions of the Fair Trading Act 1973 (FTA), require us to report on whether a merger situation qualifying for investigation, as defined in the FTA, has been created in that:

- (a) enterprises carried on by or under the control of VNU nv have, within the four months preceding the date of the reference, ceased to be distinct from enterprises carried on by or under the control of Book Data; and
- (b) either the value of the assets which have been taken over exceeds £70 million (the assets test) or the merger has created or enhanced a share of at least one-quarter in the supply of goods or services of any description in the UK, or a substantial part of the UK (the share of supply test).

If so, we have to report on whether the creation of that situation operates, or may be expected to operate, against the public interest. Section 63(2) of the FTA provides that 'enterprise' means the activities, or part of the activities, of a business. Section 65 specifies the circumstances in which two enterprises are to be regarded as ceasing to be distinct. One of the circumstances is where they are brought under common ownership or control.

2.22. As described in paragraph 2.20, VNU entered into an agreement on 16 July 2002 to acquire the whole of the share capital of Book Data. VNU is, indirectly, a wholly-owned subsidiary of VNU nv. As a result of the agreement, therefore, enterprises carried on under the control of VNU nv have ceased to be distinct from enterprises carried on by or under the control of Book Data. The agreement was made less than four months before the date of the reference to us.

2.23. As regards the first test referred to in paragraph 2.21(b), the FTA requires us to determine the value of the assets taken over by reference to the values at which the assets stood in the books of the relevant business at the time of the merger, less any provisions for depreciation, renewals or diminution in value. The reported book value of Book Data's assets at the time of the merger was well below £70 million, and therefore the assets test is not satisfied. As regards the second test in paragraph 2.21(b), VNU and Book Data before the merger were the only suppliers of commercial bibliographic data services to the UK book industry that fall within our definition of the relevant market (see paragraphs 2.43 to 2.45 and 5.148). We find that the share of supply test is satisfied with respect to those services. VNU agreed that this was

so. (VNU took a different view from us on the definition of the market, but even on that basis it estimated that Book Data and VNU had over 90 per cent of sales between them.)

2.24. In view of the considerations set out in paragraphs 2.22 and 2.23, we conclude that a merger situation qualifying for investigation has been created as described in our terms of reference. Accordingly, we have to consider whether the creation of that situation operates or may be expected to operate against the public interest.

The markets affected

2.25. The operations of VNU and Book Data overlap in two broad areas of activity: the supply of commercial bibliographic data services, and the supply of electronic transaction services to the book industry.

Commercial bibliographic data services


2.26. Commercial bibliographic data comprises a range of information that is used to identify, locate and order books, to assist with purchasing and to manage stock. It includes information on the title, author/editor, publisher, ISBN, price, availability (ie whether in print) and many other detailed elements concerning individual titles. The information is supplied by publishers to VNU and Book Data for editing and collation, in standardized form, in their respective databases. Although there is a large area of overlap between the two databases, neither is complete. There are certain records which are on one database but not on the other. In addition, as discussed in paragraph 2.29, Book Data produces more extensive records for certain books. Examples of entries in the databases are reproduced in Appendices 4.1 and 4.2.

2.27. Whitaker originally supplied bibliographic data to its customers in the form of a printed volume, *Whitaker's Books in Print*. Subsequently the data was also supplied in the form of microfiches. In more recent years there has been a growing move to the use of electronic formats, first CD-ROMs and subsequently online delivery over telecommunications networks. Large customers, such as wholesalers and the major chains of booksellers, have the data tailored to meet their particular requirements.

2.28. As mentioned in paragraph 2.11, Book Data initially built its business by charging fees to publishers for generating and disseminating data on their books. This data comprised not only the various elements which Whitaker included in its database, but also descriptive material such as tables of contents, long and short descriptions, author biographies and images of the book jackets. This product, taken as a whole, is referred to as 'enriched data'.

2.29. Subsequently Book Data began collecting basic data from non-subscribing publishers so that it could build a comprehensive database with which to compete with Whitaker. Hence Book Data's database consists of two types of entry: enriched data provided by some 4,000 publishers which subscribe, and more basic data provided by non-subscribing publishers, which total around 20,000.

2.30. VNU told us that the combined UK sales by value of its own and Book Data's commercial bibliographic data services broke down among customer categories as follows:

	%
Large book retailers	<div style="display: flex; align-items: center; justify-content: center;"> <div style="font-size: 2em; margin-right: 5px;">{</div> <div style="text-align: center;">  </div> <div style="font-size: 2em; margin-left: 5px;">}</div> </div>
Smaller book retailers	
Libraries and library suppliers	
Wholesalers	
Others (publishers and Bowker)	
Total	100

2.31. VNU said that in recent years it had faced increasing competition from other sources of commercial bibliographic data. In particular wholesalers offered services to their retailer customers which bundled together the supply of bibliographic data with book-ordering facilities, and the extensive and detailed database of Amazon.com Int'l Sales, Inc trading as Amazon.co.uk (Amazon) was available without charge to anyone with Internet access. We note, however, that these other sources depend on data from VNU and/or Book Data as the basis of their own databases, although they add other information.

2.32. VNU submitted that there were clear differences between commercial bibliographic data, described in paragraph 2.26, and catalogue-quality bibliographic data. The latter was the type of data used by libraries for cataloguing and managing their collections and for informing readers about the content of books. Such data had to meet specific standards defined by the library sector. VNU told us that compilation of catalogue-quality data usually required a physical inspection of the book, whereas commercial bibliographic data was based on information supplied by publishers about their products. Catalogue-quality data did not include information on price and availability, which were essential elements in commercial data. The book trade required only commercial bibliographic data, but libraries needed both types—commercial data for ordering books and answering readers' queries, and catalogue-quality data for cataloguing and related purposes.

2.33. VNU said that neither itself nor Book Data supplied catalogue-quality data, although BDS (of which Book Data owned 40 per cent) specialized in that field. The principal supplier of catalogue-quality data in the UK is the British Library.

Electronic transaction services

2.34. VNU's TeleOrdering service is designed to facilitate the ordering of books by wholesalers, retailers and the library sector. As noted in paragraph 2.5, the book industry is characterized by a large number of unique products (titles) and a multiplicity of suppliers (publishers and distributors). TeleOrdering enables purchasers to place a single order covering all their requirements at a particular time by simply inputting the ISBN of all the books they want and specifying the quantity required of each. TeleOrdering separates each component of the order and routes it to the appropriate supplier, whether publisher, distributor or—if specified by the purchaser—wholesaler or library supplier.

2.35. In order to provide this service, VNU maintains a comprehensive database of publishers and distributors which is updated daily. This is separate from VNU's bibliographic database. However, TeleOrdering also requires a daily feed of a small number of data elements from the bibliographic database. The system works by matching an order for a particular title with the relevant supplier.

2.36. Until recently, TeleOrdering was a 'blind' service in that purchasers received no information on the status of their orders (for example, whether the title was in stock, how soon it might be delivered). VNU has now introduced a web-site service, called WhitakerWeb, which is linked to TeleOrdering and allows the purchaser to view information about the status of its orders (as well as bibliographic information). This service is in its early stage of introduction to the market.

2.37. All orders using TeleOrdering have to be placed electronically. The great majority are also routed on to suppliers electronically, but in order to provide a comprehensive service, VNU also sends orders by other means—post, fax and telephone—to suppliers that are unable to receive direct electronic orders.

2.38. Book Data's First Edition subsidiary provides EDI services to the book industry. Broadly, EDI is the transmission of structured messages between computer systems using telecommunications networks. It allows trading partners to exchange a wide range of documents supporting order transactions—such as acknowledgments, delivery advice, invoices and credit notes—which can be processed automatically.

2.39. In the UK, most organizations wishing to use EDI engage the services of operators of private telecommunications networks known as VANs (value-added networks). Such operators include BT, IBM and Global Exchange Services (GXS—formerly part of General Electric). First Edition's service, which is tailored to the requirements of the book industry, uses the GXS network. Effectively it involves the reselling of capacity on that network to a group of book industry participants which wish to trade with each other. The set-up costs for a party wishing to join First Edition are substantially higher than for TeleOrdering, particularly for small retailers (see paragraph 5.122).

2.40. Book Data established First Edition as a joint venture with Vista International Limited (Vista), a software company, in 1992. In July 2001, Book Data bought Vista's shareholding for around £200,000.

Other activities

2.41. There is no overlap between the other activities of VNU and Book Data (see paragraphs 2.9 and 2.12). All those activities are, however, related to the book industry in various ways and there are links with the activities which do overlap, in particular:

- (a) VNU's sales monitoring service, BookScan, requires a supply of bibliographic data which is currently supplied by VNU's commercial bibliographic business.
- (b) Holding the ISBN agency gives VNU information on the publishers of forthcoming publications and a degree of status within the industry.
- (c) While BDS's involvement in catalogue-quality data does not overlap with existing VNU activities, both companies bid for the same British Library contract in 2002, for a service called cataloguing in publication (CIP)—see paragraphs 4.138 to 4.142. We were also informed that VNU had discussed the possibility of beginning to supply catalogue-quality data (see paragraphs 6.86 and 7.115).

Market definition

2.42. We now consider how the markets affected by the bringing together of the two companies should be defined. The relevant market comprises all those substitute products which provide a significant competitive constraint on the products of interest, and the geographical area in which this occurs.

2.43. Chapter 5 analyses the various factors which are relevant for our definition of the markets affected by the merger. In summary, we conclude that there is only one market in which the products of the merged parties were substitutes for each other, namely a market for commercial bibliographic data services of the kind supplied by VNU and Book Data (see

paragraphs 5.71 to 5.78). The geographical scope of this market is the UK as a whole (see paragraphs 5.79 to 5.83).

2.44. We reject VNU's argument that the market for commercial bibliographic data includes products and services available from other sources, such as wholesalers and Amazon, for the following reasons:

- (a) the functionality of those products is significantly less than VNU's and Book Data's services;
- (b) no VNU and Book Data customers which we spoke to considered that there were acceptable alternative services available; although VNU produced evidence of a very small proportion of its customers switching to other sources, there was no evidence that the switching occurred in response to changes in price; this factor did not, therefore, appear to constitute a material constraint on VNU's and Book Data's prices;
- (c) large customers, in particular, are unlikely to be very price sensitive because their purchases of bibliographic services from VNU and Book Data represent a very small proportion of their operating profits (see paragraph 5.61); and
- (d) until recently there did not appear to be any correlation between changes in VNU's and Book Data's prices and the availability of products from other sources; for example, Book Data and, to some extent, VNU continued to raise prices of their products after the emergence of Amazon; their prices have been constant since 2001 but it is by no means clear that this is due to customers becoming aware of alternative sources.

2.45. On the supply side, we noted that significant time and cost would be required by anyone wishing to set up a comprehensive database. We concluded that this would preclude any supplier of other products switching within one year to the supply of commercial bibliographic services.

2.46. We also considered the issue of market definition in respect of electronic transaction services for the book industry. Both TeleOrdering and First Edition can be used to order books but only TeleOrdering provides a routing service, an important function given the characteristics of the industry (see paragraph 2.34). There is little evidence of switching between the two services: although most of First Edition's customers are also users of TeleOrdering, they appear to use the two services for different purposes. Only a small proportion of documents transmitted through First Edition consists of orders. The costs of joining First Edition are relatively high—hence its users are among the larger organizations in the industry—and many small retailers' systems appear tightly integrated to TeleOrdering.

2.47. We further noted that it would take significant time and investment for First Edition to develop an order-routing capability so as to become a competitor for TeleOrdering.

2.48. For the reasons summarized in paragraphs 2.46 and 2.47, and set out more fully in paragraphs 5.94 to 5.143, we conclude that the respective transaction services supplied by VNU and Book Data are in separate markets.

Competition between VNU and Book Data before the merger

2.49. As explained in paragraphs 2.11 and 2.28, Book Data initially built its business by creating enriched data on the products of large publishers, using it to compile a database and supplying the contents to wholesalers, retailers and the library community. Its original operation differed from Whitaker's in important respects: it did not seek to achieve comprehensive

coverage of all publishers but its data was richer than Whitaker's. Unlike Whitaker's, Book Data's business model depended on charging subscriptions to data suppliers (ie publishers) as well as customers.

2.50. Book Data reported losses for its first seven years of trading, up to 1993/94. In order to increase revenues, Book Data began in 1995 to collect data from non-subscribing publishers in order to build a comprehensive database that could be sold to a wider range of customers in competition with Whitaker. VNU told us that Whitaker had begun to see Book Data as a direct competitor from about 1997, ten years after Book Data began trading.

2.51. There are indications that Whitaker (subsequently VNU) and Book Data competed actively with each other in the commercial bibliographic data market in the period from 1997 to the merger in 2002:

- (a) VNU told us that much of its sales activity and that of Book Data in recent years had been based on competing for each other's customers. It gave us a number of examples of customers switching from itself to Book Data and vice versa.
- (b) Several, mainly large customers told us that VNU and Book Data had competed keenly for their business. While the comments of these customers varied, the general view was that the competition had been not only on price but in terms of product features and standard of service as well.
- (c) [

Details omitted. See note on page iv.

]

- (d) Book Data appears initially to have set the price of its CD-ROM products which competed directly with VNU at a somewhat lower level than, or close to, VNU's equivalent price. As it succeeded in winning business, however, it raised its prices year by year until they were above VNU's. VNU raised its CD-ROM prices only once in the five years before the merger, in 1999, despite rising costs. VNU told us that, partly because of consolidation among customers, the market would not bear additional price increases. Given that Book Data was able both to raise prices and continue increasing sales in this same market, we infer that competition from Book Data was an important factor in VNU's inability to raise prices.
- (e) As shown in Figure 3.1, VNU's sales of bibliographic services fell each year from 1997. By 2002, sales were only [X] per cent of the level in 1995/96 in nominal terms, having fallen by £[X] million. Over approximately the same period Book Data's bibliographic data sales (including publisher subscriptions) rose each year, increasing by £[X] million between 1995/96 and the expected out-turn for 2002/03.

- (f) Since commercial bibliographic data services that fall within our definition of the market are supplied only by VNU and Book Data, it follows that changes in their respective UK sales of these services are directly reflected in market shares. Following Book Data's entry in the mid to late 1990s, when it began to offer a broadly comprehensive database in competition with VNU, Book Data had grown its market share to 43 per cent by 2001 (see paragraph 5.148).

2.52. We consider that the factors identified in paragraph 2.51 provide compelling evidence that VNU and Book Data were in strong and direct competition with each other in the commercial bibliographic data market before the merger. It is likely that, as a result, prices have been lower than would have been the case if VNU had continued to be the only supplier. Moreover, some customers told us that they believed that Book Data's entry into the market had provided a spur for more rapid product developments and improvements in service.

VNU's case

2.53. VNU submitted that a key feature of commercial bibliographic data was that it should be as comprehensive and accurate as possible. Experience in other major developed economies was that this was best achieved via a single source.

2.54. In the UK Whitaker had performed this role for a century after the first publication of *Whitaker's Books in Print*. From the mid-1990s, however, Whitaker had increasingly found itself competing with Book Data. The principal result, especially given the fast rising number of titles published each year, was that neither VNU's nor Book Data's bibliographic business could keep pace with rising costs and the industry's demands for product improvement.

2.55. VNU argued that, if it had not acquired Book Data, it was virtually certain that Bowker would have done so instead. VNU would then have left the UK commercial bibliographic data market because it would have had no prospect of trading profitably. This would have left the merged Bowker/Book Data as the sole comprehensive UK bibliographic data agency. This situation would not have been a more pro-competitive outcome than the merger. Indeed in global terms the merger had resulted in there being two suppliers of commercial bibliographic data in English-language titles: VNU, which had a comprehensive UK database and a partial US database; and Bowker, which had a comprehensive US database and a partial UK database.

2.56. VNU submitted that its merger with Book Data would realize a range of benefits for the book industry. It would lead to large cost savings for the merged entity, which would be able to produce a better database, covering more titles more accurately. Improved profitability would enable the development of innovative new products and services. Thus the merger would benefit publishers, which would obtain coverage on a single, more comprehensive database; would benefit customers, which would receive better services and not have to pay twice in order to secure comprehensive (but inconsistent) data; and ultimately would benefit consumers, who would experience an improved service from retailers and libraries.

2.57. VNU further submitted that there would be constraints on the market power of the merged entity. It would be reliant on publishers for the supply of data. Publishers would have both the motive and the ability to ensure that VNU's products and services remained attractive and affordable to as wide a range of customers as possible. The major retail chains had buyer power and would not tolerate any attempt by VNU to abuse its position in the market. The different customer groups would have other options for obtaining commercial bibliographic data. These options would include Bowker, wholesalers and library suppliers, direct supply by publishers and Amazon's free Internet database.

2.58. As to effects in other markets, VNU argued that the merger would produce no material adverse effects. TeleOrdering provided a unique order-routing service and there was no overlap with Book Data’s First Edition service.

Public interest assessment

2.59. In determining whether a merger operates, or may be expected to operate, against the public interest, we have to compare what we think will actually happen once the merger has taken place, with what we think would have happened had the merger not occurred, which we refer to as the counterfactual. Thus we need to consider what would have been likely to happen if VNU had not acquired Book Data.

2.60. As described in paragraph 2.18, there were two other bidders when Book Data was put up for sale, both of which bid significant sums not far below the winning bid. It is therefore implausible that Book Data would have failed to find a buyer: rather, it is reasonable to expect that one of the other two bidders, namely Bowker and [X], would have acquired the company. Given the relative size of their bids, the [*Details omitted. See note on page iv.*], and the fact that Bowker was already active in the bibliographic data business, we consider it likely that Bowker would have been the buyer, as VNU contended. Whether the new owner would have been Bowker or [X], however, makes relatively little difference to our analysis. Both parties expected that, if they had acquired Book Data, they would have become the sole supplier of commercial bibliographic data—see paragraphs 2.101 to 2.103.

2.61. As stated in paragraph 2.55, VNU told us that, if it had failed to acquire Book Data, it would have ceased to supply commercial bibliographic data services. It believed that its bibliographic business would have been unsaleable as a going concern but it would have tried to find a buyer for the assets (for example, the contracts).

2.62. We have investigated the plausibility of VNU’s submission on this matter, taking account of various pieces of evidence which shed light on it. We set out the evidence and our reasoning in paragraphs 2.63 to 2.108.

Internal evidence from VNU

2.63. We requested sight of VNU’s internal papers bearing on this subject, including board minutes and strategy documents. VNU replied that it had not given detailed consideration to what action it would have taken had it failed to acquire Book Data. This was because it was plain that the future of VNU’s bibliographic business depended on the acquisition of Book Data. Whilst VNU had carried out a detailed financial appraisal of Book Data, it had pitched its final bid, [

Details omitted. See note on page iv.]

2.64. VNU told us there had been several discussions between its managing director and his superiors in VNU’s immediate parent company in the USA about the future of the bibliographic business if the bid for Book Data failed. The matter had also been raised with members of the main VNU nv board. The conclusion of all the participants in these discussions was that the losses sustained by the bibliographic business would grow over the next few years; that there was no realistic prospect of a return to profitability; and that, if VNU failed to acquire Book Data, exit by VNU from the commercial bibliographic data business was the only viable option. [

Details omitted. See note on page iv.]

[

Details omitted. See note on page iv.

]

2.65. Asked to explain why it would have been prepared to close down a business for which it had paid a substantial sum only three years earlier, VNU pointed out that, in buying Whitaker, it had acquired other operations besides the bibliographic business. In fact Whitaker's owners had originally put up for sale only the Whitaker Information Services division, comprising bibliographic data and TeleOrdering. [*Details omitted. See note on page iv.*] and had therefore persuaded the owners to sell the whole Whitaker company. VNU told us that, apart from bibliographic data, the other businesses acquired had performed according to its expectations. By contrast, the bibliographic business had disappointed. VNU said that it had underestimated the dependence of the bibliographic business on the Bowker contract, and its vulnerability to losing that contract.

Financial performance of the parties

The financial performance of VNU's bibliographic business

2.66. We have alluded to the steady loss of sales by VNU's bibliographic business (see paragraph 2.51(e)). This has led to a sharp deterioration in profitability. The bibliographic business is operated as a division of VNU, not a separate company, and there are therefore no statutory, audited accounts. Table 2.1 shows the performance of the business since 1995/96 as reported in the management accounts.

TABLE 2.1 **Sales and contribution to profits of VNU's bibliographic data business, 1995/96 to 2002***

	£'000							
	1995/96	1996/97	1997/98	1998/99	1999	2000	2001	2002
Sales	5,093	5,107	4,704	4,587	4,333	4,135	3,920	(3)
Contribution	(<i>Figures omitted. See note on page iv.</i>)

Source: VNU management accounts.

*The figures presented are for the years ended 31 March 1996 to 1999 and the years ended 31 December 1999 to 2002. The change in year-end arises because the company changed its financial year after being acquired by VNU nv.

2.67. VNU has had two changes of accounting system in the last eight years, as well as other changes in accounting treatment (some resulting from the acquisition of Whitaker by VNU nv). Consequently, the evidence from the management accounts is not straightforward to interpret. Nevertheless, it appears that the contribution to Whitaker's profits made by the bibliographic business, after full allocation of costs, fell steadily from 1995/96, becoming negative from 1997/98. There was a modest recovery in 2000 and 2001 as a result of cost savings made by VNU after it acquired Whitaker, which for a time outweighed the continuing fall in sales; and then a sharp downturn in the latest year, to end-December 2002 (see Table 2.1). By this time the management accounts showed a loss of £[~~3~~] million on sales of £[~~3~~] million. (These figures for 2002 do not include Book Data, which still operates as a separate company.)

2.68. VNU told us that there were two main reasons for the sharp decline in financial performance in the latest year:

- (a) most importantly, the loss of the Bowker contract caused a reduction in net royalty payments of £[x]; and
- (b) there was a fall in other sales revenue of some £[x]. Some of this appears to be due to a continued loss of sales to Book Data, which is expected to achieve an increase in sales of some £[x] in the year to end-March 2003 (in addition to its income from the Bowker contract). Beyond that, VNU said the decline was likely to have resulted from customers either ceasing to use any bibliographic data service or switching to alternative sources such as Bowker (particularly for overseas customers), wholesalers, library suppliers and Amazon. As noted in paragraph 2.44, however, the evidence for customers switching to sources other than bibliographic agencies is very limited.

2.69. VNU submitted that the financial prospects for 2003 were even worse because the full effect of the loss of the Bowker contract would be felt in that year, leading to a further reduction in revenue of around £[x]. Hence VNU projected that its loss in the absence of the merger would have been about £[x] million in 2003 on sales of £[x] million.

2.70. VNU recognized that, if it had closed the bibliographic business, there would have been some running costs, currently attributed to that business in the management accounts, which it would still have had to incur in order to carry on its other activities. It calculated that the costs which could be avoided on closure were some £[x] less than the full attributed costs. On this basis, therefore, the loss to the company from operating the bibliographic business in 2002 was some £[x]. The prospective loss in 2003 on this basis, absent the merger, would have been around £[x]. We note that sales would have had to rise by over [x], with no increase in costs, before the business would have reached break-even on this basis.

Assessment of VNU's costs

2.71. We considered whether VNU's accounts, and the calculations of avoidable costs which it carried out for the purposes of our inquiry, gave a fair picture of the situation. We noted the following points:

- (a) VNU's total costs have been broadly constant in nominal terms (that is, ignoring changes in the Retail Prices Index (RPI)) between 1999 and 2002. The share of costs attributed to the bibliographic business appears to have fallen a little over this period, although because of changes in accounting treatment the position is not entirely clear.
- (b) Staff costs were also broadly flat over the period 1997 to 2001: average staff numbers fell by 5 per cent and average staff costs per head rose by only 5 per cent in nominal terms (based on information from VNU's statutory accounts).
- (c) There have been no exceptional items identified in VNU's statutory accounts since 1997 which might have distorted the results.

2.72. The attribution of costs as between the bibliographic business and TeleOrdering involves an element of judgment. TeleOrdering depends on two comprehensive and up-to-date databases in order to route orders accurately to suppliers: it has its own database of publishers and distributors, which is maintained separately from VNU's commercial bibliographic business; and it requires access to a database of bibliographic data. Its requirement for bibliographic data comprises six data fields—ISBN, title, author, volume number (for example, volume two of a three-volume set), price and status (for example, 'out of print')—and involves a daily feed from the bibliographic business. No allocation of costs is made to TeleOrdering to take account of the work involved in maintaining the currency of either the publisher or the bibliographic database. We noted that, whereas a proportion of technical staff costs had been

attributed to TeleOrdering in VNU's management accounts in 1999 and 2000 (£[redacted] in 1999 and £[redacted] in 2000), a change of accounting treatment had led to this being reduced to zero in 2000 and 2001. VNU agreed that it would be possible to take a different view on this allocation.

2.73. We also noted that all the sales and marketing costs of the bibliographic division (covering the bibliographic data business and TeleOrdering), totalling some £[redacted] in 2002, were allocated in VNU's management accounts to the bibliographic data business. In estimating avoidable costs, VNU stated that a substantial amount of this would still have to be incurred, if the bibliographic business closed, in order for VNU to continue offering TeleOrdering in the same way as before. It estimated that some £[redacted] would continue to be spent. While the allocation of shared costs between two continuing businesses is a different exercise from the estimation of the costs that would be avoided if one of the businesses closed, we believe VNU's explanation of this element of the avoidable costs estimate is difficult to reconcile with the current allocation of costs on a going concern basis. Indeed VNU said that, in hindsight, if the objective had been to allocate the true costs to each business, some of these costs should clearly have been allocated to TeleOrdering.

2.74. The factors discussed in paragraphs 2.72 and 2.73 suggest that the loss of £[redacted] attributed to the bibliographic business in 2002 (see paragraph 2.67) is somewhat overstated. More important for our purposes, however, is the assessment of avoidable costs. The implication of VNU's estimates is that VNU would have saved £[redacted] had it not operated the bibliographic business in 2002 (that is, the £[redacted] loss attributed to it in VNU's management accounts, less some £[redacted] in costs currently allocated to the business but which would still be incurred if the business closed). This estimate rises to about £[redacted] for 2003 when the full-year effect of the loss of the Bowker contract will be felt. Against that, VNU estimated that it would incur additional costs of £[redacted] to £[redacted] in buying in bibliographic data required for TeleOrdering and BookScan which is currently provided by the in-house bibliographic business.

2.75. We have carefully considered VNU's explanation of how it arrived at the cost estimates referred to in paragraph 2.74. VNU has made what appear to be reasonable allocations for the ongoing needs of its other businesses, especially TeleOrdering. Its estimates would have to be greatly altered before it would appear better off through continuing its bibliographic business, rather than closing or disposing of it. We are satisfied that there is no basis for making alterations on that scale.

The prospects for VNU's bibliographic business

2.76. We considered whether there were reasons to expect an improvement in the performance of VNU's bibliographic business. We have seen that VNU has kept costs broadly constant in nominal terms since 1999, despite the increase in the number of books being published year by year which is imposing increasing demands on the editorial operation (see paragraph 2.71). While there may be some limited scope for further cost reductions, it is clear that any significant improvement in performance would have to come primarily from the revenue side, whether as a result of an increase in sales volume or rising prices. Any such improvement would represent a reversal of the downward trend in sales revenue which VNU (and previously Whitaker) has experienced over the last six years.

2.77. The book industry is a mature one, and while the number of titles published each year is rising, sales of books are broadly flat. There are no grounds for expecting a rapid growth in sales. Moreover, we were told by several parties that profit margins of wholesalers and retailers were low. The ending of the Net Book Agreement in 1997 (see paragraphs 4.5 to 4.8) has led to the entry into bookselling of non-traditional players such as supermarket groups and to heavy discounting of best-selling titles. The entry of Internet-based retailers, notably Amazon, may

have brought further downward pressure on selling prices. VNU told us that these pressures had led to consolidation among specialist high-street book retailers. In addition, most libraries are part of public sector bodies, mainly local authorities and higher-education institutions, which experience budgetary pressures.

2.78. In these circumstances the market for bibliographic data services seems unlikely to grow rapidly unless there are significant advances in product development and innovation. Advances in information technology have, indeed, substantially influenced both the delivery format and the functionality of bibliographic data products in recent years. Books and microfiches have given way to CD-ROMs, which in turn are yielding to online delivery of the data. The switch to electronic delivery methods has opened up new opportunities for rapid searching of information, allowing retailers and librarians to offer improved services to their customers. There is no sign, however, that in a market with two suppliers of comprehensive bibliographic data services these advances have allowed suppliers to charge premium prices for their new products so as to enhance their revenues and profitability.

2.79. In 1997, before the sale of the company to VNU nv, Whitaker embarked on an investment project costing £[⌘] in substantially upgrading the IT systems and editorial processes supporting its bibliographic business (called the Phoenix project). VNU told us that the investment had been necessary because the previous system was no longer adequate: the main expected benefits of the investment had been in saving staff costs but the new system also allowed improvements in products, including the incorporation of enriched data into VNU's database. The system began operating in May 2000.

2.80. VNU told us that the expected cost benefits had been achieved, but the improvements had been offset by the higher costs associated with the rising number of titles being published. On the revenue side, VNU had sought to persuade publishers to pay for the inclusion of enriched records in its database but had encountered resistance. We note that Book Data has consistently achieved high rates of resubscription among its publisher customers. It seems likely that those publishers which had chosen to subscribe for the inclusion of enriched data in Book Data's database saw insufficient reason either to switch to VNU, which has not been associated with enriched data, or to incur two lots of subscription fees.

2.81. Consequently, it does not appear that the Phoenix project would have transformed the sales prospects of VNU's bibliographic data business had the merger with Book Data not taken place. Nor have we identified any other factors which might point to a significant rise in sales revenue for that business.

2.82. On the cost side, VNU told us that the adoption of the international ONIX standard for the format in which information on books should be provided would in time ease the task of compiling data on new books and enable bibliographic agencies to reduce costs. However, although the standard was agreed two years ago its adoption by publishers is proving a slow process: VNU said that fewer than ten publishers were currently supplying data to it in the ONIX format, although others were planning to do so. Moreover, in the short run VNU told us that this development was causing it to incur additional costs in persuading and helping publishers to adopt the standard. It is much too soon to assess whether ONIX will in time enable bibliographic agencies to achieve a significant reduction in costs.

2.83. None of the factors referred to in paragraphs 2.76 to 2.82 gives grounds for expecting a significant recovery in the financial performance of VNU's bibliographic business in the foreseeable future in the absence of the merger.

The financial performance of Book Data

2.84. We have considered whether the financial performance of Book Data sheds light on our analysis of the prospects for VNU's bibliographic data business.

2.85. As mentioned in paragraph 2.50, Book Data reported losses for the first seven years of its trading life, until 1993/94. Since then, Book Data has consistently reported profits. Because Book Data, unlike VNU, is largely a one-business company, its statutory accounts can be taken as reflecting the performance of the bibliographic business. (The only other significant activity carried on by Book Data is the e-haus web services business which began in 1997. The sales revenues of that business have grown strongly but even by 2001/02 they represented less than [§] per cent of Book Data's total sales.)

2.86. From 1994/95, Book Data's reported operating profit before interest and tax rose to a peak of £345,000 in 1999/2000 but then fell back to only £36,000 in 2000/01 and £120,000 in 2001/02. Its average reported profit margin over these three years was 3.6 per cent on sales.

2.87. As mentioned in paragraph 2.14, these figures are not fully consistent with VNU's because of differences in accounting policy. In particular, Book Data chooses to capitalize costs incurred in updating and maintaining its database for subsequent amortization, while VNU deducts the equivalent costs from profits in the year they are incurred. Book Data also front-loads its recognition of revenues received under subscription contracts, whereas VNU's policy is to recognize such revenues evenly over the life of the contract.

2.88. We asked VNU to recalculate Book Data's results for recent years on the basis of these VNU accounting policies. The calculations showed that, if Book Data had followed VNU's policies, it would have reported operating losses in each of the last three years. Moreover, the removal of capitalized database costs from Book Data's balance sheet, where they currently appear as intangible assets, and the increase in deferred income liability resulting from the move to VNU's revenue recognition policy would have increased the retained losses reported in the balance sheet at March 2002 from some £800,000 to £[§] (see paragraph 3.39 and Table 3.6).

2.89. On the basis of these VNU accounting policies, therefore, Book Data would have accumulated significant losses over the 15 years of its existence as an independent company. Moreover, there is no clear sign of an improving trend in profitability. Yet it appeared from the evidence we received that Book Data had established a good reputation in the industry. In particular, it succeeded in winning a substantial share of sales from VNU, a company that was strongly entrenched in the market. Most customers which gave evidence to us spoke highly of the quality of Book Data's products and its customer service. Bowker told us that, as a result of the assessment it had made when bidding to acquire Book Data, [*Details omitted. See note on page iv.*]. The fact that Book Data has nevertheless not been financially successful adds weight to our view that this market would not sustain two well-managed, profitable operations. We return to this question in the context of our discussion of cost savings resulting from the merger (see paragraphs 2.97 to 2.99).

Closure costs

2.90. VNU estimated that it would incur termination costs of almost £[§] if it were to close its bibliographic data business. Most of this would be in the form of redundancy/staff costs, with other elements being supplier and customer contract penalties, professional fees and property costs. This estimate did not appear unreasonable based on the number of staff that would lose their jobs.

2.91. As stated in paragraph 2.70, VNU projected that, if it had not acquired Book Data, it would have saved around £[§] in 2003 by closing its bibliographic data business rather than continuing to operate in competition with Book Data. We have not identified any grounds for expecting a material improvement in performance compared with VNU's projection (which is based on an extrapolation of recent trends), either for 2003 or beyond. It would clearly have paid VNU to incur the level of closure costs indicated in paragraph 2.90 rather than to continue to suffer projected trading losses on this scale.

2.92. A preferable alternative, in principle, would have been for VNU to find a buyer for the business. We consider the likelihood of such an outcome below (see paragraphs 2.107 and 2.108).

Implications for TeleOrdering and BookScan if VNU's bibliographic business closed

2.93. As stated in paragraph 2.74, VNU estimated that it would incur costs of between £[§] and £[§] if it had to buy in the feeds of bibliographic data required for TeleOrdering and BookScan. VNU based these estimates on the prices actually charged for broadly similar services. It said that it would have expected to acquire the data from Bowker had Bowker acquired Book Data and VNU had closed its own bibliographic business.

2.94. We put it to VNU that [

Details omitted. See note on page iv.

].

2.95. VNU argued that it had commercial relationships with Bowker elsewhere in the world. In a situation where Bowker had acquired Book Data and VNU was closing its bibliographic business, [

Details omitted. See note on page iv.

]. VNU added that, [*Details omitted. See note on page iv.*], the requirements of both the TeleOrdering and BookScan businesses for bibliographic data were far smaller than those of the bibliographic business itself and could, if necessary, be met from other sources such as direct publisher supply, wholesalers and Amazon. VNU said that the book industry would be anxious to ensure that TeleOrdering received the data it needed because the service was critical to the supply chain. Another possibility was that the BookScan operation could be used as the basis for a database covering the limited number of fields required: it would not be comprehensive at first but could be supplemented with data from other sources such as wholesalers.

2.96. On the basis of these explanations, we believe that the data requirements of TeleOrdering and BookScan would not in themselves be sufficient grounds for VNU to continue with its bibliographic data business. Even if the costs of obtaining the data were two or three times the level estimated by VNU, they would fall far short of eliminating the savings which VNU would have expected from closing its bibliographic business.

Cost savings resulting from the merger

2.97. In assessing VNU's argument that there is room for only one supplier of comprehensive commercial bibliographic data in the UK, it is relevant to examine the extent and nature of the cost savings which VNU expects as a result of acquiring Book Data.

2.98. VNU estimated that it would achieve savings in the combined costs of its own and Book Data's businesses of £[redacted]. Of this total, [

Details omitted. See note on page iv.

]. By contrast, sales of the combined business were projected to fall by only some £[redacted], compared with the combined sales of VNU's and Book Data's separate businesses. This would be the result of customers no longer subscribing to both databases.

2.99. The extent of the [redacted], compared with the expected decline in combined sales, illustrates the fact that the costs of the two bibliographic data operations are largely fixed, that is, they do not vary much with sales volumes. By the same token, the short-run marginal cost of making additional sales is low. In this situation, economic theory indicates that aggressive competition between rivals offering similar products could be expected to drive down prices below average cost and hence drive one firm from the market. The theory indicates that each firm will possess a strong incentive to do this because of its inability to reduce its high fixed costs and its ability to cover the low costs of additional sales in the short term. While there is no strong evidence that competition between VNU and Book Data has been of that intensity, nevertheless competition between them has led to prices being at such a level that neither company's business has been profitable (see paragraphs 2.67 and 2.89).

2.100. The situation following the merger is quite different. Direct competition between two suppliers of comprehensive commercial bibliographic data no longer exists, but the currently duplicated costs of the two database operations stand to be eliminated. [

Details omitted. See note on page iv.

]

The views of other bidders and third parties

2.101. As recorded in Chapter 7, the other two bidders for Book Data, Bowker and [redacted], told us that they considered that the financial prospects for VNU's bibliographic business would have been poor if VNU had not acquired Book Data.

2.102. Bowker believed that VNU had no option but to acquire Book Data if it were to have a future in the market for commercial bibliographic data services. Otherwise the prospects for its bibliographic business would have been very uncertain. We note that Bowker would have been well aware of the importance of its previous data supply agreement with Whitaker and, therefore, of the impact which the loss of that contract had on VNU (see paragraph 2.68).

2.103. [redacted] said that it considered there was room for only one supplier of comprehensive commercial bibliographic data in the UK. It believed that, before the merger, VNU had been making a substantial loss on its bibliographic data business and had reached the stage where it had either to buy Book Data or leave the market. Had [redacted] succeeded in acquiring Book Data, it believed that it would then have been able to acquire the remnants of the Whitaker database operation from VNU in order to become the sole supplier of commercial bibliographic data.

2.104. Both Bowker and [redacted] told us that, if VNU were required as a result of our inquiry to divest Book Data, they would still be interested in acquiring Book Data. It did not appear to be in the interests of either Bowker or [redacted] to argue that the VNU business had no future without Book Data, and so we have attached some weight to the comments in paragraphs 2.102 and 2.103 in reaching our conclusions.

2.105. Some other third parties also told us that they believed there was room for only one supplier in the market, although opinions were not unanimous on this point.

2.106. In the context of our consultations on possible remedies if we were to find the merger to be against the public interest, we asked a number of third parties, including wholesalers and Amazon, whether they would be interested in acquiring Book Data if it came up for sale again. None expressed an interest in doing so.

2.107. We considered whether any other party would have been interested in acquiring VNU's bibliographic business had VNU not bought Book Data. Bowker might have been interested if it had acquired Book Data first, but such a transaction would have brought together the two bibliographic businesses just as the merger has done. The same would have applied to [redacted] if it had been the winning bidder for Book Data.

2.108. Beyond that, we saw no reason to think that any other bidder would have been interested, given the losses being incurred by the VNU business. The amounts that even the largest of VNU's customers pay for data supply are small in relation to the size of those losses. It would not, therefore, be logical for a customer to acquire the business in order to safeguard itself against price increases. We do not think the business would have been any more attractive to another party than it was before the merger to VNU, which benefited from certain economies of scope between the bibliographic business and its other activities, notably TeleOrdering and BookScan.

Summing up on the counterfactual

2.109. We sum up the evidence bearing on the question of what would have happened in the absence of the merger, which is discussed in paragraphs 2.59 to 2.108, as follows:

- (a) The internal evidence from VNU on the action it would have taken had the merger not occurred is consistent with its argument that its bibliographic data business would have been closed, but is not in itself conclusive (see paragraphs 2.63 to 2.65).
- (b) While there are issues over the allocation of costs within VNU, it appears that the financial performance of the bibliographic data business has been declining for several years, principally because of falling sales. The business has reported losses in recent years. These increased sharply in 2002 and were substantial in relation to sales (see paragraphs 2.66 to 2.70).
- (c) On the basis of the estimated net costs that would be avoided if the bibliographic business were closed, VNU would have saved some £[redacted] had the business not operated in 2002. The full-year effect of the loss of the Bowker contract could be expected to have increased this figure to around £[redacted] in 2003 (see paragraphs 2.74 and 2.75).
- (d) The prospects for sales and costs do not indicate that a significant recovery in the financial performance of VNU's bibliographic data business could have been expected in the foreseeable future (see paragraphs 2.76 to 2.83).
- (e) Book Data itself has not been financially successful, but we have no evidence that the company has been badly managed. This is consistent with the notion that the market cannot support two profitable operations (see paragraphs 2.84 to 2.89).
- (f) Although VNU would expect to have incurred £[redacted] in closure costs if it left the bibliographic data market, it would clearly have benefited it to incur those costs rather than keep the business operating in competition with Book Data (see paragraphs 2.90 and 2.91).

- (g) The fact that VNU needs bibliographic data in order to operate its TeleOrdering and BookScan businesses would not have amounted to a case for continuing to operate the bibliographic business in the face of ongoing losses (see paragraphs 2.93 to 2.96).
- (h) The substantial cost savings available from the merger help to explain why two competing suppliers would have difficulty in earning an adequate return in this market (see paragraphs 2.97 to 2.100).
- (i) The views of the other bidders for Book Data are consistent with the view that, had VNU failed to acquire Book Data, it would have left the bibliographic data market. Following such an event, there is no reason to think that a third party would have been interested in buying VNU's bibliographic data business in order to compete with Book Data (see paragraphs 2.101 to 2.108).

2.110. While in the nature of things we cannot be sure what would have happened in the absence of the merger, we consider that the weight of evidence summarized in paragraph 2.109 leads to an expectation that the VNU bibliographic data business would have closed. Our view of the counterfactual, therefore, is that Book Data would, within a short space of time, have become the only supplier of comprehensive commercial bibliographic data services in the UK. We also believe the most likely purchaser of Book Data would have been Bowker.

2.111. We considered whether this situation might have been preferable for the public interest compared with the actual post-merger situation. For the main part, the situation would have been the same, with a single supplier of comprehensive commercial bibliographic data facing no direct competition. As to whether the public interest would have been better served with Bowker as the one supplier rather than VNU, we give some weight to VNU's argument that, at a global level, the merger has led to there being two commercial bibliographic agencies for English-language books—namely Bowker and VNU—whereas absent the merger Bowker would have been the only one. This consideration does not directly affect the UK, the market with which we are concerned. One consequence, however, is that Bowker remains as a potential entrant into the UK market for commercial bibliographic data services. Bowker already markets its global product in the UK (see paragraph 5.18). The risk of provoking entry by Bowker can be expected to act as some constraint on VNU's conduct as the sole bibliographic data agency in the UK.

2.112. For this reason we believe that, while the difference between the counterfactual and the post-merger situation is not large, the latter is a preferable outcome for the UK public interest.

Conclusion on the merger's effect on the market for commercial bibliographic data services

2.113. For the reasons given in paragraphs 2.110 to 2.112, we conclude that, in relation to the supply of commercial bibliographic data services, the merger does not have, and may not be expected to have, effects adverse to the public interest.

The effect on electronic transaction services for the book industry

2.114. We have decided that the order-routing service provided by TeleOrdering is in a separate market from other transaction services, including First Edition (see paragraph 2.48). The merger has not, therefore, significantly reduced actual competition for either TeleOrdering or First Edition. However, there remains an issue as to whether the merger might have reduced potential competition.

2.115. The counterfactual in respect of the merger's effect on electronic transaction services is different from that which applies to commercial bibliographic data. Both VNU's TeleOrdering service and Book Data's First Edition subsidiary [*Details omitted. See note on page iv.*]. We have established that TeleOrdering does not depend on the continuation of VNU's bibliographic business. It is also true that First Edition does not require bibliographic data for its operations. The counterfactual, therefore, is that each of these services could have continued in separate ownership.

2.116. In some respects Book Data appears to have been a potential entrant into the order-routing market. Apart from VNU, it was the only party with its own source of comprehensive commercial bibliographic data on UK-published books, and it was already involved in the transactions sector. A few third parties told us that they saw Book Data, via First Edition, as a potential competitor to TeleOrdering, particularly as in 2001 Book Data had acquired the remaining shares in First Edition which it did not already own. Prior to the merger, this threat of entry from Book Data could, arguably, have been constraining VNU from exercising market power by increasing the prices of TeleOrdering.

2.117. In response to this argument, VNU said that Book Data could not have incurred the financial risk of seeking to develop First Edition as a competitor to TeleOrdering in order-routing. There was no evidence that Book Data had planned to develop its First Edition service as a direct competitor to TeleOrdering prior to the acquisition. The trigger for Book Data to acquire the other shares in First Edition had been [*Details omitted. See note on page iv.*] (see paragraph 3.41). VNU further argued that Vista (which already operated the PubEasy service (see paragraphs 4.172 to 4.176)) and Bowker (which operated a similar transaction business, Pubnet, in the USA and had access to bibliographic data (see paragraphs 4.166 to 4.171)) were the most likely entrants into the order-routing market.

2.118. VNU also said that it had no plans to expand its operations in the EDI market to compete with First Edition.

2.119. We note that the electronic transactions sector is characterized by rapid technological change. This is likely to open up new market opportunities. It also makes it more difficult to predict events than would be the case with a more mature sector.

2.120. In view of Book Data's relatively weak financial position, we consider it unlikely that the company would have seriously contemplated entry into the order-routing market. Had First Edition been acquired by Bowker, such a move would have become more realistic. Given the uncertainties, however, we consider that the evidence for seeing potential competition from Book Data as a significant competitive constraint on TeleOrdering is weak.

2.121. As regards First Edition, we see no grounds for believing that the merger has removed potential competition from VNU.

2.122. For these reasons we conclude that the merger does not have, and may not be expected to have, effects adverse to the public interest in relation to electronic transaction services for the book industry.

The effect on catalogue-quality bibliographic data services

2.123. As stated in paragraph 2.41, there was no overlap between the activities of VNU and Book Data before the merger in relation to catalogue-quality bibliographic data but two issues arise:

- (a) VNU bid for the British Library's CIP contract, in competition with BDS, in 2002 (see paragraphs 4.138 to 4.142); and

- (b) VNU had discussions with a large customer about the possibility of its starting to supply catalogue-quality bibliographic data, also in competition with BDS (see paragraphs 6.86 and 7.115).

Given that Book Data owns 40 per cent of BDS and has certain rights of approval under the shareholder agreement (see paragraph 3.49), there must be some doubt that VNU would want to compete with BDS now that it has acquired that stake as a result of the merger.

2.124. As regards paragraph 2.123(a), VNU argued that the British Library's planned move to using the international MARC 21 format for the delivery of CIP data would attract new, US-based bidders for the contract when it next came up for tender in 2005. The British Library was less sanguine about this possibility, pointing out that bidders would need to show that they could establish effective operating relations with thousands of UK-based publishers which supplied the raw data needed for the creation of CIP records. The British Library, however, adopted a neutral stance in relation to the merger, a factor to which we attach some importance.

2.125. We note that VNU and BDS were the two main bidders for the CIP contract in 2002 (see paragraph 4.141). However, there is inevitably considerable uncertainty as to the prospects for competition for the contract in 2005. We consider that there is not a sufficient basis for believing that the merger has significantly reduced future competition for the CIP contract.

2.126. As regards paragraph 2.123(b), VNU told us that some of its managers had had exploratory discussions with the customer concerned but VNU's executive management team had not been aware of these conversations. No formal submission had been put to the executive management team or to the board proposing that the company should begin to supply catalogue-quality data, and such supply had never been a serious possibility. VNU would face significant costs if it were to seek to enter that market.

2.127. The supply of catalogue-quality data does not appear to be a particularly profitable activity. Given the recent financial performance of VNU's bibliographic business in commercial data, it seems to us implausible that it would have seriously considered starting the supply of catalogue-quality data at this time. We do not accept the proposition that VNU was a potential competitor to BDS in the supply of catalogue-quality data.

2.128. For the reasons given in paragraphs 2.125 and 2.127, we conclude that the merger does not have, and may not be expected to have, effects adverse to the public interest in relation to the supply of CIP and other catalogue-quality data.

Overall conclusion

2.129. For the reasons given in paragraphs 2.113, 2.122 and 2.128, we conclude that the merger does not operate, and may not be expected to operate, against the public interest.

Concluding remarks

2.130. It is unusual for the CC to clear a merger which has brought about a significant reduction in competition compared with the situation that pertained beforehand. As we have said, however, in determining whether the merger has adverse effects for the public interest we have to compare the situation with the merger with what would have been the situation without the merger (see paragraph 2.59). On that footing, once we have reached the view that the counterfactual is unlikely to have been materially different from the post-merger situation, we

have no option but to conclude that the merger is not against the public interest. The question of remedies for adverse effects, therefore, does not arise.

2.131. It is understandable that some customers and some suppliers of data, which have benefited from the competition which existed between VNU and Book Data in the commercial bibliographic data market, should have concerns about the consequences of the disappearance of that competition. We would draw their attention to the following considerations:

- (a) The merger offers the prospect of some benefits, particularly from the expectation that the merged entity will be better able to fund investment in improving and developing its products than either VNU or Book Data was able to previously.
- (b) VNU gave us a number of assurances about its intended future conduct which are recorded in Chapter 6 of our report: although such assurances have no legal force, it would be harmful for VNU's reputation in the book industry if it failed to respect them.
- (c) It appears to us that VNU will be in a dominant position in the market for commercial bibliographic data services. As such, it will be subject to the provisions of Chapter II of Part 1 the Competition Act 1998, which prohibits the abuse of a dominant position. To quote from a leading text book on EC competition law:

Conduct which may be permissible in a normal competitive situation may amount to an abuse if carried out by dominant firms because such firms have a special responsibility on account of the prejudice that their activities may cause to competition in general and to the interests of competitors, suppliers, customers and consumers. Accordingly, undertakings in a dominant position may be deprived of the right to adopt a course of conduct or take measures which are not in themselves abuses and which may even be unobjectionable if adopted or taken by non-dominant undertakings.¹

This responsibility must be considered in the light of the special circumstances of each case,² which here would include a market share of 100 per cent. Participants in the book industry should draw any concerns about VNU's future conduct to the attention of the Office of Fair Trading (OFT).

- (d) Moreover if VNU were to behave in such a way as to cause significant discontent among customers for its commercial bibliographic products, it would risk incurring two adverse consequences. First, those customers for which the VNU products themselves are not essential might satisfy their future requirements in different ways. This would apply to smaller customers, in particular. Second, larger customers might seek to encourage an entrant. By the logic of our analysis, the market would not be attractive to an entrant at the present time, but Bowker would be well placed to enter if the market evolved in such a way as to create an opportunity for a second, financially viable, provider of commercial bibliographic data.

¹*European Community Law of Competition*, Bellamy & Child, 5th Edition, 2001 (paragraph 9-068).

²ECJ case C334/94, *Tetra Pak v Commission* [1996] ECR I-5951.