

# 6 The views of VNU

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## Introduction

6.1. This chapter summarizes the views of VNU provided in written submissions and at hearings. In describing the position before the merger, we refer to the two companies involved as VNU and Book Data. VNU was prior to January 2002 known as Whitaker, but we refer to it as VNU even when describing its history before January 2002. Book Data was renamed Nielsen BookData in September 2002 but we refer to it as Book Data.

### VNU's summary of its position

6.2. VNU said that the merger of VNU and Book Data had taken effect on 16 July 2002. VNU and Book Data had both been involved before the merger in supplying a range of services to the book industry, in particular the compilation and supply of commercial bibliographic data products and services.

6.3. Commercial bibliographic data comprised a range of information used to locate and order books, to assist with purchasing and to manage stock. Information was supplied by publishers to VNU and Book Data for editing and collation. Subsequently the information was supplied by VNU and Book Data to users such as book retailers, wholesalers, libraries and library suppliers. Publishers supplied information free of charge to VNU, Book Data and others. In addition, some 4,000 publishers paid Book Data to take information to create an enriched record, that is to say, a record that included descriptive material such as tables of content, long and short descriptions, author biographies and jacket images; VNU said that this information described the nature and content of the title in far greater depth than the non-enriched bibliographic record.

6.4. VNU and Book Data had each before the merger sold commercial bibliographic data products and services derived from databases drawing on information supplied by practically all publishers. Other suppliers such as wholesalers provided more limited products tailored only to the needs of their customers. These products were sometimes bundled with services such as online book ordering. In the case of Amazon, bibliographic data was a by-product of its online book-retailing service and was free for anyone to access.

6.5. VNU added that small independent book retailers often did not have Internet-enabled PCs because of the cost; they tended to prefer to use CD-ROMs provided by VNU and wholesalers.

6.6. A key feature of commercial bibliographic data was that it should be as comprehensive and accurate as possible. VNU submitted that the experience in other major developed economies was that this was best achieved via a single comprehensive source of commercial bibliographic data. In the UK, VNU had performed this role for a century after the first publication of *Whitaker's Books in Print* in the 1890s.

6.7. In 1987, Book Data had entered the market through its innovative approach of attracting marketing revenue from publishers to promote their titles through enriched bibliographic data. Book Data had taken about ten years to build up sufficient records to gain significant sales of commercial bibliographic data. From the mid-1990s, VNU had increasingly found itself competing with Book Data. The principal result of two competing, comprehensive databases, especially in the context of fast-rising numbers of titles published every year, was that neither VNU's nor Book Data's commercial bibliographic data businesses could keep pace with rising costs and the demands from the industry for product improvements.

6.8. VNU said that, if the merger had not occurred, two events would have inevitably followed. First, as Book Data's shareholders were determined to sell their interests in the company, and as the only other serious bidder for the company was the US bibliographic data agency, Bowker,<sup>1</sup> it was virtually certain that Book Data would have been acquired by Bowker. Second, VNU would have left the UK commercial bibliographic data market because it had no prospect of trading profitably. Its withdrawal would have left the merged Bowker/Book Data as the sole comprehensive UK bibliographic data agency.

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<sup>1</sup>Bowker is owned by the Cambridge Information Group. See paragraph 3.93.

6.9. VNU submitted that this situation would not in any sense have represented a more pro-competitive outcome than the merger. VNU believed that the merger was the most pro-competitive result in global terms. It had resulted in there being two suppliers of bibliographic data on English-language titles: on the one hand, VNU/Book Data, which had a comprehensive UK database and a partial US database, and, on the other hand, Bowker, which had a comprehensive US database and a partial UK database.

6.10. VNU submitted that the position before the merger had not been efficient for the book industry. Publishers had faced the costs of supplying data for two different databases. Customers had been obliged to buy from both businesses if they wished to ensure comprehensiveness. The duplication of databases had hampered the realization of critical book-supply-chain efficiencies. Neither VNU nor Book Data could develop new and innovative services which depended both on incentives to invest and on the creation of a comprehensive and consistent database. VNU added that, before the merger, UK publishers had been disadvantaged in selling their books abroad in competition with other English-language publishers from countries with a single bibliographic database, notably the USA, where Bowker was the sole bibliographic data agency.

6.11. VNU submitted that the merger would realize a range of benefits for the book industry. The merger would lead to large cost savings for the merged VNU/Book Data in the production of a comprehensive bibliographic database. The merger would also be an important contribution to savings and efficiency in the book supply chain as a whole. The merger would result in a better commercial bibliographic database that covered more titles more accurately. Furthermore, the merger would enable the development of innovative new products and services demanded by the industry. This would occur with increasing digitization of publishing. Finally, the merger would result in more sales overseas for UK publishers. [

*Details omitted. See note on page iv.*

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6.12. In short, the merger would benefit publishers, who with lower costs would obtain coverage on a comprehensive database via a single outlet; would benefit customers, who would be able to deal with only one outlet, rather than paying twice to secure comprehensive but inconsistent data; and ultimately would benefit consumers, who would experience an improved service from retailers and libraries.

6.13. VNU submitted that there would be constraints on the market power of the merged entity. VNU/Book Data would remain reliant on publishers in order to create its database, whose comprehensiveness would be its key competitive advantage. Publishers would have both the motive and the ability to ensure that the products and services of the merged entity remained attractive and affordable to as wide a range of customers as possible. The major book retail chains with their buyer power would not tolerate any attempt by the merged entity to abuse its position in the market.

6.14. The different customer groups would have other options for obtaining commercial bibliographic data. These included Bowker, wholesalers and library suppliers, direct supply by publishers to individual customers, supply by an initiative such as Ottakar's Intranet, and Amazon's free Internet database.

6.15. As to the effects in other markets, VNU submitted that the merger would produce no material adverse effect on competition. Neither VNU nor Book Data supplied catalogue-quality bibliographic data, including CIP data, although CIP data was supplied by BDS, in which Book Data had a 40 per cent interest. VNU also said that its TeleOrdering business provided a unique electronic order-routing system for the book industry, and that there was no overlap with the First Edition services offered by Book Data. Lastly, VNU told us that First Edition was one small provider of EDI services, and that TeleOrdering was even smaller in this field; their combined share of the UK market was de minimis at less than 1 per cent.

6.16. Accordingly, VNU stated that the merger would not result in any substantial lessening of competition within any market in the UK, but would result in a more efficient and productive book industry.

6.17. VNU said that the UK book industry was small. Total sales to consumers via book retailers, book clubs and libraries were less than £2 billion. Historically, the profits earned by the industry's participants had been low. A recent report—the *Business Ratio report 2002*—found that the top 145

publishers in the UK achieved on average a pre-tax profit declining over the last three years from 8.3 per cent to 6.6 per cent, and a return on total assets falling from 7.2 per cent to 5.7 per cent over the same period. Retail profits were even lower. Moreover, funding for books in libraries and schools had been reduced in real terms as well.

6.18. Over the last 15 to 20 years the participants in the book industry had sought to increase economies of scale largely through merger and agglomeration, and that had created considerable buyer power. That had applied constraints to the behaviour of VNU and Book Data.

6.19. As Book Data had become more established and more comprehensive and had competed more effectively with the incumbent Whitaker, the costs of compiling and maintaining an accurate and comprehensive database had escalated. It had become clear to both parties and to all informed observers in the wider book industry that the commercial bibliographic data market was not large enough to sustain two companies. Indeed, VNU said that to the best of its knowledge there was no other country in the world that sustained two bibliographic data agencies. As a result, both VNU and Book Data had invested enormous energy over the last five years in trying to bring the two businesses together.

6.20. In the late 1990s, survival for either the Whitaker bibliographic business or Book Data had been dependent on continuing support from shareholders. Book Data had been assisted by changes in accounting policy and support from its major shareholder, Baker & Taylor. The Whitaker business had been profitable until 1997 as a result of the royalty deal in 1994 with Bowker (see paragraphs 4.105 and 4.106).

6.21. VNU wanted to work for a profitable business and to achieve the scale needed to get a return on its investment in innovation. It wanted to compete effectively in the global market, and it wanted a stronger voice to help drive UK supply chain efficiencies which were required for the long-term health of the book industry.

6.22. VNU said that it would not in any way abuse its privileged position of being the only supplier of comprehensive bibliographic data to the UK book industry. It did not need to do this to achieve long-term financial targets. There were tight constraints that prevented any sort of misbehaviour, including competitive constraints on VNU from such as Bowker, Ottakar's, Amazon, the wholesalers and the library suppliers (see paragraphs 6.124 to 6.129)

## **The rationale for the transaction**

6.23. VNU told us that, prior to the merger, there had been two earlier attempts to merge Whitaker, the forerunner of VNU, with Book Data. The first attempt at a merger had been proposed by Book Data in 1997 (before Whitaker's acquisition by VNU nv) and had failed because agreement could not be reached between shareholders of the two companies on the equity split within a merged group. The second attempt had been a joint venture proposal in 2000 (shortly after Whitaker's acquisition by VNU nv) but this had been abandoned due to failure to reach agreement with the major shareholders of Book Data on a number of complex options. VNU said that on these previous occasions, the reasons for attempting a merger were the same as in the present case, namely, that in the view of both companies' management and shareholders, neither bibliographic operation had been sufficiently profitable to justify the future investment needs of the respective businesses.

6.24. VNU nv's offer in 2000 for the whole of Book Data had been acceptable to Book Data's venture capital shareholders [*Details omitted. See note on page iv.*].

6.25. VNU stated that the experience in a number of major economies had been that the book industry was best served by a single comprehensive source of commercial bibliographic data. VNU stated that there was a sole bibliographic agency in the USA, namely Bowker; in Germany, namely MVB; in France, namely Cercle de la Librairie; and in Japan, namely the Japanese Book Publishers' Association. VNU said that the merger would bring the UK into line with the position in these other countries, which were other leading book markets.

6.26. VNU maintained that the experience from the mid-1990s onwards of VNU and Book Data indicated that a sole bibliographic data agency was also the inevitable outcome in the UK. Book Data, since its launch in 1987, had relied on attracting marketing spend from publishers in the form of

subscription fees to promote titles through enriched bibliographic data. VNU had adopted a business model which relied on marketing commercial bibliographic data to booksellers and libraries, rather than earning revenues from publishers. Accordingly, because the early emphasis for Book Data had been on selling the books of its subscribing publishers, Book Data had taken several years to build up sufficient quality records to gain significant sales. It was only from around 1997 that both VNU and Book Data were offering comparable rival bibliographic database products. Since that time, it had become increasingly evident that the high and increasing costs of two competitors seeking to provide near-comprehensive bibliographic databases made it impossible for VNU and Book Data to keep pace with the industry's need for efficient and improved bibliographic data products and services.

6.27. In response to our request for more information about bibliographic data products in the USA, VNU said that Bowker was the only bibliographic data agency in the USA. Ingram and Baker & Taylor, which were the largest US book wholesalers, produced bibliographic data as a spin-off from their core wholesaling and distribution activities. VNU added that Ingram derived its bibliographic data from its own stock and no longer took bibliographic data from Bowker.

6.28. Bowker's main competitive advantage had been the comprehensiveness of its database, but this was being eroded as the wholesalers enhanced their databases. Indeed the numbers of titles in the two wholesalers' databases were now almost as large as the number in Bowker's database. Moreover, the wholesalers' databases were superior in a number of key competitive areas: they provided substantially more descriptive elements on titles than Bowker, and their price and availability data was more up to date.

6.29. VNU said that, following the completion of its Phoenix project to upgrade the IT system for its bibliographic business (see paragraph 6.122 ) but before the merger, it had sought to follow the practice of Book Data by inviting publishers to pay for the inclusion of enriched or extended records in the Whitaker database, but had encountered resistance to this proposition.

6.30. VNU stated that its last major investment had been the launch of BookTrack, now Nielsen BookScan, in 1997. [ *Details omitted. See note on page iv.*

] Also in 1997, Book Data had made its last significant investment through the establishment of the Book Data Asia Pacific operation. For Book Data, funding new developments had been a major concern from the mid-1990s onwards.

6.31. We asked VNU about the effect of the acquisition of Whitaker by VNU nv in 1999. VNU said that the effect had been to remove a substantial amount of cost from the business. The effect on Book Data had been to intensify competition. Book Data had realized that its rival now had the resources of an international media company behind it.

6.32. VNU said that the number of titles coming into print had continued to rise and so had the costs for both VNU's and Book Data's bibliographic data businesses. Vast numbers of records on the databases needed changing because of rapidly changing ownership of imprints and titles during a period of considerable consolidation in publishing. The importance of timely price and availability information had grown substantially, increasing again the number of changes to records, as the industry needed to improve the efficiency of its supply chain, reducing errors and improving customer service. Finally, the combination of low cost of entry into publishing, as a result of desktop publishing technology, and the expanding productivity of larger publishers, had led to a proliferation of new titles published each year. The forecast for the number of printed books published in the UK in 2002 was 132,000, up from 120,000 in 2001, and up from less than 80,000 a decade earlier, a rise of over 65 per cent.<sup>1</sup> New print titles were expected to grow to 200,000 by 2010.<sup>2</sup> VNU forecast that in 2002, it would make over 3 million changes to the price and availability information in its bibliographic database, over three times the figure in 1997. Book Data estimated that the total number of changes to its database in 2002 would be around 8 million.

6.33. VNU added that 45,000 print-on-demand titles were made available in the UK for the first time in 2001/02 and were being entered on the databases. One estimate of new titles available as ebooks by 2005 was 75 per cent of new titles, with 25 per cent available only as ebooks.<sup>3</sup> If this estimate were

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<sup>1</sup>Source: *The Bookseller*.

<sup>2</sup>Source: Mark Bide Associates.

<sup>3</sup>*Scale of Future Publishing in Digital and Conventional Formats*, Mark Bide Associates, February 2000, a report prepared for the British Library.

correct, the result would be a doubling of the numbers of the current 1.2 million books in print within five to ten years, as print-on-demand titles and ebooks were never out of print or unavailable. This could double the number of changes required to the databases.

6.34. VNU said that these factors had all combined to put the bibliographic data businesses of VNU and Book Data under severe financial pressure. Trading figures for these businesses for the last three years showed clear losses for VNU and at best marginal profits for Book Data. The year 2002 had confirmed the trend of unprofitability of VNU's bibliographic data business: its position had worsened significantly because of its loss to Book Data of the contract to supply bibliographic data to Bowker (see paragraphs 4.105 to 4.110). The value of the Bowker contract was significantly less to Book Data than it had been to VNU, however, owing to lower payments by Bowker under the new contract (see paragraphs 3.63 to 3.64).

6.35. VNU summed up by saying that there were insufficient profits to be made from the bibliographic data businesses of VNU and Book Data as separate entities. Given rising costs, the exit of one or other business from the market was inevitable in the short term, and that had occurred as a result of the merger.

6.36. The timing of the merger had arisen from the decision of Book Data's shareholders—Barings, 3i and Baker & Taylor—in the autumn of 2001 to dispose of their shares in Book Data. More detail on the transaction is given in paragraphs 3.92 and 3.93.

6.37. As regards the specific rationale for the merger, VNU submitted that VNU and Book Data were driven together by their inability to keep pace with the rising costs of providing their bibliographic data services. However, the merger went much further than merely giving effect to the inevitable exit of VNU or Book Data from the market. The merger would produce significant cost savings and efficiencies both for the merged entity and for the book industry as a whole. It would also make possible improved bibliographic data products that neither business could have contemplated separately. Finally, the merger would be an important factor in the ability of the merged entity to compete overseas. This had important implications for the ability of UK publishers to sell their titles overseas in competition with other English-language publishers.

6.38. Summing up its reasons for acquiring Book Data, VNU said that this had been an obvious move for it to make for three principal reasons:

- (a) If VNU had not acquired Book Data, it would have had to exit from the bibliographic data business because its losses were mounting.
- (b) The reduction in costs achievable by combining VNU and Book Data was substantial and would be a driver of profitability after the acquisition.
- (c) [ *Details omitted. See note on page iv.* ]

VNU said that although it had carried out a detailed financial appraisal of Book Data, it had pitched its final bid, [*Details omitted. See note on page iv.*].

6.39. VNU said that this thinking had been reflected in a business plan approved by its US parent. There had been several discussions between VNU's 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.*

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## Benefits of the merger

6.40. VNU stated that the combination of VNU and Book Data would create large cost savings in production. As the bibliographic data business had significant economies of scale, the same output could be created at far lower cost. VNU estimated the total annual premerger cost of the VNU and Book Data bibliographic data businesses and electronic book ordering businesses to be £[§] million. The post-merger cost would be £[§] million. [

*Details omitted. See note on page iv.*

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6.41. Describing how efficiencies would be achieved, VNU said that in terms of bibliographic systems, its plan was to adopt the existing VNU bibliographic system rather than the Book Data system. Only one sales and marketing operation and only one IT operation would be needed to support both the former Book Data business and the VNU business. The plan had been to complete implementation by April 2003 and to bring the bibliographic data services together under the name of Nielsen BookData. VNU said that it would also make savings in the administration of First Edition and in other areas.

6.42. VNU further submitted that the merger would realize a range of efficiencies required by the book industry as a whole. The industry's need for supply chain efficiency had been demonstrated by the KPMG report of February 1998 (see paragraphs 4.67 to 4.72). That report had concluded that savings in excess of £150 million a year could be made throughout the industry by instigating a number of priority and long-term projects; priority projects identified included the provision of consistent and accurate bibliographic data. The creation of a single source of commercial bibliographic data would be an important contribution to such savings.

6.43. VNU forecast a reduction in revenue of £600,000 because those customers that currently paid two subscriptions would in future pay only one. In addition to the savings for customers, significant savings would accrue to publishers, who would benefit from reduced costs in supplying data on their titles. Publishers would be able to achieve the same or even better coverage for their titles at significantly lower cost by having to supply only one set of bibliographic data. VNU said that for a large publisher, the cost and time of contributing to two databases was considerable, and publishers had been complaining for a long time. The VNU and Book Data systems were very different and required different approaches to programming.

6.44. Finally, more accurate data would reduce the number of books ordered by mistake and would assist in reducing returns. The KPMG report had estimated the cost of book returns to be around £100 million a year, each return costing the publisher about £1 and the retailer 50p. Although it was not possible to quantify exactly how much the level of book returns would be reduced by a consistent database, VNU said that a reduction of 1 percentage point in the returns rate from its current level of 14 per cent would save the book industry over £7 million a year.

6.45. VNU submitted that a further benefit of the merger would be better bibliographic data products. Improvements would come about in four key aspects of quality: (a) the comprehensiveness of the database, since a single combined database would lead to increased title coverage; (b) the depth and richness of the data, since publishers and customers would have access to the enriched data of Book Data's database; (c) the most up to date information from both databases would be used, since customers who were buying data from both companies had to establish rules to prioritize updates for all records which were duplicated; and (d) timeliness, since the whole process of data supply from the publisher via the bibliographic data agency to the customer would be streamlined as inefficiencies arising from duplication were removed.

6.46. VNU gave examples of how these quality improvements would benefit the book industry. As regards title coverage, the merger would result in a complete commercial bibliographic database containing all book titles. Currently, VNU had about 1.2 million titles on its *Whitaker's Books in Print* database, and Book Data had about 1.4 million titles on its UK database. Of these 2.6 million titles in total, about 900,000 were unique to either VNU or Book Data. Therefore around 30 per cent of titles were not universally accessible by a customer without incurring the double cost of subscribing to both VNU's and Book Data's services. Even if the customer did use both services to ensure that a title could be located, the two databases provided different information in different formats.

6.47. As regards the management of increased title output, VNU submitted that the efficiencies and savings as a consequence of the merger would ensure that the merged entity would be able to invest sufficiently to keep pace with the increase in title output.

6.48. As regards innovation and new value-added services, VNU said that the merger would enhance the range of services provided. One example would be industry identifiers. The publishing industry had begun to recognize the need for further development of unique product-numbering systems. Currently, an individual book could be identified by its ISBN, but the merged entity would be able to facilitate systems for identifying individual sections of a book, such as chapters, organized by context. This would be done through a system called the digital object identifier. For this purpose, the merged group would need to develop more powerful and sophisticated search engines and enhanced database infrastructure. Such initiatives would be particularly important in the educational sector as online learning developed, and would also assist small publishers, particularly in marketing scientific and technical journals.

6.49. Another example of innovation would be expanding the content of data. The book industry was demanding access to increased sources of information, such as author information and promotional information to support sales. As a result of economies of scale, the merged entity would be able to aggregate this information cost-effectively and store it centrally in a form instantly accessible to retailers. A further example of innovation would be the ability of the combined database to provide real-time information on books, a development which would be necessary if the book trade was to match the service levels of other industries and reduce supply chain inefficiencies.

6.50. VNU added that, as regards the technology standard for the delivery of bibliographic data, fewer than ten publishers were currently using ONIX to supply information to VNU and Book Data (see paragraphs 4.191 to 4.201). The ONIX standard was complex but was likely to become more established in time. VNU wanted to improve matters by investing in staff who could manage its relationship with publishers and encourage the development of standards.

6.51. The ONIX standard had increased costs for both VNU and Book Data as staff time was required to help publishers to meet the ONIX standard. It would be important to continue to train staff who would help publishers to manage their bibliographic data and use ONIX.

6.52. VNU said that a further benefit of the merger would be support for the UK book industry abroad. The book industry was becoming increasingly global and the merged entity would need to be able to assist UK publishers to compete successfully overseas. Of total sales of UK-published books in 2000 of £3.24 billion, exports accounted for £1.2 billion or some 37 per cent. English-language books were sold around the world, and therefore UK publishers were competing directly with North American, Australian and other publishers to sell their products.

6.53. The consequence of this global trade was that the merged entity would be competing with, for example, Bowker, not only in the UK, but around the world. Some £2.7 million (37 per cent) of the bibliographic data revenues of VNU and Book Data in 2001 had been sales outside the UK.

6.54. VNU said that it was vital to UK publishers that the available bibliographic data on their titles was as good as the data provided on US titles by Bowker. Moreover, the merged entity would be in a better position to promote UK titles than Bowker, which had an incentive to promote US titles rather than UK titles.

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

6.56. Asked what would stimulate innovation by the merged entity, bearing in mind that competition had been reduced by the merger, VNU said that it was customers which drove innovation. The publishing customers of the merged entity would put pressure on it to innovate, as would the retailers. Because the merged entity would have higher sales than either VNU or Book Data had had before the merger but would achieve substantial cost savings, returns would be greater than if the merger had not occurred. This would give VNU both the ability and the incentive to invest in innovation.

6.57. VNU said that the merger was not a qualifying merger on the basis of the assets test, as Book Data's gross assets at the time of the merger were substantially below £70 million. However, the merger qualified under the share of supply test. The only material overlap between VNU's and Book Data's

operations was in relation to commercial bibliographic data, where the merged businesses had a share of supply in the UK in excess of 25 per cent. VNU estimated that Book Data had a share of 51 per cent of the UK commercial bibliographic data market in 2002; VNU had 41 per cent; wholesalers had 4 per cent; and Bowker had 3 per cent.

### **The relevant markets**

6.58. VNU submitted that there were five relevant markets, which it discussed separately. These were:

- (a) commercial bibliographic data products and services;
- (b) catalogue-quality bibliographic data products and services;
- (c) CIP data;
- (d) electronic order-routing systems for the book trade; and
- (e) EDI services.

VNU's views on each of these markets are set out below.

### ***Commercial bibliographic data products and services***

6.59. VNU stated that the function of commercial bibliographic data was to assist customers to locate and order books, to assist with purchasing and to manage stock. Typical customers were book retailers, book wholesalers, libraries and library suppliers.

6.60. VNU stated that some [§] per cent of Book Data's revenues—just over £[§] million in its last financial year—derived from fees from publishers, in return for which Book Data created an enriched record for all new titles published by the publisher and maintained a backlist of titles. This enriched record operated as a means for the publisher to promote a title by ensuring increased prominence in the database, and by providing additional information that would attract book buyers. VNU compared the enriched data records to the enhanced information for which some businesses paid to be included in a directory such as *Yellow Pages*. Some 20,000 publishers currently supplied data to Book Data but chose not to pay for the enriched record (compared with 4,000 which did so).

6.61. VNU told us that, when Book Data had entered the market in 1987, it had set out to persuade publishers to pay it to create enriched data records. This was a service not offered by VNU. Book Data's founders, who came from publishing backgrounds, had realized that a major export order for books had been lost because descriptive content was not provided. From experience of dealing with book buyers overseas, they had found that both librarians and booksellers wanted to know more about books. This was because more books were being published and prices were going up and therefore there was pressure on purchasing budgets; consequently book buyers wanted further information to make choices. Advances in technology had made possible the innovations which Book Data decided to introduce. Book Data therefore promoted to publishers the benefits of their subscribing to an enriched record, and continued to build up as many subscribing publishers as possible. In 1995 Book Data began introducing non-subscribing publishers' records on to its database in order to achieve broadly comprehensive coverage.

6.62. VNU went on to say that recently it had been developing a similar service to Book Data's enriched records by expanding the number of extended entries on its database. It had come to realize that richness of data was an area where customers demanded better quality.

6.63. 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, and that Book Data had been a strong competitor to the Whitaker bibliographic data business from about 1997. VNU gave us a number of examples of customers switching from VNU to Book Data. VNU added that most retailers took their commercial bibliographic data from just one supplier.

6.64. As regards competition on quality before the merger, VNU said that there were differences between VNU and Book Data in the actual data, and also in the timing and frequency of supplying the data, the formats in which it was supplied to the customers, and generally in coverage and other aspects such as the inclusion of details of book jackets and coloured images.

6.65. VNU said that there was a small element of synergy between its holding of the ISBN agency for the UK and its commercial bibliographic data services in so far as VNU was aware at an early stage who the publishers were, because the publishers applied for ISBN numbers. The agency conferred no other advantage: commercial bibliographic data services could perfectly well be operated by a party which did not hold the ISBN agency, and Book Data had not found any difficulty in this respect.

6.66. VNU said that the BookScan sales-tracking business could also be operated separately from the commercial bibliographic data business, but the operator would need to obtain a limited amount of bibliographic data in order to do so.

6.67. VNU stated that commercial bibliographic data services comprised the collection, compilation, aggregation, maintenance and supply of the various elements of commercial bibliographic data, such as ISBN, author, title, publisher, date of publication, availability, price and descriptive data. Commercial bibliographic data products were available in a range of formats, including CD-ROMs, web-based services, microfiche and printed products such as *Whitaker's Books in Print*. Suppliers of commercial bibliographic data collected information directly from UK publishers, and also from distributors and wholesalers, or via an intermediary. That information was collated, edited, indexed, standardized and mounted on databases, and then sold to customers located all round the world.

6.68. VNU stated that customers used commercial bibliographic data primarily for operational support reasons. The data enabled users to obtain detailed and extensive information about books and other published material, and to locate them for ordering purposes. For example, book retailers and acquisitions departments of libraries used the data in order to assist them with stocking decisions. Book retailers and wholesalers used the data in order to locate and order books for their own customers, to check the status of a book—that is, whether in print or not, or whether publication was forthcoming—and for stock management. Commercial bibliographic data was also used by library information desks as a reference source for their users.

6.69. As to customers for bibliographic data products, VNU said that these could be segmented into different groups. These were major book retail chains; other book retailers; Internet book retailers; wholesalers; libraries; library suppliers; and other data aggregators such as Bowker.

6.70. As regards customer choice for bibliographic data products, VNU submitted that different customers had different needs. In the UK, those needs could be met by data aggregators such as VNU/Book Data; by the three major book wholesalers; by library suppliers; by Amazon; or by a mixture of those sources. Some bibliographic data products were paid for (such as VNU/Book Data's products); some were bundled in with products such as the ordering services provided by wholesalers to their customers; and some, such as the products offered by Amazon on its web site, were free and adequate for the needs of some customers. VNU submitted that there was also significant potential competition, most notably through Ottakar's Intranet venture (see paragraph 6.125(c)) and the direct supply of data by publishers.

6.71. VNU stated that for some bibliographic data customers, such as the major book retail chains, the merged VNU/Book Data was ideally placed to service their needs by virtue of its ability to provide a comprehensive bibliographic database. Other customers might currently use VNU/Book Data's products, but could equally easily use less comprehensive products. Any of these customers, if faced with a significant price rise or decline in service levels, could and would switch to other sources of supply.

6.72. VNU said that commercial bibliographic data products currently available in addition to VNU/Book Data's included the following:

- (a) *Wholesalers*. Bertram offered Bertline, a bookshop management system which used a data file from Book Data or VNU and enabled bookshops to send orders direct. Gardners and THE operated in the same way, with Gardners offering Gardlink and THE offering Thesis. Gardlink added some locally made information, while Thesis used THE data for non-book products. Customers paid for the Gardlink service, though not usually for data on its own. Each of these

three major wholesalers had its own web site available to its customers from which the wholesaler allowed access to a database made up of Book Data and other information enhanced by its own information. The wholesalers' databases were perceived by customers to compete directly with information services from Book Data and VNU. The wholesalers marketed the top-selling titles at any time, and as a result they carried the most searched-for books on their databases. Wholesalers also produced catalogues giving a broad overview of titles, called 'buyers' notes', and provided customer service departments.

- (b) *Library suppliers.* These also aimed to provide a 'one-stop-shop' service, in this case to libraries. Library suppliers provided a range of services required by libraries, including, for example, profiling and plastic jackets for books, and this included provision of bibliographic data.
- (c) *Amazon.* Amazon had a high-quality database based upon a number of sources of bibliographic data, including that provided by VNU and Book Data, but also data supplied directly by publishers. Amazon's database was available online to anyone accessing the Amazon web site, including retailers and libraries as well as consumers. The data was entirely free to anyone with Internet access and provided significant competition to the paid-for services of VNU/Book Data.
- (d) *Bowker.* Bowker represented the publishing output of North American publishers both in its domestic market and internationally. Bowker was regarded as the leading information agency for publishing in the English-language world. Bowker owned the US ISBN agency, other agencies and Ulrich, a periodicals directory of 250,000 publications worldwide. Bowker also had a database of Australian titles through its subsidiary company, D W Thorpe. Bowker's bibliographic data products in the UK included CD-ROM and on-line services of its global database, which carried over 3.5 million titles. Bowker's recognized strength was in relation to library customers, to which it had been a major supplier for 130 years. Bowker's information services were specially moulded to meet specific library requirements.

6.73. VNU stated that pricing of commercial bibliographic data products varied considerably depending on both the supplier and the customer. Data aggregators such as VNU, Book Data and Bowker tended to enter into individual price negotiations with major customers, most notably the major book retail chains. One-off pricing also applied to higher-value, individually tailored products such as ongoing data supply. In contrast, list prices applied to 'off-the-shelf' products such as CD-ROMs. The approach of wholesalers and library suppliers to pricing was entirely different. Generally, their supplies of commercial bibliographic data were part of the 'one-stop' service they were offering to their customers, ie including the supply of books and electronic transaction services as well as bibliographic data services, and therefore the customers of wholesalers and library suppliers tended not to be aware of any distinct cost element attributable to the bibliographic data. Amazon bibliographic data was available free of charge over the Internet. As to publishers, they had every interest in making data on their titles as widely available as possible for promotional purposes, and so they did not charge for it.

6.74. VNU said that its own customers varied in what they wanted when they contracted to receive data supply. Before the merger, customers taking data supply from Book Data had the right to request particular elements of data that were needed. Consequently, Book Data had not supplied data at a fixed price because it did not know what customers wanted until the data was requested. Therefore prices were negotiated individually for data transmitted online. Prices also reflected what the market would bear.

6.75. VNU submitted that the widespread availability of commercial bibliographic data which was either perceived by the customer to be free or which actually was entirely free had two key consequences. First, it inevitably shaped the value placed by customers on data products such as those of VNU and Book Data. VNU and Book Data had to convince each customer that their data products were worth paying for on grounds such as comprehensiveness and accuracy, or value-added features such as real-time updates. That set a natural ceiling on customers' willingness to pay data aggregators for commercial bibliographic data. Second, market shares for commercial bibliographic data by value were highly distorted in favour of showing only stand-alone sales of such products, and therefore excluded bundled products and free products.

6.76. VNU provided the following summary of the commercial bibliographic data options for each of the customer groups:

- (a) for major book retail chains: data aggregators; publishers; Ottakar's; PubEasy;<sup>1</sup>
- (b) for other book retailers: data aggregators; wholesalers; Amazon; publishers; Ottakar's; PubEasy;
- (c) for Internet book retailers: data aggregators; publishers;
- (d) for wholesalers: data aggregators; publishers; PubEasy;
- (e) for libraries: data aggregators; library suppliers; Amazon; and
- (f) for Bowker: data aggregators; publishers.

6.77. As to the geographic market, VNU stated that the need for UK publishers to compete globally with other English-language publishers, especially US publishers, provided the context in which a merger of VNU and Book Data had become a necessity, not only for the businesses themselves, but also to support British publishing abroad. VNU and Book Data supplied commercial bibliographic data in over 100 countries in competition with a range of competing suppliers, most notably Bowker. However, UK customers for bibliographic data generally received the data only from businesses with UK operations, and did not seek data supply from outside the UK. Any new entrant to the UK market would need to supply UK bibliographic data in order to compete. There were no regional differences within the UK in the conditions of competition under which commercial bibliographic data was supplied.

6.78. VNU's conclusion was that the relevant product market was at least the supply of commercial bibliographic data. Although there was competition on a worldwide basis to supply bibliographic data on English-language books, VNU stated that, for the purposes of its submission, the relevant geographic market was the UK.

6.79. We asked VNU about the product called BDZ, jointly offered to libraries by Book Data and BDS, and containing a combination of commercial bibliographic data and catalogue-quality data (see paragraphs 4.120 and 4.121). VNU said that BDZ allowed librarians to combine two or more of the following databases: Book Data's commercial database, the BDS catalogue-quality database and the British Library catalogue-quality database. The BDZ offering was unique in combining these databases. To date, customers had only taken up the option of the combined BDS and British Library databases. BDZ was a very new product and its turnover so far was very small.

### ***Catalogue-quality bibliographic data products and services***

6.80. VNU stated that catalogue-quality bibliographic data was the specialist bibliographic data required by libraries to meet their cataloguing needs. Neither VNU nor Book Data individually supplied catalogue-quality bibliographic data, but BDS did, in some cases jointly with Book Data.

6.81. Catalogue-quality bibliographic data contained different information from that typically included in a commercial bibliographic record, and notably often required a physical inspection of the book. Records were required to be created adhering to the major bibliographic standards used in libraries (see paragraph 4.120).

6.82. VNU said that catalogue-quality records were supplied in CD and web-site formats. The main suppliers of catalogue-quality bibliographic data products in the UK were the British Library, BDS, OCLC, library suppliers and library management system providers.

6.83. VNU stated that a key barrier to entry to the catalogue-quality bibliographic data market was the strong market position of the British Library, and margins that were on average even lower than for commercial bibliographic data due to the constraints on funding traditionally faced by libraries. If margins improved, there would be likely to be new entrants, including library consortia.

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<sup>1</sup>PubEasy enables retailers to access information about titles published by publishers which have subscribed to PubEasy. VNU provides a bibliographic resource for the PubEasy web site. See paragraphs 4.172 to 4.176, 6.98 and 6.99.

6.84. As to the geographic market, VNU said that UK libraries would generally seek catalogue-quality bibliographic data on UK books from UK-based suppliers. There were no regional differences within the UK in the conditions of competition under which catalogue-quality bibliographic data was supplied.

6.85. VNU's conclusion was that the relevant product market was the supply of catalogue-quality bibliographic data and that, for the purposes of VNU's submission, the relevant geographic market was the UK.

6.86. We told VNU that we had heard from another source that VNU had been considering entering the market to supply catalogue-quality bibliographic data. VNU said that it was continually exploring different opportunities at different levels in its organization. VNU said that a member of its sales staff had held exploratory conversations with a major customer about supplying catalogue-quality bibliographic data, but VNU's executive management team, which was its decision-making executive body, had been unaware of these conversations, and such supply had never been a serious possibility.

6.87. VNU summed up by saying that the catalogue-quality bibliographic data market was separate from the commercial bibliographic data market. The commercial record was based on information from the publisher, while the catalogue record required study of the book itself. If a supplier of commercial bibliographic data wished to switch to producing catalogue-quality bibliographic data, it would incur significant costs and would also have to convert retrospectively its bibliographic database records to catalogue-quality standard.

### ***Cataloguing in publication***

6.88. VNU stated that CIP information was a prepublication version of catalogue-quality bibliographic data. CIP was based on information supplied by UK publishers about forthcoming publications to an intermediary appointed by the British Library following a competitive tender. The contract to compile CIP data was awarded by the British Library every three or four years. Currently, CIP data was supplied by BDS and subsequently used by the British Library as a basis for its full catalogue-quality record; when books were published, the CIP record was upgraded to reflect any changes that had occurred between the supply of the prepublication information and the book being published.

6.89. As to the geographic market, historically the CIP market had been contested only by UK-based operators. As the British Library would in future require data in MARC 21 format, the international standard, the market would become increasingly global in nature; however, VNU said that at present the market could be assessed on a UK-only basis.

6.90. VNU's conclusion was that the relevant product market was the supply of CIP data and that, for the purposes of its submission, the relevant geographic market was the UK.

6.91. VNU added that CIP data differed from full catalogue-quality data in that the CIP data was not compiled from the actual book. Hence it was less difficult for a supplier of commercial bibliographic data, such as VNU, to supply CIP data than it would be for it to supply full catalogue-quality records. Essentially, the British Library needed the CIP record because it needed some way of starting a record about books of which the publication was forthcoming. The CIP record was subsequently replaced by the full catalogue-quality record.

### ***Electronic order-routing systems for the book industry***

6.92. VNU described the electronic order-routing system operated by its TeleOrdering business: see paragraphs 4.151 to 4.165.

6.93. VNU said that the First Edition business owned by Book Data did not provide order-routing services and could not provide comprehensive coverage because its customers were confined to the larger publishers and distributors. First Edition was a trading network business which marketed a conduit between individual retailers and publishers or distributors in the same way that an Internet service provider such as Freeserve marketed a communication conduit over the Internet, in each case using VANs of third parties.

6.94. VNU said that the perception of TeleOrdering and First Edition as ‘rival electronic ordering systems’ was misplaced. Both businesses’ services might be used to order books, but there were a number of alternative ways to order books electronically—for example, the Internet (including via FTP), and Intranet-style services—as well as more traditional methods, such as fax, post and telephone. Because TeleOrdering and First Edition were providing distinct services, there was a significant overlap in their customer base. In fact, according to VNU, with a few exceptions all of First Edition’s distributor, publisher, retailer, wholesaler and international supplier customers were also customers of TeleOrdering. The overlap between TeleOrdering’s and First Edition’s customers showed that the two businesses were complementary rather than competing. Customers used TeleOrdering to order titles and used First Edition to send and receive related invoices and order acknowledgements.

6.95. VNU explained that using TeleOrdering was like sending letters without addressing them, whereas using First Edition required a knowledge of the addressee. While retailers might be aware of the publishers of some books, they were likely to want to batch orders, and TeleOrdering could sort those orders and send each of them to the correct publisher. Under 5 per cent of the messages sent via First Edition were orders; more than 95 per cent were other messages such as invoices, acknowledgements and credit notes.

6.96. VNU said that TeleOrdering’s service in acting as an intermediary between suppliers and purchasers was unique in the UK. It had become a critical and integral part of the UK book supply chain. TeleOrdering offered the following key advantages:

- (a) It saved the retailer time and effort in locating the relevant publisher or distributor, allowed the retailer to send several orders in one batch, and enabled the retailer to reduce costs through automating its ordering process.
- (b) It significantly reduced publishers’ costs of processing orders, as orders were fed directly into their systems without the need for costly rekeying, and it assisted publishers in the efficient management of workflows.
- (c) It facilitated competition between publishers/distributors, as any transfers of distribution rights were effectively processed for retailers using TeleOrdering.
- (d) It ensured that new and very small publishers would be able to receive orders placed electronically by the major chains, and would be accessible to all TeleOrdering retail customers.

6.97. With regard to the market definition, VNU said that TeleOrdering’s customers comprised book retailers, wholesalers, library suppliers and publishers/distributors in the UK. There were currently no direct competitors to TeleOrdering’s order-routing service. However, Vista supplied software which enabled interface with the web sites of the leading publishers and distributors, thereby enabling retailers to place orders and make enquiries directly to the publishers’ warehouse systems via the web. Vista’s PubEasy service made it possible for booksellers anywhere in the world to link to publishers’ web sites in order to check the range of titles available, to place orders with those publishers or the relevant distributor directly, and to check the progress of orders placed for various titles.

6.98. VNU stated that a key competitive constraint on TeleOrdering lay in the fact that about 60 per cent of all book sales in the UK in any given week were made up of some 5,000 titles, and those tended to come from the major publishers and/or to be distributed by the major distributors. Thus retailers were able to order the vast majority of their stock requirements directly from the major publishers/distributors or wholesalers or using PubEasy. VNU currently supported a centralized PubEasy web site providing a bibliographic search and TeleOrdering facility, enabling retailers which did not know the identity of the supplier of a particular title to locate the supplier and link automatically, via the central PubEasy web site, to the web site of the appropriate publisher/distributor. That service was provided without charge to retailers but publishers that participated in the service paid an annual fee to VNU. VNU added that PubEasy was also near to completing a central service that would enable retailers to send batched orders to a central service which would then split and route to the major publishers and distributors on the service, in the same way as TeleOrdering, but without TeleOrdering’s comprehensive coverage.

6.99. VNU stated that the main barrier to entry into the order-routing market related to the ability to provide a fully comprehensive order-routing service covering 100 per cent of titles, since that required a database that was comprehensive in terms of keeping track of all books published in the UK and all

changes in supplier of a particular title. However, barriers to entry were much lower in terms of providing a service equivalent to PubEasy, relating only to the top eight or nine suppliers of titles. The fact that PubEasy was able to launch a batch-order-routing service demonstrated that there were no significant barriers to providing limited order-routing.

6.100. VNU argued that a major retailer could create its own central database and use this to identify the appropriate supplier. The orders could then be sent using this information via a variety of different channels. VNU said that that model had been adopted by a major book retailer, which sourced its core title range direct from publishers and used wholesalers to source special customer orders and non-stocked titles. The retailer had been able to adopt that approach because it had a central warehouse, had adopted centralized ordering and had in-house IT expertise. VNU added that the Ottakar's Intranet (see paragraph 6.125(c)) enabled publishers to provide daily updates of information on their titles and could be developed as a means of processing and sending orders electronically.

6.101. As to the relevant geographic market, VNU said that that was the UK and there were no regional variations.

6.102. VNU concluded that the relevant market might be considered to be the provision of electronic order-routing systems to the book industry in the UK.

### ***Electronic data interchange services***

6.103. VNU described the EDI services provided by First Edition and, to a very small extent (in VNU's view), by TeleOrdering.

6.104. With regard to the market definition, VNU said that customers for EDI services using VANs tended to be the bigger companies with their own computer systems. As to competitors, First Edition's most direct competitor currently servicing the book industry was Freeway, which used capacity on all three of the major VANs. Freeway had been active in the book industry since late 2000. Littlehampton, one of the major book distributors, had switched fully to Freeway from First Edition. Other Freeway customers included The Book Service (the largest UK distributor), MacMillan Distribution and Harper Collins. VNU said that all these companies could switch the whole of their business to Freeway and stop using First Edition if they became dissatisfied with First Edition. Freeway was also working with Batch, a service owned by the Booksellers Association, which had been developed recently to assist with electronic trading and account clearance within the book industry.

6.105. VNU said that in its view EDI services comprised a very small part of the TeleOrdering business, less than 3 per cent of its revenues. VNU's development of WhitakerWeb, a web-based inquiry and ordering service that was fully integrated with TeleOrdering, was designed to enhance substantially the quality of service provided to retailers. WhitakerWeb envisaged providing electronic messages to retailers and publishers via email, web page, download, XML or full EDI standard, as required.

6.106. VNU added that Bowker had an EDI service in the USA called Pubnet which linked publishers to college bookshops. This link was not currently active in the UK, but Bowker had the infrastructure and technology which could be easily adapted and expanded to compete internationally.

6.107. As to other EDI service providers, VNU said that the operators of any VAN could operate in competition with First Edition in servicing the book industry. Thus IBM, BT and GXS could all set up in competition to First Edition without facing significant barriers to entry. Moreover, any business could operate in competition to First Edition by using the VAN of a third party. It was relatively easy for a customer to switch from one provider of EDI services to another. There were no long-term or exclusive contracts; for example, nearly all of First Edition's contracts were on standard terms for a one-year period.

6.108. The cost of switching was primarily in the staff time required to set up the interconnections between the customer's mailbox on its new VAN and the mailboxes of its trading partners. On average, it took around four days for an interconnection to be implemented. This service was provided as part of the

package by the EDI service provider. Furthermore, the translation software used by the major customers within the trade was independent of the VAN.<sup>1</sup>

6.109. As an alternative to EDI, customers could send messages over the Internet via FTP. Although in the past the Internet had lacked the security and reliability of the major VANs, it was now improving significantly. FTP provided a low-cost option to facilitate electronic trading over the Internet which was widely available and was becoming increasingly popular. A major book retailer was using FTP for the transmission of its orders to the leading distributors and publishers and to wholesalers. Once customers had made the initial investment in the infrastructure, FTP was, in effect, an alternative to VANs at no cost.

6.110. As to the geographic market, VNU said that, while the operators of the VANs over which EDI services were traditionally carried were large multinational companies, the networks used were local and UK-based. Providers of third party networks tended to be based in the UK due to the importance of establishing customer relationships.

6.111. In conclusion, on the market definition for EDI, VNU said that there were many companies providing similar services to EDI users across the range of industries, and which either served the book industry or could easily do so. Moreover, EDI faced significant competition from newer means of communication, especially the Internet. Accordingly, the relevant product market was at least the market for providing EDI services and might be broader in terms of alternative means of communication. The relevant geographic market might be assumed to be the UK.

## **Public interest issues**

### ***Commercial bibliographic data services***

6.112. As regards the effects of the merger on competition in commercial bibliographic data services, VNU submitted that its exit in the near term from the market would have been highly likely if the merger had not happened, and therefore a single source of comprehensive commercial bibliographic data was in any event almost inevitable.

6.113. Moreover, VNU submitted that the merger would not confer on the merged entity any position of market power, as the merged entity would be subject to significant competitive constraints. These would come from publishers, from the buyer power of the major book retail chains, and from the merged entity's vulnerability to losing market share to the range of alternative sources of bibliographic data.

### ***Consequences if no merger***

6.114. VNU stated that, given that Book Data's shareholders were intent on selling their shares, the first consequence of VNU not acquiring Book Data would have been that a rival bidder would have acquired it. Bowker had been the only other serious bidder. The alternative to the merger would therefore have been that Bowker acquired Book Data. VNU said that this would have suggested a belief on Bowker's part that VNU would choose to exit. VNU considered that the global dimension to bibliographic database competition would have tipped the balance of power in favour of a combined Bowker/Book Data because that merged entity would have had a comprehensive UK/US English-language database while VNU would have had access only to an incomplete US database through its link with Ingram. VNU's commercial bibliographic data business had been unprofitable, and was likely to remain so for the foreseeable future.

6.115. VNU provided detailed calculations of the revenues it would have forgone if it had closed its bibliographic data business as against avoidable costs it would have saved by ceasing to run the business, had it not been successful in acquiring Book Data (see paragraphs 3.80 to 3.88). VNU said that on this basis the trend in its profitability had been flat between 1999 and 2002, when the business had moved

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<sup>1</sup>Translation software converts electronic messages into standardized, machine-readable formats and connects the user's computer or system with its mailbox.

into cash loss. This was largely the consequence of VNU's loss of the Bowker contract in that year. Had Bowker acquired Book Data, there would have been no prospect of VNU supplying Bowker with bibliographic data, and therefore no prospect that VNU's business would have produced a positive cash flow in the foreseeable future. Indeed, the prevailing trend towards higher database compilation costs as the number of new titles increased suggested that losses would increase in subsequent years. Accordingly, VNU submitted that its bibliographic data business would no longer have been viable had the merger not proceeded.

6.116. Therefore, had Bowker acquired Book Data, it was highly likely that VNU would have exited the commercial bibliographic data market. VNU could have satisfied the ongoing requirements of other parts of its business, namely TeleOrdering and Nielsen BookScan, by licensing data from Bowker/Book Data.

6.117. VNU stated that in comparing the actual outcome of the bidding for Book Data, namely a merger of VNU and Book Data, with the most likely counterfactual, namely a merger of Bowker and Book Data, it was clear that either merger would inevitably have resulted in a single supplier of comprehensive commercial bibliographic data in the UK. The possibility of ongoing competition between rival comprehensive databases was not an option. Moreover, the actual outcome was the most pro-competitive in global terms, resulting in a contest to supply bibliographic data on English-language titles between VNU/Book Data, with a comprehensive UK database and a partial US database, and Bowker, with a comprehensive US database and a partial UK database.

6.118. Accordingly, VNU concluded that the merger did not result in any substantial lessening of competition in bibliographic database services because in the absence of the merger almost certainly VNU would have exited the market. Furthermore, the merger promoted competition at a global level, in addition to giving rise to benefits for the UK book industry.

6.119. In answer to further questions about the counterfactual, VNU said that it did not agree that demand for commercial bibliographic data had been flat over the last three years. VNU had lost business to Book Data and had also, in the year 2002, lost the royalty income from Bowker as a result of the ending of the contract with Bowker in June. Other revenue reductions had occurred as a result of falling sales of printed and fiche products and CD-ROMs. While it was difficult to tell why sales were falling, VNU believed one reason was that customers were switching to other sources of bibliographic data, such as wholesalers' services and Amazon's database, which had become available in the last few years.

6.120. VNU said it doubted that, if Bowker had acquired Book Data, Bowker would have stopped producing enriched information, which was clearly required in the UK market. Furthermore, Book Data had a very strong sales team, which would be an asset to any potential bidder.

6.121. Asked about the cost of buying in the bibliographic data needed for TeleOrdering and BookScan, if it were to exit from the bibliographic data market, VNU estimated that the cost would amount to some £[redacted] to £[redacted] a year. It had no doubt that it could buy this information from Bowker, even if Bowker were to become the owner of Book Data. Bowker was likely in those circumstances to value VNU's cooperation over the transfer of customers to Bowker. If necessary, however, VNU could acquire the information from other sources, such as direct supply by publishers, or from wholesalers. Indeed VNU could probably obtain the information from its own BookScan service. The numbers of data fields required to meet the needs of TeleOrdering and BookScan were relatively small—five or six for TeleOrdering and 9 to 16 for BookScan. This was a very different requirement from the 270 fields needed in bibliographic databases for book retailers and libraries.

6.122. Asked about the expectations that VNU had of Whitaker when it acquired Whitaker in 1999, VNU said that there had been some division of opinion among its management as to whether Whitaker was an attractive opportunity. [

*Details omitted. See*

*note on page iv.*

] Hence when the owners had invited bids for only the bibliographic and TeleOrdering businesses, VNU had made an offer for the whole 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. VNU's current view of the Whitaker bibliographic database services was that there was not room in the market for both it and Book Data. If it had not acquired Book Data, it would have sought to sell its customer contracts but it would not have been able to find a buyer for the

Whitaker bibliographic business. VNU had estimated that closing that business would cost some £[ 200 ]. VNU added that the management team which had acquired Whitaker in 1999 was no longer in place. In 1997, before the sale of the company to VNU nv, Whitaker had embarked on an investment project costing £[ 200 ] to upgrade substantially the IT systems supporting its bibliographic business through a project called Phoenix. 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. 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.

6.123. Asked about plans for the ISBN agency if the Whitaker business had had to exit from the market, VNU said that it had never had any plans to divest itself of the ISBN agency. It considered that its stewardship of the ISBN agency had been very good. Originally the agency had been subsidized, but the decision had been taken in 1997 to run it on a cost recovery basis.

#### *Constraints on the merged entity's market power*

6.124. VNU stated that market shares by value only measured products charged for, and so showed VNU/Book Data with a high combined market share for commercial bibliographic data services, in excess of 90 per cent of total sales. However, customers also obtained commercial bibliographic data from suppliers such as wholesalers which did not charge for this as a discrete item. Customers could also obtain such data free from sources such as Amazon. The combined share of VNU/Book Data by volume would undoubtedly be lower, but VNU was not able to suggest an accurate way of measuring market shares by volume.

6.125. VNU went on to say that, because of these characteristics of the commercial bibliographic data market and the difficulties in measuring market shares, market share figures were not an accurate way of measuring market power. To assess the merged entity's position in the market, a dynamic analysis of the constraints it would experience was necessary. VNU made the following points about such constraints:

- (a) The merged entity would remain entirely dependent on publishers supplying their individual data. If a bibliographic data service did not develop in such a way as to promote publishers' titles, publishers could be expected to withdraw their consent to VNU/Book Data supplying information about their titles. It would not be an option for VNU/Book Data to 'de-list' smaller publishers as that would lessen the usefulness of the database to the book trade. VNU was also reliant on publishers' income for Nielsen BookScan, and [ 200 ] of Book Data's premerger revenues had derived from publisher payments for enriched data records to promote titles. These sources of revenue and also VNU/Book Data's reputation would be put at risk should VNU/Book Data be seen by publishers to be exploiting or neglecting its customers.
- (b) Publishers' leverage was further increased by the power they had to supply their data to the merged entity's competitors, and to compete directly themselves. Publishers already supplied information direct to wholesalers, and to retailers such as Amazon and Ottakar's.
- (c) The merged entity would face significant buyer power from its major book retailer customers. These customers would not allow VNU/Book Data to raise prices, impose restrictive trading conditions or allow service standards to decline. Major retailers had financial weight and could establish alternative ways of gaining commercial bibliographic data. For example, Ottakar's had developed its own Intranet service, which it had said it intended to roll out to all its stores and to license to other major retailers. Ottakar's was using its influence with publishers to encourage them to send their own title information direct to Ottakar's, bypassing VNU/Book Data. The Ottakar's Intranet included commercial bibliographic data and sales and promotional information on book titles, and linked directly into publishers' systems. VNU said that Ottakar's had been

quoted in the trade magazine *The Bookseller* as saying that its Intranet would be in place as an industry standard within the next two years.<sup>1</sup>

- (d) Major retailers could also put further pressure on the merged entity by threatening to withdraw the supply of sales information to Nielsen BookScan.
- (e) The merged entity's other customers, such as the smaller retailers, could switch to alternative sources of supply if VNU/Book Data abused its position. A comprehensive database was useful but not essential for their business. VNU/Book Data was effectively constrained by the range of other sources of supply of bibliographic data, which in many cases were free of charge (see paragraph 6.124). Bowker had strong ties with publishers globally and had indicated that it was considering an expansion of its UK bibliographic data operation. Bowker's President had reacted to the merger by stating in *The Bookseller* that Bowker was considering whether to start its own data collection business in the UK.<sup>2</sup>
- (f) VNU said that in the last 18 months, it had been aware of six customers (three retailers and three libraries) that had switched from using VNU to using Amazon. Also 12 customers had switched to using either a wholesaler or a library supplier as their provider of bibliographic data. Several other customers had switched to undisclosed suppliers. VNU was also aware of nearly 30 competitive bids to supply data to libraries in which Bowker had participated in 2002, winning 20 of them.

6.126. We put it to VNU that there seemed to be a contradiction between its argument that there was room for only one supplier of commercial bibliographic data services and the argument that the threat of entry would be a constraint on the merged company. VNU said that the threat of entry into a market might come for a number of different reasons. For example, Bowker might wish to take a position in the UK market in order to leverage its position within the global market. Such an entry would not necessarily be profitable.

6.127. VNU conceded that the databases of the wholesalers, Amazon and Ottakar's all depended on VNU and/or Book Data for the kernel of their information but argued that, if competing companies decided that they wished to take data from publishers direct, their combined buyer power was such that they would be able to persuade publishers to support them by providing data.

6.128. VNU agreed that a new entrant would take some time to obtain data from publishers, although Bowker and others such as OCLC already had the necessary contacts. VNU added, however, that the world had changed since Book Data built up its database between 1987 and 1997. Publishers now understood the importance of bibliographic information, as demonstrated by the KPMG report (see paragraphs 4.67 to 4.72). The democratization of technology allowed individual publishers to enter the market themselves, using technological developments to which all had access. Consequently this posed a real threat to a central organization like VNU. The abilities of wholesalers to develop a good independent service if they wished should not be underestimated; wholesalers in the USA, namely Ingram and Baker & Taylor, had done just that, with good data sets even though these were not fully comprehensive. VNU said that Amazon might also take the opportunity to set up a bibliographic database. VNU said that Amazon had the potential to become a data aggregator. It had already developed the capability to take electronic feeds from publishers and was expert at the manipulation of data. It had in-house bibliographic expertise and could potentially develop a data aggregator role. In the USA, Amazon was pioneering the adoption of the ONIX standard from all its major suppliers so that it could maintain direct feeds.

6.129. VNU agreed that access to the basic content of either the VNU or Book Data database would be important for an entrant seeking to establish a comprehensive service. It did not think there was any barrier to entry created by copyright on databases. It was difficult to establish copyright on databases because the publishers also had rights to their own information that was included in the database.

6.130. VNU said that it had not determined the likely level of future prices, which would necessarily be constrained by customer demand. It had not built any price reductions into its business plan.

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<sup>1</sup>*The Bookseller*, 8 March 2002.

<sup>2</sup>*The Bookseller*, 26 July 2002.

6.131. We asked VNU about remarks in a newsletter for Nielsen BookData presented at the Frankfurt Book Fair in September 2002 which stated that more and more publishers would be encouraged to become subscribers. VNU said it believed that all publishers should subscribe to an enriched database because otherwise they would not be promoting their works properly. Many small publishers did not yet realize the importance of having their titles described in full on an enriched database, for which VNU/Book Data charged a very modest fee.

6.132. Asked about the gaps in the VNU and Book Data databases, VNU responded that it was only when preparing for the merger that it had discovered that some 900,000 titles were not found on both databases. VNU was stronger in local publishing and Book Data was stronger in government publications. VNU had slightly better coverage of books published by small and medium-sized publishers and Book Data had slightly better coverage of books published by US academic publishers.

### ***Electronic transaction services***

6.133. VNU submitted that there was no competitive overlap between VNU's TeleOrdering and Book Data's First Edition in relation to the electronic order-routing service provided by TeleOrdering. First Edition's EDI services were one of the alternative methods by which a purchaser could order a book. There were many other methods, and the routing service provided by TeleOrdering was quite distinct from simple ordering methods. Moreover, there were already services such as PubEasy and the WHSmith model that would provide potential competition should TeleOrdering seek to exploit its market position.

6.134. VNU concluded that TeleOrdering's market position was not changed as a result of the merger.

6.135. With regard to the effects of the merger on competition in EDI, VNU estimated that GXS had a 57 per cent share of the sale of EDI services in the UK, IBM had 20 per cent, and BT had 15 per cent. First Edition (which was a reseller for GXS) had 0.3 per cent, TeleOrdering had less than 0.1 per cent and Freeway also had less than 0.1 per cent. Thus the combined revenue of First Edition and TeleOrdering would represent less than 0.5 per cent of the total market for EDI services in the UK. VNU said that there was a very small increment in market share, but that First Edition would be very much the main focus of the merged entity's EDI activities. Furthermore, even in its chosen specialized sector of the book industry, First Edition faced significant competition from Freeway. Customers in the book industry, as in other industries, had many low-cost alternatives to using EDI.

6.136. VNU therefore submitted that the merger would not result in any material lessening of competition in relation to EDI.

6.137. Asked about plans to develop TeleOrdering's EDI service, VNU said that it had sought in the mid-1990s to launch an EDI product called TeleOrdering Gold, but this had not been successful. VNU had no further plans to expand its operations in the EDI market.

6.138. We asked VNU why the prices for TeleOrdering had stayed static despite the fact that the service appeared to have no direct competitor. VNU said that this was due to the buying power of its customer base, both publishers and retail groups, where there had been consolidation. TeleOrdering's revenues had grown through an increase in orderlines.

6.139. VNU told us that, before the merger, Book Data had been seeking to develop First Edition by introducing First Exchange as an EDI service for smaller publishers using the Internet, but this product had not yet been launched.

### ***Catalogue-quality bibliographic data services, including CIP***

6.140. Recalling that VNU did not currently supply catalogue-quality bibliographic data, nor had had any plans prior to the merger to do so, VNU submitted that there was no actual or potential overlap between itself and BDS, in which Book Data had a 40 per cent shareholding. VNU said that the merger would not have any material effect on the operations of BDS.

6.141. VNU added that BDS's total sales of catalogue-quality bibliographic data worldwide for 2002 were likely to be around only £[ 20 ]. VNU estimated that this represented less than [20] per cent of the UK catalogue-quality bibliographic data market, with the British Library having by far the largest share.

6.142. As to the effects of the merger on CIP, VNU said that that market was effectively confined to the supply of CIP data to a single customer, the British Library. The market was contestable only on retendering by the British Library of the contract to compile and supply CIP data to it.

6.143. The British Library intended to require that CIP data be provided in MARC 21 format in future. As MARC 21 was the format currently used internationally, VNU submitted that competitors for the contract next time could be expected to include entities such as Bowker and the OCLC. VNU would bid again if it was the right thing for it to do, commercially, at the time. The merger would not therefore have a material effect on competition in relation to CIP.

### ***The possibility of combined effects***

6.144. Asked whether VNU could leverage its position in the commercial bibliographic data market in order to exercise power in related markets such as electronic transactions for the book trade, VNU said that it was unclear as to the focus of the CC's concerns. If the concern was that VNU might make its commercial bibliographic data products and the TeleOrdering service available only at a single bundled price, VNU's response was that that would be an extreme course of action which would be strongly resisted by customers. Alternatively, if the concern was that VNU might give attractive terms to customers for both commercial bibliographic data products and TeleOrdering, VNU's response was that there was no evidence that commercial bibliographic data products and the TeleOrdering service were complements, and therefore it was hard to see how anti-competitive effects could arise. VNU added that it was not the case that the merged entity would have a strong market position in relation to commercial bibliographic data. The merged entity would be subject to actual and potential competition.

6.145. VNU said that the CC should give particular attention to the standard of proof of anti-competitive effects, in the light of the recent judgement of the European Court of First Instance in relation to the Tetra Laval/Sidel merger.<sup>1</sup>

6.146. VNU said that its strategy would be to continue to meet the needs and preferences of all its customers. It would provide both stand-alone and integrated services. It would not make the provision of any one service dependent on the provision of another service. It would continue to make available stand-alone 'legacy' products such as fiche and print. Its competitors offered integrated services providing both product information and ordering services, and VNU's offering of integrated services would be in no sense adverse to competition.

### **Possible remedies**

6.147. We discussed possible remedies with VNU, if we were to conclude that the merger was against the public interest.

6.148. Commenting on our remedies statement (see Appendix 1.1), VNU said that, if the CC concluded that the merger would have adverse effects, measures aimed at restoring competition were likely to be ineffective because there was room for only one supplier in the market. VNU suggested, therefore, a customer protection remedy, which would have the following features:

- (a) The merged entity would be obliged to supply anyone who requested it (subject only to considerations of creditworthiness) with a standard commercial bibliographic data product at a regulated price. This standard product would be equivalent to the current lowest-priced CD-ROM product (VNU's Book Bank), or better.

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<sup>1</sup>Judgment of the Court of First Instance of 25 October 2002, *Tetra Laval v Commission of the European Communities*, Case T-5/02.

- (b) The product would be sold at the current real price or lower for as long as the OFT considered necessary.

6.149. VNU said that the merged company would eventually produce a combined database product. Agreement would need to be reached with the OFT on the characteristics of the product which it would have an obligation to supply.

6.150. VNU said that it was also prepared to give a supplier protection undertaking under which VNU would maintain a free service to publishers for putting basic records on the database. It proposed that this undertaking should apply for a period of three years.

6.151. VNU said that, if the only alternative were divestment of one of its bibliographic businesses, it would be prepared to grant a licence to a third party approved by the OFT for commercial exploitation of basic data. That data would be less extensive than the data which VNU had in mind when formulating its proposal for a requirement to supply customers. VNU said that there would be a number of difficulties with the licence proposal, the most important of which were as follows:

- (a) The price of the licence would be difficult to establish. It should certainly reimburse VNU/Book Data for the cost of creating the licensed database, and not give the new entrant some artificial cost advantage. Detail would need to be considered with the OFT.
- (b) More fundamentally, the problem with this remedy was that it would either fail, or succeed too well. Either there would be no new entrant or a new entrant would come in which would swamp the merged entity, because it had been provided with data too cheaply.
- (c) It was quite likely that publishers would be unwilling to supply their data to a new entrant, on grounds of cost.

6.152. As to the possibility of the divestment of the Whitaker bibliographic database business, VNU said that, given the current and prospective losses, it could see no buyer for that business. VNU saw no reason why the ISBN agency or TeleOrdering should be considered for divestment along with the Whitaker bibliographic data business.

6.153. As to the possibility of the divestment of Book Data, VNU said that, if it were required to divest Book Data, it would exit from the bibliographic data market as a result. If Book Data were offered for sale together with First Edition, there would probably be interest from Bowker.

6.154. As to the possibility of the divestment of First Edition in order to remedy an adverse effect in electronic transaction services for the book trade, VNU said that this would be feasible, but VNU saw no reason why it would be necessary. First Edition was a stand-alone business.

6.155. As to the possibility of divestment of the 40 per cent share in BDS in order to remedy an adverse effect in catalogue-quality bibliographic data services, VNU said that it could not see any case for disposal but that this would be feasible.