



Brightsolid Group Limited and Friends Reunited Holdings Limited

A report on the anticipated acquisition by Brightsolid Group Limited of Friends Reunited Holdings Limited

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The Competition Commission has excluded from this published version of the report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X].

Anticipated acquisition by Brightsolid Group Limited of Friends Reunited Holdings Limited

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Glossary

Summary

1. On 2 November 2009, the Office of Fair Trading (OFT), in exercise of its duty under [section 33\(1\)](#) of the Enterprise Act (the Act), referred to the Competition Commission (CC) for investigation and report the anticipated acquisition by Brightsolid Group Limited (Brightsolid) of Friends Reunited Holdings Limited (Friends) (the parties). The sale and purchase agreement was signed on 5 August 2009.
2. Brightsolid is a wholly-owned subsidiary of DC Thomson & Co Ltd. Among its activities, its subsidiary Find My Past Limited (FMP) operates as a leader of projects to digitize, transcribe and index historical records, and as an online retailer of data relevant to family history. Friends is a wholly-owned subsidiary of ITV plc (ITV). Its subsidiary, Genes Reunited Ltd (Genes), operates a social networking online family history website, which also provides its users with access to a number of historical records. There is no evidence to suggest that either company would exit from the market in the absence of the merger.
3. Both companies operate as providers of online family history data and other services, to which we refer as online genealogy services. There is no one measure of the share of supply of such services; but the share of supply test specified in the Act would be satisfied on reasonable and comprehensive measures of market share we have examined. We have therefore concluded that arrangements are in progress or contemplation which, if carried into effect, would result in the creation of a relevant merger situation. We have therefore to examine whether the creation of that merger situation may be expected to result in a substantial lessening of competition (SLC).
4. The UK online genealogy market has grown very rapidly over the last ten years, with a considerable pace of change in the number of suppliers and the range of their product offerings. The Internet is now the publishing medium of choice for all large genealogical data projects, whether official, commercial or volunteer-run, and there is growing popularity for amateur genealogy in the UK. It is estimated that 2 million people access genealogy websites per month; a survey we commissioned of the users of the two parties' websites showed that the average user made use of four sites over the previous year.
5. The supply chain consists of:
 - (a) original data holders (ODHs), often public bodies which offer access to their records via partnerships with private companies that can digitize the data;
 - (b) the digitizers, which typically scan and transcribe the records in return for a short period of practical exclusivity in use of the data;
 - (c) the retailers, which market and sell the data and/or related services to end-users. The parties listed over 30 suppliers in the UK, including a number of free sites. Retailers are differentiated by the data and services they provide and by the extent to which particular data or services can be accessed free of charge. Some retailers are also themselves involved in digitizing or sublicensing—in effect wholesaling—the data; and
 - (d) end-users, who obtain information by either purchasing it, accessing publicly available information or by sharing information with other end-users (referred to as social networking in this context). The interests of end-users vary widely, from occasional users who only wish to develop a basic family tree to customers who wish to use specialised datasets.

6. The evidence suggests that there are broadly three distinct aspects to online genealogy services—core data, non-core data and social networking—of which FMP provides core and non-core data and Genes provides core data and social networking; the parties therefore only overlap on the provision of core data. For the purpose of our inquiry, we believed it appropriate to adopt a broad relevant market comprising all online genealogy services, rather than three narrow market definitions. However, in considering the competitive effects of the merger within this broad market we take into account the differentiation between different providers' product offerings.
7. We examined a range of evidence in order to assess the unilateral effects of the merger, ie whether any loss of competition between the parties would be such as to allow the merged company profitably to raise prices, at least in the short term. Data on market shares showed that the largest supplier, Ancestry.co.uk (Ancestry), would continue to be so by some margin after the merger. Our review of the parties' internal documents suggests that competitors' prices are taken into account in the pricing decision; but there is nothing to suggest that the parties represent a closer constraint on each other than Ancestry, or indeed other providers. The scope of the subscriptions offered by Ancestry and their price levels overlap those of Genes and FMP individually more than the offerings of Genes and FMP overlap each other. We also commissioned a survey of about 4,000 users of the two parties' websites, the results of which were consistent with the view that FMP and Genes are to a large extent complementary with a different focus on supply of data and social networking respectively, that Ancestry represents a significant constraint in the market, and that free sites may also constrain prices in the market.
8. In our view the unilateral effects of the merger may not be expected to result in an SLC, due to the extent of differentiation and limited overlap between the parties and the other constraints on prices remaining after the merger, or create the incentive or ability for the merged firm profitably to increase prices or otherwise worsen their product offering. There is also the potential for the merger to have pro-competitive effects on prices, given, among other things, the complementary nature of at least part of the parties' offer, although we have not based our assessment on any expectation that prices would necessarily be reduced as a result of the merger. We saw no evidence that, in the absence of the merger, current or planned investment by either Genes or FMP would lead to the parties becoming significantly closer in product offering and hence closer competitors on prices in the period relevant to our assessment of the merger. We found that the merger (and corresponding larger customer base) may increase the scope of investment and innovation by reducing the risk associated with upfront investment costs, as a result of the merged firm offering a product more comparable to that of Ancestry, increasing competition in innovation and improvements in product quality.
9. We do not consider that the merger would be likely to give rise to any coordinated effects, ie any risk of coordination or tacit collusion between the suppliers. There is a lack of reliable measures of prices and volumes, which suggests to us that the market is much less transparent than we might have originally expected. The market seems also still to be very unstable in terms of size, having experienced periods of growth and periods of stability and subject to sharp fluctuations. The merged entity would be much smaller than Ancestry and hence the firms that could in principle coordinate would be significantly asymmetric in size. These factors, together with the number of free sites in the market, are likely to undermine any ability to coordinate behaviour.
10. We found that the merger is unlikely to affect competition in the supply of digitization services, or to result in any market foreclosure by affecting the availability of data to

retailers of online genealogy services. Genes cannot itself be regarded as an actual or potential digitizer of data in the period over which we are considering the effects of the merger; although the merger could still have an indirect effect given that it is a significant purchaser of digitized data, there are other sources of potential competition for the digitization of genealogy data and for the wholesaling of most core datasets to retailers. The ODHs, such as The National Archives (TNA), are in a strong position to encourage new entrants to the digitization of data and otherwise prevent any restriction in the availability of data to retailers. We also noted the significant amount of entry into what has been a rapidly growing and volatile market and consider that there is scope for further new entry into the supply of online genealogy services.

11. We have therefore concluded that the merger may not be expected to result in an SLC.

Findings

1. The reference

- 1.1 On 2 November 2009, the OFT, in exercise of its duty under [section 33\(1\)](#) of the Act, referred to the CC for investigation and report the anticipated acquisition by Brightsolid¹ of Friends. The reasons for the reference are given in the OFT's [decision document](#). The OFT estimated that the combination of the respective online genealogy businesses of the two parties—Genes and FMP—would account for over 25 per cent of the supply of online genealogy services in the UK; it was concerned that the acquisition would see the three main providers of those services reduced to two and might lead to an SLC in the supply of those services.
- 1.2 The reference requires us to determine:
- (a) whether arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.
- 1.3 We published a summary of our provisional findings on 18 February 2010 and the full provisional findings report on 23 February. In finalizing our conclusions, we have carefully considered all the comments we received on our provisional findings. We were required to report by 16 April 2010. Our terms of reference are in Appendix A, together with an account of how we conducted our inquiry and the steps we took, including measures to ensure that there was no integration between Brightsolid and Friends, to ensure that no actions were taken during the course of our inquiry which might prejudice the reference or impede the CC's ability to take any remedial action that might be determined to be necessary.
- 1.4 This document (including its appendices) constitutes the final report that we must publish under [section 38\(1\)](#) of the Act. Non-commercially sensitive versions of the main party and third party written submissions and summaries of hearings with third parties are on our website² along with other documents relevant to this inquiry. We cross-refer to them where appropriate.

2. The companies

- 2.1 Brightsolid is a wholly-owned subsidiary of DC Thomson & Co Ltd. It operates:
- (a) as a provider of online IT business services;
 - (b) as an Internet service provider (ISP);
 - (c) as a leader of projects to digitize, transcribe and index historical records; and
 - (d) as an online retailer of data relevant to family history.
- 2.2 As apparent in Appendix B, the acquisition in December 2007 of FMP by Scotland Online, which in April 2007 had been awarded the contract to digitize the 1911

¹Brightsolid Group Ltd was renamed Brightsolid Online Innovation Ltd during the course of our inquiry and FMP was renamed Brightsolid Online Publishing Ltd.

²[Competition Commission—Inquiry—Brightsolid/Friends Reunited](#).

Census records for England and Wales, led to the creation of Brightsolid in its current form; Scotland Online was rebranded as Brightsolid in summer 2008. Following a subsequent reorganization, Brightsolid's online genealogical activities are now undertaken by Brightsolid Online Publishing Ltd, formerly FMP. We use FMP in this report to refer to Brightsolid's online genealogy activities.

2.3 Friends is a wholly-owned subsidiary of ITV. It consists of three principal businesses:

(a) a social networking site, Friends Reunited, which allows individuals to find and communicate with friends;

(b) an online dating website, called Friends Reunited Dating; and

(c) Genes, which operates a social networking online family history website, but also provides its users with access to a number of historical records. Genes is not active in the digitization of historical or other original records. It licenses most of its datasets from a smaller company, [redacted]; but acquired the website and dataset for the 1901 Census from a different company, Qinetiq, which had digitized that data under contract to TNA.

2.4 Both companies therefore operate as providers of online family history data and other services, to which we refer as online genealogy services. Information on the history and recent financial performance of both companies is set out in Appendix B.

3. The acquisition and the relevant merger situation

3.1 On 4 March 2009, as part of its announcement of its results for the year ended 31 December 2008, ITV stated that it intended to dispose of Friends. Its rationale for the disposal was its narrowing of its online business to focus on the delivery of web-based video-on-demand content. As a consequence, Friends was no longer a core asset and, given the background of 'challenging trading conditions for ITV', it was decided that the business should be sold. In April 2009, the Friends Reunited Group was put up for sale. [redacted] As a result of the second round bids, Brightsolid was granted exclusivity. On 5 August, the sale and purchase agreement was signed. The transaction was notified to the OFT on 4 September 2009.

3.2 In relation to the Genes part of the acquisition, Brightsolid saw the merger as an opportunity to:

(a) build its overall customer base; and

(b) expand into the social networking segment of the online family history sector where it does not currently have a presence.

3.3 Brightsolid argued that it lacked the resources easily to develop a customer offering in regard to social networking and collaborative tools. These tools, it stated, were currently playing, and were likely to continue to play, an increasingly significant role for consumers researching their family history online. As a result, it was vulnerable to competition from international social networking sites that might develop their offering, for instance to increase customers' ability to link user-generated content and original data. Acquiring Genes provided it with an enhanced ability to respond to this competitive threat. More detail of the transaction is in Appendix C.

3.4 The sale and purchase agreement was conditional on the OFT indicating that it did not intend to refer the transaction to the CC; or, if the matter was referred, the CC having concluded, in terms satisfactory to Brightsolid, that it did not intend to prohibit

the transaction, or seek remedies that Brightsolid considered to be onerous. Arrangements are therefore in progress which would result in enterprises carried on by or under the control of Brightsolid ceasing to be distinct from enterprises carried on by or under the control of Friends. The reference to the CC was within the time period following the notification of the transaction to the OFT as set out in the Act.

- 3.5 Under the share of supply test in [section 23\(4\)](#) of the Act, a relevant market situation is created if, as a result of the merger, the merged company would account for more than 25 per cent of the supply of services of any description in the UK, or do so to a greater extent. As evident from paragraph 2.4, the two companies overlap in the supply of online genealogy services in the UK. As we discuss further in paragraphs 6.4 et seq, there is no one measure of the share of supply of such services; but the share of supply test would be satisfied on reasonable and comprehensive measures we have examined (the parties' estimates of the share of revenues of those services and data on the share of site visits).
- 3.6 We conclude that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation. We have therefore to examine whether the creation of that merger situation may be expected to result in an SLC.

4. The supply of online genealogy services in the UK

- 4.1. As discussed in Appendix D, Industry background, online genealogy is the investigation of ancestry and family history online. The Internet has revolutionized the ease with which some research can be carried out. Key aspects of this are:
- (a) increasing amounts of data being digitized (ie scanned, transcribed and indexed into searchable databases) and made available online; and
 - (b) the proliferation of Internet use which has increased the number of people with shared interests who have Internet access.
- 4.2. The Internet is now the publishing medium of choice for all large genealogical data projects, whether official, commercial or volunteer-run, and there is growing popularity for amateur genealogy in the UK—2 million people are estimated to access genealogy websites per month. This increase in popularity is partially as a result of the fact that genealogy websites now also provide additional services (to core data research) such as family tree software and social networking; but it has also been stimulated by family history programmes on television, notably *Who Do You Think You Are?* on BBC1, and a number of magazines on family history. As noted in Appendix D, the UK online genealogy market has grown very rapidly over the last ten years, with a rapid pace of change in the number of suppliers and the range of their product offerings.
- 4.3. The UK online genealogy supply chain has four main constituent parts:
- (a) ODHs, many of which are public bodies which may not have the resources (or remit) to digitize and retail the data sources themselves; accordingly ODHs tend to offer access to their records via partnerships with private companies that are able to digitize the data, known as digitizers. Examples of ODHs in the UK include TNA, the General Register Office (GRO), the General Register Office for Scotland (GROS) and the British Library.
 - (b) Digitizers, which typically scan and transcribe the data source in return for a period of practical exclusivity in use of the data. (Sometimes different companies

will scan and transcribe the data.) The digitizer may itself also retail this data online to end-users or it may partner with online retailers or license data to other retailers.

(c) Retailers, which market and sell the data and/or related services to end-users (but may themselves also be involved in digitizing or sublicensing—in effect wholesaling—the data). There are currently at least four main online retailers of genealogy services in the UK whose offering extends to cover birth, marriage and death (BMD) data and a substantially complete range of released England and Wales census data: Ancestry, FMP (including its operation of the 1911 Census website on behalf of TNA), Genes and The Genealogist (operated by Genealogy Supplies (Jersey) Ltd (GSJ)). As shown in Annex 3 to Appendix D, the parties listed over 30 suppliers of online genealogical services, including a number of free sites.

(d) End-users, who obtain information by either purchasing it, accessing publicly available information or sharing information with other end-users. The interests of end-users vary widely, from occasional users who only wish to develop a basic family tree (and for many of whom family history is a marginal leisure activity which is competing with many other leisure activities), to customers who wish to use specialized datasets to add richness to the portraits of their ancestors, and to professional users, such as heir-tracing companies.

4.4. There is significant differentiation among the many companies that can be said to offer online genealogy services, including:

(a) the type and range of data offered;

(b) the quality of the data offered (eg in terms of searchable fields);

(c) the range and quality of other services offered, different retailers putting a different emphasis on particular services such as specialist information, core data, social networking or other website functionalities;

(d) the level and structure of their charges, including the extent to which particular data or services can be accessed free of charge, with some sites wholly free of charge; and

(e) the extent of their involvement in the upstream activities in the supply chain—the creation of digitized data—as well as the downstream retailing of data.

4.5. The difference between FMP and Genes subscription offerings, for example, is shown in Table 1 (both parties also offer pay per view (PPV) access to their records).

TABLE 1 **FMP and Genes subscription percentage**

<i>Supplier</i>	<i>Subscription packages</i>	<i>Price and term</i>	<i>Data/service available</i>
FMP	Explorer	£54.95 for 6 months	All FMP data, excluding 1911 Census
		£89.95 for 12 months	All FMP data, excluding 1911 Census
	1911 Census	£39.95 for 6 months	1911 Census only
		£59.95 for 12 months	1911 Census only
Full		£94.40 for 6 months	All of above
		£149.90 for 12 months	All of above
Genes	Standard	£9.95 for 6 months	Social networking/family tree
	Gold	£34.95 for 6 months	As Standard, plus Genes core records

Source: CC study from information provided by parties.

- 4.6. While Genes focuses on the provision of social networking and core data (ie BMD and census data), FMP focuses on core data and specialist data, with no social networking features. The only overlap is in the supply of core data. As noted in Annex 2 to Appendix D, FMP offers all core records, while Genes offers all core records aside from the 1881 and 1911 Censuses. FMP also offers at least 18 non-core record sets that are not available on Genes.³ Genes' Gold subscription, referred to in Table 1, includes access to all of Genes' social networking tools, which FMP does not offer. FMP also told us that its core data offering was of a higher quality than that offered by Genes.
- 4.7. Brightsolid and Friends both argued that they were complementary (in the non-technical sense of the word) rather than competitive to each other, Brightsolid focusing on a greater range and quality of data, Friends on social networking functions.⁴ Hence they stated that the merger would provide Brightsolid with the opportunity to expand into the social networking segment where it did not currently have a presence and would provide Genes users with [X] access to [X] data than would otherwise be the case.

Market definition

- 4.8. Much of the genealogy data available on the Internet can be accessed by other means, including at the premises of the ODHs, but at considerably greater inconvenience to users, and the growth of interest in family history itself is to a large extent attributable to the availability of such information on the Internet. As noted in Appendix D, for example, TNA told us that the ratio of online to on-site delivery had doubled to almost 200 to 1 in the last year alone. We saw no indication that the market is broader than online genealogy services defined to encompass all suppliers offering a varied mix of data and other services.
- 4.9. We acknowledge that it is possible that relevant markets could be defined more narrowly than the whole of online genealogy services. In other words, there may be subsets of types of products that would, collectively, be able profitably to impose a small but significant and non-transitory price increase (SSNIP) of, say, 5 per cent. More generally, suppliers of groups of products within the broad set of online genealogy services, for example certain sets of data or some social networking products, may collectively be able to relax their competitive effort in a small, significant and non-transitory way, as would be consistent with a narrower market definition.
- 4.10. The evidence suggests that there are broadly three distinct aspects to online genealogy services—core data, non-core data and social networking—and, as noted in paragraph 4.6, that the parties only overlap on the provision of core data. Therefore, if we were to consider separate market definitions for each of these segments, the only 'market' in which both companies would be present would be the core data market. Moreover, of the two parties, only Brightsolid has been directly involved in the upstream activity of creation of digitized data. It is not, however, necessary to adopt such narrow market definitions in order to examine overlap in a particular segment, such as core data, of a wider market.
- 4.11. For the purpose of our inquiry we believed it appropriate to adopt a broad relevant market comprising all online genealogy services as defined above, rather than three narrow market definitions, given the possible interrelationship between them,

³Main parties' joint submission.

⁴Matching and sharing of data with other users.

including the possibility, which we discuss further below, that either of the parties may extend the scope of their activities into services they currently do not provide. However, in considering the competitive effects within this broad market, we take into account the differentiation between different providers' product offerings.

5. The counterfactual

- 5.1 In order to assess the effects of the merger, we have to consider not only whether each of the companies would continue to operate as competitive constraints on each other in the absence of the merger, but also whether competition between them or with other suppliers of online genealogical services could become more or less effective, as a result of additional investment or other strategic developments they may pursue. We have assessed the prospects for the two parties in the absence of the merger over a period of about the next two years;⁵ there would be no reason to consider a longer period in the context of a rapidly-changing and dynamic market such as the one we are currently considering, indeed a shorter period could well be appropriate.
- 5.2 Friends was profitable in the three years ended 31 December 2008 as, within it, was Genes.⁶ In addition, forecasts in the Information Memorandum issued to potential purchasers, and in Brightsolid's valuation of the group, show that the parties believed it would continue to be profitable in the period to December 2011,⁷ although each had differing views of the level of that profitability. ([REDACTED])
- 5.3 ITV said that, as Friends was a profitable stand-alone business, ITV would not have needed to sell it if a satisfactory price had not been achieved through the sale process, and Friends could therefore have remained part of ITV. ITV also, however, stated that it believed that Friends would be better able to fulfil its potential with a strategic partner, ie where it was a core asset. ITV [REDACTED] argued that the most likely outcome was that it would have decided not to retain the business, and would have sought to re-engage with other bidders who had expressed serious interest earlier in the sales process.
- 5.4 [REDACTED]
- 5.5 ITV told us at the same time that it would [REDACTED].
- 5.6 Genes' internal documents show that, [REDACTED].
- 5.7 [REDACTED]
- 5.8 [REDACTED]
- 5.9 [REDACTED]
- 5.10 Given [REDACTED], and the forecast profitability of Friends (and, within Friends, Genes), it is reasonable to conclude in our assessment of the counterfactual that, in the absence of the merger with Brightsolid, ITV would retain Friends, including Genes, at least in the short term. The actual length of this continued ownership would be dependent on ITV's future online strategy, Friends' and Genes' ongoing profitability levels, general

⁵The CC's draft merger guidelines refer, for example, to entry or expansion within less than two years being regarded as sufficiently timely and sustained to constrain a merged firm, but with the appropriate timescale depending on the characteristics and dynamics of a market.

⁶A more detailed review of the figures is included in Appendix B.

⁷Brightsolid's valuation model included forecasts for 2012 and 2013 which showed group profitability.

market conditions and ITV achieving an acceptable offer if a sale process were undertaken—all of which are uncertain. [REDACTED] would indicate a continuing interest by ITV at that point in at least maintaining the profitability and the competitiveness of the group in the short term; but this is tempered by [REDACTED]. It is more likely than not that in the absence of the merger the rate and scope of Genes' product development would decline.

- 5.11 Brightsolid absent the merger is forecasting [REDACTED] (see Appendix B). In addition to a complete set of previously available census data and core BMD datasets, it has recently digitized, indexed and transcribed the 1911 Census and is at present the only entity providing online access to it (initially on TNA's 1911 Census website operated by FMP, but recently also on its own website). Brightsolid saw its strategic development as including: [REDACTED].
- 5.12 Our review of internal (strategy) documents also suggests that before the merger FMP recognized the need to expand its offering to improve its ancillary services. This suggests that absent the merger, FMP would continue to be a proactive participant in the genealogy market which could include the development of at least some elements of social networking facilities.
- 5.13 Brightsolid told us, however, that [REDACTED].⁸ Hence, any improvements resulting from specific investment that it could conduct in the counterfactual would not be of the same scale, and would not occur within the same time frame, as would be possible if the merger went ahead. Specifically, Brightsolid stated that it would not invest in developing a comprehensive social networking offering in the absence of the merger as this investment would involve too high a risk to reward ratio.
- 5.14 Brightsolid's statement is confirmed by the lack of specific project plans by FMP to improve its non-data offering before the current merger was considered. Conversely FMP has advanced plans to improve its data offering [REDACTED]. FMP also told us that its product development plans after the merger would focus on enhancing the user experience for accessing official records ([REDACTED]). This suggests that absent the merger FMP is likely to focus its investment on building on its strengths rather than on broadening its range of services to include, for example, social networking functions.
- 5.15 There is, therefore, no evidence to suggest that either company would exit from the market in the absence of the merger. However, absent the merger the parties are unlikely to offer as broad a range of services (in terms of data and ancillary services) as would be achieved with the merger at least in the period we are considering. Furthermore Genes' consideration of the options of [REDACTED] do not suggest that Genes is likely to become a more significant independent competitor in developing or retailing new datasets.
- 5.16 The merger will therefore remove any competitive constraint between Friends and Brightsolid, but the counterfactual strategies outlined above do not indicate that the two parties would compete to develop new overlapping products to any significant extent in the period we are considering. The greater constraint to invest in new products might be from Ancestry, which offers a broad product offering, overlapping with all of the parties' products.

⁸[REDACTED]

6. The competitive effects of the merger

- 6.1 We considered three possible ways in which the merger could adversely affect competition in the supply of online genealogy services:
- (a) possible unilateral effects, namely whether a loss of actual or potential competition between the parties to supply online genealogy services could allow the merged company profitably to raise prices, or to reduce investments in improving the quality or range of its services;
 - (b) possible coordinated effects, namely whether the merger could create two relatively symmetric companies (ie Ancestry and the merged entity) with a high combined share of the market, making it likely that they would start coordinating their prices or other aspects of their offerings, or coordinate more effectively than in the absence of the merger; and
 - (c) market foreclosure in the supply of digital genealogy services, ie whether the merger could affect competition in supply of digitization services and/or availability of data to retailers of online genealogy services including potential entrants, thereby adversely affecting competition in the supply of online genealogy services.

Unilateral effects on online genealogy services

The potential lessening of price competition in the short term

- 6.2 We first considered whether any loss of competition between the parties would be such as to allow the merged company profitably to raise prices, at least in the short term. The scale of any unilateral effects is in turn likely to be affected by:
- (a) Closeness of competition between the two suppliers. If the products provided by the parties are close substitutes for each other so that the parties represent a greater constraint on each other than other companies can provide, the merged company would find it more profitable to raise prices. Similarly, the merged entity might be able to relax its investment in improving the quality and range of its services if the parties had previously been a stronger constraint on each other than the constraint coming from other suppliers in making investment decisions.
 - (b) The sensitivity of their customers. If customers are less willing to switch away from the merged entity's offer in response to an increase in prices or other deterioration of the competitive offer, the merged company will find it more profitable to lower its competitive effort.
- 6.3 The evidence we considered in order to appraise the potential loss of competition in the short-term included:
- (a) market shares;
 - (b) event studies—for example, the effect on companies' revenues and prices of entry of Genes, FMP and third parties; addition of the 1901 or 1911 Census data; and significant price and non-price changes;
 - (c) analysis of parties' pricing and non-pricing decisions/reviews and other internal documents over time;

- (d) customers' preferences and choices, as shown by evidence from our user survey;
- (e) analysis of whether the merger could increase competition in the short term, by improving efficiency or investment in product development; and
- (f) analysis of whether current/planned investment decisions would lead to an increase in price or non-price competition between the parties absent the merger in the longer term, including an analysis of past innovations and other product developments, and the success of these product developments in winning new customers.

The effect of the merger on market shares

- 6.4 Generally market shares can provide some indication of market power as in some specific circumstances the price cost margin that a firm can charge is proportional to its share of units sold. For this reason, market shares based on volume can be used to inform views on firms' market power. However, frequently actual market circumstances are such that this relationship is less clear-cut. Factors such as product differentiation, differences between customer groups, the extent to which different firms benefit from a presence in a number of different markets, etc can decrease the reliability of market shares as an indicator of market power. For this reason, we considered a varied set of measures with the aim of providing some information on the relative market power of various companies operating in the market. These are presented in Appendix E.
- 6.5 The OFT quoted estimates by the parties that Ancestry accounted for somewhat less than one-half (about [X] per cent)⁹ of the turnover of online genealogical services in the UK, and Genes and FMP combined for somewhat less than one-third (about [X] per cent). Market shares based on revenue, however, make no allowance for use of free sites. On the other hand, those based on volume may be affected by the different pricing structure of different suppliers: those whose customers tend to use subscriptions may encourage more use of data than those whose customers tend to use PPV.
- 6.6 The differences in the measures of market shares primarily provide information about the various segments of the differentiated product market. As discussed in Appendix E, we therefore looked at Ancestry's, Genes' and FMP's relative shares of UK revenue, total UK subscribers, new subscriptions, PPV purchases and new registrations.¹⁰ We also used Hitwise data¹¹ to look at other players in the market, including free sites and social networking sites.
- 6.7 TNA provided us with data on page downloads appropriate for comparing the parties' performance in retailing TNA records. TNA uses this data to calculate the royalties it is to receive from each party and considers that they are the best proxy for the parties' revenue from the retailing of TNA data.

⁹As initially quoted by the parties; they subsequently revised their estimates, slightly increasing those for Ancestry and slightly reducing their own combined market share but the latter still remaining above 25 per cent. The parties told us that they were not able to verify the figures on which these estimates were based. Other comments by the parties on these figures are in paragraphs 6.33 to 6.41 of their [main submission](#), reproduced on the inquiry website.

¹⁰We looked at the relative shares of these three main providers only in order to compare the position of these three providers before and after the merger, not in order to assess their shares in the market as a whole.

¹¹Data produced by Hitwise, an online intelligence company owned by Experian, based on visits to 45 family history websites contained in Experian Hitwise's 'Lifestyle Family' category which were collated into a custom category.

- 6.8 TNA data indicates that Ancestry has a very large majority (greater than [X] per cent) of TNA downloads. This suggests that the most significant competitive interaction might be between Ancestry and other companies rather than among companies accounting for a small portion of the market. However, this takes no account of other aspects of retailers' offerings, such as non-TNA records (in particular, non-core data) and social networking functionalities; it may also to some extent reflect Ancestry's use of subscription rather than PPV charges, which would encourage a greater use of records.
- 6.9 We have compared Genes', FMP's and Ancestry's relative shares of turnover, total subscribers, new subscribers and page impressions. Ancestry has a [X] per cent share of the combined turnover of Genes ([X] per cent), FMP ([X] per cent) and Ancestry, suggesting that it has the highest overall share of UK turnover, these three retailers being the largest in terms of UK turnover. Ancestry also has a higher share of total subscribers ([X] per cent, the Genes and FMP shares being [X] and [X] per cent respectively) and new subscriptions¹² ([X] per cent, the Genes and FMP shares being [X] and [X] per cent respectively). We note that these measures of subscribers use only volume rather than also taking account of value shares, and it is likely that on a value basis Ancestry would have an even more substantial share.
- 6.10 We have also looked at Hitwise data on site visits to assess the relative position of other companies in the market including free sites and social networking sites. In November 2009, of 45 UK genealogy sites, Ancestry sites had the highest share of site visits, [X] per cent, Genes had [X] per cent and Brightsolid [X] per cent: after the merger, the merging parties' share on this basis would be around [X] per cent lower than that of Ancestry. Over the last two years, Genes' share of visits had fallen by about [X] per cent and Brightsolid's share had increased by about [X] per cent, attributable to the launch of the 1911 Census data. These market share figures on visits also show that FamilySearch (a free site) appears to have a similar share of visits to FMP. Site visits do not, however, tell us about the sites' relative paying customer base, revenue, or ability to attract new paying customers.
- 6.11 The market share figures confirm therefore that Ancestry is still likely to have a stronger position in the market than the merged company; and also highlight the significant differentiation and limited overlap between the parties' offerings. For example, Genes' share of total and new subscriptions is significantly higher when its social networking-only Standard subscription is included, highlighting its focus on social networking.¹³

Event studies

- 6.12 We conducted some analysis of events such as entry and price changes. The changes in FMP's new subscriptions over time following price promotions suggest that customers respond to price changes and that there is the potential at least for price competition.
- 6.13 This is confirmed by internal documents of FMP on the pricing of the 1911 Census data where it considers a number of rivals' prices as part of its assessment. However, the volume and price data we had did not allow us to reach any con-

¹²We exclude Genes' Standard subscription from the total and new subscriber figures as this includes social networking only.

¹³The introduction of the 1911 Census as part of FMP's subscription is too recent to be picked up in market share figures: this may have increased FMP's share of new subscribers.

clusions concerning the extent of any customers' reactions to *relative* price changes.¹⁴

- 6.14 The volume responses to entry are hard to assess as the market size was not stable during the period (there were phases of rapid growth interspaced by more modest growth or even short periods of decline) and we cannot control for other determinants of individual companies' volume (for example, promotions and advertising). Furthermore, we are not able precisely to split out the entry dates of different competitors to compare the effects on volume. The event studies were, therefore, inconclusive in helping us to establish the effects of the merger on competition.

Pricing and other decisions

- 6.15 Our review of the parties' internal documents suggests that competitors' prices are taken into account in the pricing decision. However, there is nothing to suggest that the parties represent a closer constraint on each other than Ancestry, or indeed other providers. FMP's review of prices prior to the launch of the 1911 Census data in fact benchmarks against Ancestry but not against Genes for subscription products.
- 6.16 We summarized in paragraphs 4.5 and 4.6 the difference between Genes and FMP both in the services they offer and their price levels. In paragraph 26 of Appendix F, we also compare the subscriptions they offer and price levels with those of Ancestry: Ancestry's offer has a closer similarity to the offerings of either of the two parties than their offerings are to each other. Although Genes offers a subscription for social networking only, its lower-priced data subscription is more similar to Ancestry's Essentials subscription than it is to any of FMP's subscription packages. Ancestry's Premium subscription and FMP's Explorer and Full subscriptions offer similarly comprehensive levels of core and non-core data. This would suggest that Ancestry is a closer competitor to each of the parties than they are to each other.

Other internal documents

- 6.17 There were a number of references in some internal documents we saw (to which we also refer in paragraphs 14 and 15 of Appendix F) to the two parties regarding each other to some extent as competitors, with the implication that competition could be reduced by the merger.
- 6.18 Genes' documents, for example, referred [REDACTED].¹⁵
- 6.19 Friends argued that these were isolated comments within a number of much larger documents, not therefore representative of any strategic intention. References to [REDACTED] related to only a marginal part of its business—core data—in which the parties overlapped. Some of the documents were by now several years out of date and of no relevance to the current market given the particular speed of change and rapid pace of entry, facilitated by the online environment in which it operated, and were based on the very limited information at the time, including what was subsequently shown to be a significant understatement of Ancestry's market share. References [REDACTED] were one-line mentions in board packs, with no follow-up investigation or documentation and no further discussion on these points. Friends told us that [REDACTED].

¹⁴In other words, the increase in FMP new subscriptions following a price reduction could be entirely due to new customers coming to the market, rather than any switching from rival suppliers.

¹⁵[REDACTED]

- 6.20 Brightsolid's internal documents included references to Genes' perspective that the Genes Gold subscription was being successful in preventing migration of casual genealogists to either Ancestry or FMP (although Brightsolid told us that it could see no such impact); to a merger allowing it to 'minimise direct competition between [the] sites for audience share'; to Genes 'competing on price and popular entry point with high brand awareness for new customers' (although with little evidence that Genes currently planned to provide a fully-rounded genealogy package or intended to steal market share from Ancestry or FMP); to a purchase of Genes consolidating the position and preventing a new competitor from entering the 'battle for market share and data'; and to a Brightsolid objective to move to being the clear market leader. A November 2006 report for Title Research Group also referred to 'clear blue water' between the three key companies and others, which are limited by breadth and quality of data or UK presence.
- 6.21 Brightsolid similarly argued that, taken as a whole, the documents stressed the complementarity of FMP and Genes rather than their limited overlap and that they were based on very limited information available at the time. On the reference to the purchase of Genes being to prevent a new competitor acquiring it, this was in no way the main reason for the transaction, nor would this prevent a new competitor entering the market in other ways; its ambition to lead the market was a longer-term—maybe three to five years—objective, relating to its strategy in general (referred to in paragraph 5.11), not just the effect of the merger.
- 6.22 We have considered the references in these internal documents and the parties' explanation of them alongside the other evidence we have considered, and accept that we should not put undue weight upon them, bearing in mind the context of all the other evidence we have considered.¹⁶

User survey

- 6.23 We commissioned a survey of about 4,000 Brightsolid and Genes users to provide evidence on consumer preferences, on their willingness to switch between suppliers, and on the likelihood of their doing so in response to changes in price or for other reasons, which would be indicative of the nature and extent of competition between suppliers. Survey results, however, also have to be considered in the light of other information available.
- 6.24 The survey showed, among other things, that:
- (a) There was significant overlap in the use of family history sites, the average user making use of four sites over the previous 12 months. A majority ([X%]) of FMP and Genes users used both sites; but somewhat more of those users also used Ancestry; and two free sites—FreeBMD and FamilySearch—were also each used by a significant proportion ([X%]) of FMP and Genes users. There was a good deal of overlap in paid-for as well as free Genes and FMP sites.
 - (b) There was a significant difference in subscription customers' usage of the Genes and FMP sites. A large majority ([X%] per cent) of Genes subscription users paid only to upload their family tree and progress it through searching, matching and sharing with other users; only a small minority ([X%] per cent) had a subscription

¹⁶We also noted a comment in a consultant's report for Brightsolid prepared when it was considering making a bid for Genes, that 'a detailed assessment by the CC of any buyout of Genes by either Ancestry or FMP is likely since it would reduce the number of key players from 3 to 2 and could significantly reduce competition in both the sourcing and retail markets'. We give less weight to this document, being prepared for Brightsolid by an external consultant and at short notice, and accept that it was only a preliminary view, prior to discussing the issues in detail with management.

which allowed access to official historical records. In contrast, all FMP subscriptions offer access to official historical records.

- (c) Although the majority of both Genes and FMP users search for a particular ancestor/person ([x%] per cent of Genes users, somewhat more ([x%] per cent) of FMP users), the other main reasons for using the sites varied significantly. For example, among the main reasons for using the sites, a majority ([x%] per cent) of Genes users, but only a small minority ([x%] per cent) of FMP users, searched other users' trees or shared their trees with others; a significant proportion ([x%] per cent) of Genes users but only a small proportion ([x%] per cent) of FMP users interacted/communicated with other site users; a majority ([x%] per cent) of FMP users but only a minority ([x%] per cent) of Genes users searched for a particular set of records. Use of the two sites is therefore significantly different. The survey showed that use of the FMP site was more similar to use of the Ancestry site than to use of the Genes site and use of the Genes site was also more similar to the use of the Ancestry site than to use of the FMP site; this is consistent with Ancestry offering not only core datasets as offered by both Genes and FMP; but also non-core data similar to that of FMP, and social networking facilities similar to those of Genes.
- (d) The survey also suggests that a substantial proportion of PPV users would respond to a price increase: in the event of a 5 per cent price increase, a substantial proportion (some [x%] to [x%] per cent) would reduce their usage, and a smaller proportion ([x%] to [x%] per cent) use another website, although only a very small proportion ([x%] to [x%] per cent) would have stopped researching. Subscription users were less likely to respond to price increase by reducing their usage; but in response to a 5 per cent price increase more (some [x%] to [x%] per cent) would switch to another website (which may not involve any additional cost if they already subscribe to more than one site as many do) but less ([x%] to [x%] per cent) stop research.
- (e) Of those Genes and FMP users currently intending to switch to another site at the end of their current subscription or PPV credits package (although this may be for reasons other than in response to a price increase), a majority were likely to switch to Ancestry rather than to (respectively) FMP or Genes. But many were also willing to switch to free sites. Genes rated lower among FMP users' potential substitutes than the free sites FreeBMD and FamilySearch; and a significant proportion of Genes users were also willing to use those two free sites (although a higher proportion of Genes users would switch to FMP).

6.25 The user survey is in our view consistent with the view that FMP and Genes complement each other, with a different focus on supply of data and social networking respectively, and are not close competitors. It also provides evidence that Ancestry represents a significant constraint in the market, Ancestry being the most likely alternative website for customers of both FMP and Genes who are intending to switch at the end of their subscription or PPV credits package. It indicates, moreover, that free sites may constrain prices in the market: for FMP users intending to switch at the end of their subscription or PPV package, the free sites FamilySearch and FreeBMD are ranked higher as likely alternatives than Genes; Genes users in the same condition rank FMP higher as a likely alternative than these free sites, but there are still a considerable proportion of users who consider the free sites to be an alternative. The extent to which users make use of a number of sites, including free sites, suggests they would have little difficulty in switching between sites, which is also shown by the substantial proportion of users who said that they would switch to another site in response to a price increase.

- 6.26 The user survey is therefore, in our view, consistent with there being relatively little competition between FMP and Genes compared with the competition with other sites, in particular Ancestry.

Potential benefits to competition from the merger

- 6.27 As discussed in paragraphs 37 to 74 of Appendix F, the merger could result in potential benefits to competition by providing scope for the merged company to compete more aggressively on price than would otherwise be the case. First, it would allow the elimination of a double mark-up on Genes' Gold subscription¹⁷ [§]. Secondly, to the extent that consumers view (some of) the parties' products as complementary, the merged company might have the incentive to set lower prices for the parts of the offer that are seen as complementary than would have been set by the two companies independently. Thirdly, the merger creates a competitor more similar to Ancestry, with a comparable bundle of products combining FMP's existing core and non-core records with Genes' social networking facilities; and the merged entity could impose more of a competitive constraint on Ancestry than the parties are able to do separately (as Ancestry itself acknowledged), increasing overall rivalry in the market. While we note the potential for the merger to bring about benefits to competition and lead to incentives for the merged firm to increase competition, we do not need to reach a conclusion on the extent to which we expect the merger to lead to lower prices or increased competition more generally. Our conclusion on whether the merger may be expected to lead to unilateral effects (see paragraph 6.37) is not predicated on the merger leading to increases in competition, but on our expectation that, given the differentiation in the product offerings of FMP and Genes, the limited overlap and competition between them, and the remaining constraints in the market, there is little reason why the merger would result in an increase in prices or other deterioration in the product offering.

The potential loss of competition from reduced price competition in the future

- 6.28 We assessed whether the parties' current or planned investment decisions are such that we would expect price competition to increase in the counterfactual. This involves an assessment of pre-merger and counterfactual investment plans.
- 6.29 The evidence outlined in the counterfactual section suggests that in the absence of the merger the parties would be unlikely to invest to broaden their services to the extent that they would be significantly closer to each other in their product offerings.
- 6.30 The evidence suggests therefore that current or planned investment decisions are unlikely to result in future price competition that would be lost as a result of the merger.

The potential loss of competition to expand services

- 6.31 We considered whether the merger might reduce the competitive pressure on Genes and FMP to expand the services they offer on their sites so that the merged company would offer fewer services in the long run than the parties would in the counterfactual.

¹⁷There is currently both a wholesale and retail mark-up; following the merger there would just be a retail mark-up. The current double mark-up arises because [§], which will include a mark-up over [§] marginal cost of making record sets available; Genes will impose its own mark-up over its retail marginal costs which includes that fixed amount. [§]

- 6.32 As apparent in paragraphs 5.6 and 5.12, incentives to expand the range of data offered, and hence compete for a better offer, exist absent the merger and the parties have plans to carry these forward. However, it does not appear from the parties' internal documents that the incentives are driven by the threat represented by each other. The presence of Ancestry, which offers the whole spectrum of service, is much more likely to provide the incentives to invest.
- 6.33 Furthermore, there are real possibilities that the merger might provide incentives to invest in increasing data and improving services beyond what the parties could do individually. Brightsolid stressed the uncertain nature of investments in digitizing data. It said that as part of a larger entity, in particular as a result of having a larger guaranteed distribution network for those datasets that it digitized, it would be better able to shoulder the risk inherent in large digitization projects ([REDACTED]), and compete more effectively with other large companies such as Ancestry and Google (a bidder in the [REDACTED] project).
- 6.34 We considered whether in principle there would be ways to use contractual agreements between a digitizer and a retailer to reduce this risk that did not involve a merger. However, we considered that there would be significant uncertainties and asymmetric information between the two companies (for example, around the value of marketing efforts or the likely cost of digitization) that would limit their ability to rely on a contract in this way. Furthermore most large retailers (with the exception of Genes) are also involved in digitizing data and would therefore be competitors in a digitization project and hence unlikely to want to engage in this type of agreement with a competitor.
- 6.35 As outlined above, the merged company is likely to become a closer competitor to Ancestry in terms of being able to offer a more comparable set of products. The merger could thereby stimulate Ancestry to innovate and further improve product quality (for example, by adding more specialist records and by improving the functionality of the site).
- 6.36 Levels of investment depend on both the ability and the incentive to invest in product development. Therefore, we assess the effect of the merger on both of these aspects of product development. The evidence suggests that the incentives for both the parties and Ancestry to invest in product development are unlikely to decrease and might even increase as a result of the merger. In addition, the merger increases the ability of Genes to invest in product development, since it would no longer be a non-core asset [REDACTED]. Finally, we have seen no evidence to suggest that, should the merger result in increased price competition, this would reduce Ancestry's ability to invest in product development.

Assessment of unilateral effects

- 6.37 In our view, therefore, the unilateral effects of the merger may not be expected to result in an SLC:
- (a) Although the parties might be seen to impose some constraint on each other in setting prices, this constraint is likely at most to be limited due to the extent of differentiation and limited overlap between them and the other strong constraints

on prices remaining post-merger, principally from Ancestry but also from free core data sites.¹⁸

- (b) Overall, the evidence suggests that any loss of competition between the parties is unlikely to create the incentive and ability for the merged company profitably to increase prices.
- (c) There is no evidence that current or planned investment by either Genes or FMP would lead to the parties becoming closer in product offering and hence closer competitors on prices in the counterfactual.
- (d) The merger (and corresponding larger customer base) is unlikely to decrease and may increase the scope of investment and innovation by reducing the risk associated with upfront investment costs, as a result of the merged company offering a product more comparable to that of Ancestry, and increasing competition in innovation and improvements in product quality.

Coordinated effects in online genealogy services

- 6.38 As noted in paragraph 1.1, a main concern of the OFT was that the merger would reduce the three main suppliers of online genealogy services to two. In addition to considering the unilateral effects of the merger, we considered whether the merger would give rise to, or increase, coordination between the remaining two main suppliers.
- 6.39 In making our assessment, we considered three questions. The first is whether market conditions following the merger are conducive to coordination. Factors that may point towards coordination being feasible include the following:
- (a) If there are fewer market participants, then it is easier for companies to reach a tacit agreement and to monitor compliance with the agreement.
 - (b) Simplicity, in terms of product characteristics, market stability, symmetry and the dimensions on which companies compete, can have an effect. If the market is simple, then it is easier for companies to reach the terms of an agreement, and to monitor compliance.
 - (c) A more transparent market makes it easier to detect cheating.
 - (d) Other factors can facilitate coordination by making the punishment mechanism more effective. These include the companies having a similar scale or capacity, and growth in the market.
- 6.40 The second question is whether there is additional evidence that companies are coordinating already; if so, then a merger could make collusion more likely to be sustained even if it had only a small effect on the conditions. However, we saw no evidence that companies were currently coordinating and did not need to consider this question further.

¹⁸Among the comments on provisional findings, there was concern that the greater resources available to the two main suppliers of online genealogical services would push out the current range of smaller companies in the market. We noted in paragraph 6.24(a), however, that the average user responding to our survey made use of four sites; the willingness of users to use a number of different sites suggests that there is a significant role for smaller suppliers of both free and paid-for sites and new entrants in the market, who are able to compete by offering high service levels or more specialized data sources, that is unlikely to be adversely affected by the merger.

- 6.41 The third question is whether the merger makes the market more conducive to coordination compared with the counterfactual.

Assessment of coordinated effects

- 6.42 There is a lack of reliable measures of prices and volumes, which suggests to us that the market is much less transparent than we might have originally expected.
- 6.43 Specifically, even though data is readily available on standard charges to users, discounting is widespread. Even if companies subscribe to other companies' websites, they may not be aware of the full range of discounts available which may be targeted at particular categories of user depending on their usage; companies are also not in a position to know the extent to which other companies' users benefit from the various discounts.
- 6.44 The market seems also still to be very unstable in terms of its size, having experienced periods of growth and periods of stability both characterized by sharp fluctuations. As a result, even if there were a reliable measure of volumes available to each retailer, it would be difficult for a retailer to infer anything about competitors' behaviour from volume fluctuations as there are many other factors that affect volume. This would imply that it would be difficult to detect cheating from any collusive agreement through observing volume fluctuations (and as we note above, prices are not transparent).
- 6.45 Furthermore, although the merged company is likely to be a stronger competitor to Ancestry, it is still likely to be significantly smaller than Ancestry; hence the companies that would in principle coordinate would still be asymmetric in size. There are also a number of free sites (the extent of usage of which is also shown in the survey results) whose competitive role in the market may itself be likely to undermine any ability to coordinate behaviour between the merged firm and Ancestry.
- 6.46 Finally investment in data and other aspects of the offer raises the possibility of significant changes in the relative strategic position of companies in the market. Coordinated effects can occur in markets where firms recognize their strategic interdependence over time. This can happen when the market is relatively stable, so that the effect of individual firms' actions are recognizable, and when the actions that firms can take do not fundamentally alter the way in which they interact. In online genealogy, the acquisition of a particularly important dataset (such as the 1911 Census) or the introduction of a significantly different functionality, for example in terms of social networking, may change the way in which companies compete quite significantly and further contribute to the instability and unpredictable nature of the strategic interaction in the market.
- 6.47 For all these reasons, we do not consider that coordinated effects would be a likely outcome of the merger.

Market foreclosure in the supply of digital genealogy services

- 6.48 We considered whether the merger could affect competition in the supply of digitization services and/or availability of genealogical data to other existing retailers of online genealogy services, in turn adversely affecting competition in the supply of such services. It is also useful for us in this context to consider prospects for entry in the upstream activity of digitization services; we consider entry into retailing of online digital genealogy services in paragraphs 6.66 to 6.78.

Digitization of data

- 6.49 Genes is not currently active in the digitization of data. [REDACTED] and is a significant purchaser of digitized data services from [REDACTED].
- 6.50 [REDACTED] We do not necessarily accept Genes' categorization of its involvement in this project. Nevertheless, given the shortage of financial resources available to Genes, at least in the short-term period we are considering, its sole limited attempt to become involved in digitization projects to date, and its lack of previous experience or expertise in digitization, on balance we do not believe that it could be regarded as an actual or potential competitor in the digitization of data over the relevant time period.
- 6.51 We considered whether market foreclosure could nonetheless arise, first through the impact on [REDACTED]. (Similar concerns were expressed to us in the comments we received on our provisional findings.) [REDACTED] We considered what might happen in the absence of the merger and whether the merger could therefore affect competition in the supply of digitization services.
- 6.52 Genes' agreement [REDACTED]. Therefore, [REDACTED] any corresponding effect on competition for digitization of genealogy datasets cannot be regarded as wholly attributable to the merger.
- 6.53 We also, however, considered the possible implications for competition on an alternative assumption [REDACTED] we are concerned to the extent that this affects competition in the market more generally. There are two ways that [REDACTED] could have an impact on competition for online genealogy services: through reduced competition for digitization services and through reduced availability of data for existing retailers and for any new entrants (the latter of which we discuss in the next section).
- 6.54 On competition for digitizing data, [REDACTED]. There appears to us to be significant competition in the digitization of genealogy datasets between Ancestry and FMP, which may well be strengthened as a result of the merger—which was also the view of TNA—and evidence that [REDACTED].¹⁹
- 6.55 We also considered the prospects for entry to digitization. Brightsolid said that digitization was straightforward; that there was considerable potential competition for digitization projects using the substantial number of external contractors available; that FMP did not itself digitize; and that companies could compete for digitization projects even if they had no track record, just as Brightsolid had itself done successfully in respect of the 1911 Census project. (Moreover, it said, since the digitization agreements were not exclusive, any other companies could subsequently gain access to the ODH, and purchase copies of the images and commission or carry out their own transcription.)
- 6.56 It is difficult to extrapolate from the one example of the 1911 Census that access to digitization projects is open to all comers. TNA has a Licensed Internet Associateship²⁰ (LIA) programme for developing commercial partnerships which give a period of 'de facto' exclusivity, only five of which are currently in existence (with Ancestry, FMP, Genes, GSJ and Eneclann), although TNA said there were indications that there might at some future time be potential entrants to the market. Genes, moreover, viewed digitization as a complex and potentially expensive process requiring upfront capital, which meant that it was not something it would consider doing itself, although, as noted in paragraph 6.49, [REDACTED].

¹⁹[REDACTED]

²⁰The general terms of these programmes are publicly available: www.nationalarchives.gov.uk/business/licensing.htm.

- 6.57 We have acknowledged, in paragraph 6.33, that the merger will facilitate Brightsolid's investment in digitization projects as a result of its larger guaranteed distribution network. Nonetheless, there are, in our view, other means of entry into digitization, including by major companies active in digitization projects other than genealogy, that would ensure that such benefits to Brightsolid are not offset by any reduction in competition for digitization projects, or will not affect the supply of data to retailers or competition between retailers in other ways.
- 6.58 [REDACTED], by entering into the partnership with Genes, showed a willingness to adopt a model where a digitizer partners with a retailer to digitize and commercialize original data. [REDACTED]. We understand that a number of significant projects such as the British Library (newspaper archives) and the GRO's Digitization and Indexing project have been tendered for by new entrants into genealogy digitization (although not new to digitization itself). A significant number of large digitization players have recently entered the market, such as Google, currently digitizing books, and which also bid for the [REDACTED] project. Some of the most important ODHs, such as TNA, have a significant countervailing power in this market and are in a strong position to encourage new entrants to compete for digitization of their records and to prevent or mitigate any vertical effects resulting from this merger.
- 6.59 We see therefore little risk of a reduction in competition to digitize collections resulting from the merger. Potential sources of competition include providers willing to participate in partnerships to share the cost of acquisition, transcribing and indexing of records, and with other retail partnerships available if required. Hence, there is, in our view, sufficient prospect of new entry into digitization projects to offset any adverse effects of this merger even in the unlikely event that they were to occur.

Wholesaling of data

- 6.60 We considered whether the merger could, by affecting the wholesaling of data, restrict the availability of data for other retailers, first through any effects on [REDACTED]. [REDACTED] currently sublicenses data, [REDACTED] so is a significant source of transcribed datasets.²¹ However, the cost to [REDACTED] of sublicensing its datasets to other retailers is likely to be close to zero. Hence, [REDACTED], it would in all likelihood still be able to supply its current datasets to other retailers. Alternatively, its datasets could be open to an entrant to acquire, [REDACTED]. There are also other providers ([REDACTED]) of most core and specialist data from which other retailers could sublicense.
- 6.61 We also considered whether, as a result of the merger, Brightsolid would have less incentive to give other competitors in the market access to the 1911 Census data on fair and reasonable financial terms and in a timely manner; and, by providing Genes with [REDACTED] and cheaper access specifically to the 1911 Census data than would otherwise be the case, the merger would be to the detriment of other retailers of online genealogical services. But as we noted in paragraph 5.6, [REDACTED], which could to a large extent also have affected the position of other retailers and the incentive on Brightsolid to license them.
- 6.62 Both these concerns arise from FMP's current position as the only licensee of the bulk of the 1911 Census data. Ownership of data, or continued exclusive rights to its use could, in our view, be a significant source of market power, even in the context of this rapidly-changing online market. But the ownership of data, in either their original

²¹Brightsolid told us that Genealogyarchives.com represents a significant new entrant to the supply of online genealogy data, and that Genealogyarchives.com licenses its data from [REDACTED]. However, Brightsolid was not able to provide any evidence that this competitor was successfully competing with the large existing retailers. This entrant had a [REDACTED] per cent share of Hitwise site views in October 2009, suggesting that [REDACTED].

or digitized forms, generally does not lie with the digitizers or retailers of the data, but with the relevant ODH. The licence for the 1911 Census, as with most of the main data sources, was non-exclusive: although there was a period of practical exclusivity, when the data was available on TNA's own website operated by the licensee, TNA required the data to be offered on a PPV basis at a specified maximum price in this period. That short period of practical exclusivity having now ended, the digital image (but not the transcription) is available to other retailers directly from TNA.

- 6.63 Brightsolid told us that it was itself prepared to license data on commercial terms, including the 1911 Census data, and we noted in paragraph 5.11 that [§]. It is, however, possible that the terms on which Brightsolid would be prepared to supply such data, particularly the 1911 Census data, could themselves deter other retailers from acquiring such data from Brightsolid or reduce their ability to compete effectively with Brightsolid in retailing or wholesaling it. The terms on which TNA is prepared to allow additional access to the 1911 Census data are therefore potentially important as a constraint on the terms offered by Brightsolid, and to ensuring competition in the retailing of that data to end-users.
- 6.64 We note in Appendix D, paragraph 12, the responsibility on TNA to make its records as accessible as possible, and its objectives in order of importance to provide access to its records, to preserve its records (the digitization of records and their availability on the Internet reducing the extent to which they are physically handled) and only lastly to generate revenue. It has an interest in encouraging competition both among digitizers on price and service, and among retailers to ensure accessibility of records to users; it has previously made data available on a royalty rather than fee basis to maintain a range of companies of different sizes able to license material. We are aware of concerns about the terms currently offered by TNA for the 1911 Census data, concerns that arise irrespective of the merger: we note that terms that allow for effective competition between retailers of data would be consistent with TNA's own objective to make records as accessible as possible.

Assessment of market foreclosure

- 6.65 Genes is not an actual digitizer of data, nor can it, in our view, be regarded as a significant potential digitizer of data in the relevant period over which we are assessing the effects of the merger; [§]; there are other sources of potential competition for the digitization of genealogy data; and ODHs themselves are in a strong position to encourage new entrants to the digitization of data and otherwise prevent any restriction in the availability of data to retailers. In our view, therefore, the merger is unlikely to affect competition in the supply of digitization services, or to result in any market foreclosure by affecting the availability of data to retailers of online genealogy services.²²

Entry and repositioning

- 6.66 We concluded in paragraph 6.37 that the unilateral effects of the merger would be unlikely to result in an SLC; and in paragraphs 6.47 and 6.65 respectively that no coordinated effects or market foreclosure would be likely to arise from the merger.

²²Similar concerns to those discussed in paragraphs 6.49 to 6.64 were expressed to us in the comments we received on our provisional findings, including concerns about the 'de facto' monopoly that Brightsolid had over the 1911 Census data; that its high pricing for the census was very likely to be maintained if the same content was made available to Genes customers without Genes having to pay the same high fee currently proposed by TNA; and that there was also no evidence to suggest that the 1911 Census data would be licensed by TNA to other retailers on reasonable terms following the merger. These concerns arise, in our view, to a large extent irrespective of the merger, and we see insufficient reason to expect the merger itself to result in an SLC on these grounds.

We also, however, considered the scope for repositioning by competing suppliers or entry by new suppliers in the downstream activity of retailing of online digital genealogy services. (Entry into retailing may also, however, involve integrated entry into both the upstream and downstream markets, the latter of which we have discussed in paragraphs 6.49 to 6.65.)

- 6.67 As noted in Appendix G, there has been a significant degree of entry since 1990, which can be split into four main phases:
- (a) 1990 to 1997, which was characterized by the launch of a number of small specialist websites with discrete datasets or information for specialist genealogists. The main exception to this was the launch in 1996 of Ancestry.com in the USA.
 - (b) 1998 to 2001, which saw the start of large-scale record digitization and the launch of the first PPV UK site, ScotsOrigins. It also saw the launch of a number of free sites offering a variety of datasets aimed at non-specialist genealogists such as FreeBMD and familysearch.org.
 - (c) 2002 to 2003, which saw the launch of the main UK paid-for genealogy sites including Ancestry.co.uk, Genes and FMP (launched as 1837online). In addition, FreeCEN was launched and TNA's own part-commercial website.
 - (d) 2004 to 2009, which has seen a growth in the established online providers as well as:
 - (i) the launch of a number of specialist websites such as Military-Genealogy.com (military specialist) and Times Online (newspaper archive);
 - (ii) the growth and new entry of social networking websites. A number of social/cooperative websites already existed, eg RootsWeb (genealogy co-operative acquired by Ancestry) launched in 1996 and Genes launched in 2002; but this period saw the growth of social networking sites, in particular World Vital Records/FamilyLink operating on Facebook, Footnote and Geni.com;²³ and
 - (iii) the emergence of genealogy search engines such as MyHeritage.
- 6.68 Despite the scale of entry over the period since 1990 as a whole, the last significant entry into large-scale data provision occurred around 2003 with the launch of the current main players. Over recent years the market has been characterized by a lack of expansion by the smaller genealogical entities and significant entry has been in social networking rather than data retailing.
- 6.69 We discuss in more detail in Appendix G the potential to enter the retailing of genealogy data and/or social networking services in turn. There appear to be three routes to entry into the retailing of online genealogy data: integrated entry including digitization and transcription of original data as well as retailing; a more limited degree of integrated entry, the retailer first transcribing scanned images available from the majority of ODHs; and entry into the downstream activity of retailing alone, using transcribed datasets sublicensed from other retailers/wholesalers.
- 6.70 The first two of these models involve significant upfront investment, which is more risky for entrants specializing in genealogy but lacking an established distribution

²³Genealogy linked to social networking sites tends not to be UK specific.

network. We have also received some evidence from both Genes (as noted in paragraph 6.56) and TNA that project management of the digitization/transcription of large record sets requires significant skill and expertise, which might hinder a new, specialized entrant looking to acquire data through either of these models.

- 6.71 The third of these entry models for acquiring data—sublicensing from an existing provider—is significantly lower cost. Most contracts for sublicensing appear to involve no upfront costs, with licensees paying instead a flat fee per customer transaction or a proportion of revenue. We received some evidence, including Genes internal papers, that suggested that sublicensing could have disadvantages compared with owning and controlling the transcriptions of record sets. However, we note that Genes sublicenses almost all of its data²⁴ and was able to successfully launch a core data subscription product; we also noted in paragraph 5.8 that in the absence of the merger Genes was now, [REDACTED].
- 6.72 As we noted in paragraph 5.11, Brightsolid told us that it wanted [REDACTED]. But, as noted in paragraph 6.60, there are other sources of core data available to new entrants as well as to existing retailers, [REDACTED]. Overall, therefore, the evidence suggests that most core data currently offered by existing online genealogy retailers is likely to remain available to a new entrant for sublicensing.
- 6.73 An entrant may not find it so easy to access newer datasets such as the 1911 Census, although, as noted in paragraph 6.63, Brightsolid told us that it was also looking to license that data to third parties. However, the price on which it is available could reduce the prospects for new entry (as well as increasing the risk of foreclosure of existing suppliers as we discussed in paragraph 6.63). The terms on which data is available from TNA (and other ODHs) are also, therefore, important to the prospects of entry, both for entrants wishing to acquire newer digitized datasets from TNA and as an important discipline on the terms offered by the current retailers of the data for sublicensing.
- 6.74 As well as access to data, entry may involve other costs of website development and advertising. The large number of small suppliers in the market, including free sites, suggests that these costs cannot be regarded as a significant barrier to entry on a small scale, although advertising could be a significant cost for specialized suppliers aiming at a more significant scale of entry.
- 6.75 Barriers to entry in social networking are less relevant to our analysis given the limited overlap between Genes and FMP in social networking facilities. Genes argued that there had been significant new entry and expansion in recent years in social networking, including FamilyLink and MyHeritage. Genes also told us that the cost of developing a social networking offering similar to that offered by Genes was likely to be £[REDACTED], but that various ‘off-the-shelf’ social networking solutions could be purchased for one-off set-up fees of £15,000 to £50,000 and ongoing monthly fees of £1,500 to £10,000.
- 6.76 However, Brightsolid told us that to develop a social networking offering comparable to that of Genes or Ancestry would be likely to cost a ‘seven-figure’ amount, and involve significant risk if it did not succeed in attracting customers. But this is likely to reflect Brightsolid’s own position as a relatively small and specialized genealogy company, hence the advantages of the merger to Brightsolid.

²⁴The exception being the 1901 Census acquired from Qinetiq.

6.77 Brightsolid suggested that social networking entry was more likely to come from innovative new start-ups than expansion into social networking by existing data retailers. The parties told us that FamilyLink²⁵ had seen huge growth and represented a significant and successful entry into social networking, growing its customer base by using a Facebook application (although Brightsolid also told us that the viral marketing tools that were used in the distribution of FamilyLink were no longer available on Facebook).

Assessment

6.78 There has since 1990 been a significant amount of entry into what has been a rapidly-growing and volatile market. However, as noted in paragraph 6.68, most recent entry has been in social networking rather than focusing on data provision, and there has also been a lack of expansion by the smaller genealogy providers in recent years, which may indicate some barriers to entry or expansion, particularly in the acquisition of data. The more limited recent entry, however, may itself be attributable to the effective competition currently established in the market, as evidenced by the rapid growth in the use of online genealogy services. If the performance of the current suppliers should deteriorate, potential sources of entry include large firms undertaking complementary activities of digitization or social networking. The terms on which data is available from ODHs are, however, important to effective competition in this market and the ODHs are themselves in a position to encourage entry, at the retailing level of this market as well as the digitization and wholesaling levels as noted in paragraph 6.65. Although we do not expect the merger to result in an SLC between existing suppliers for the reasons set out in paragraphs 6.37, 6.47 and 6.65, we also therefore note the scope for new entry into the supply of online genealogy services.

7. Conclusions on the SLC test

7.1 We conclude:

- (a) Given the differentiation in the product offerings of Genes and FMP, the limited overlap between them and the other strong constraints on prices that would remain irrespective of the merger, there is currently at most only a limited degree of competitive constraint between Genes and FMP; nor is that competitive constraint between the two parties expected to have increased in the absence of the merger. The unilateral effects of the merger may not, therefore, be expected to result in an SLC (paragraph 6.37).
- (b) There is no reason to expect coordinated effects to result from the merger (paragraph 6.47).
- (c) We do not expect the merger to give rise to any market foreclosure that would reduce competition between retailers of online genealogy services by any effects on the supply of genealogical data to those retailers (paragraph 6.65).

We therefore see no reason to expect any price increases or other deterioration in product offering to occur as a result of the merger. There is also the potential for the merger to have pro-competitive effects on prices (paragraph 6.27), but our conclusion is not (and does not need to be) based on any expectation that the

²⁵Which they put forward as only one example of several entrants that had experienced significant growth in a short time frame.

merger would necessarily result in price reductions. We have also noted the scope for new entry into the supply of online genealogy services (paragraph 6.78).

7.2 We therefore conclude that the merger may not be expected to result in an SLC.