

6 Conclusions

The merger situation

6.1. Under the reference dated 10 September 1987 we are required to investigate and report whether arrangements are in progress or in contemplation which, if carried into effect, would result in a merger situation qualifying for investigation, in that an enterprise carried on under the name Book Club Associates (BCA) in the United Kingdom will cease to be distinct from an enterprise carried on under the name Leisure Circle, and the value of the assets taken over exceeds £30 million.

6.2. In paragraphs 4.2 and 4.3 we have described the events which led up to the making of the reference and have given the details which we consider to be material of the contractual arrangements made in June and July 1987 between Bertelsmann and Les Presses, and between Bertelsmann and WHS, in respect of the proposed transfer of interests in BCA and Leisure Circle. The effect of these arrangements, if completed, will be that Bertelsmann and Les Presses will each hold a 50 per cent interest in BCA and Leisure Circle. We consider that this would have the result, for the purpose of section 65 of the Fair Trading Act 1973, of bringing BCA and Leisure Circle under the common ownership and control of Bertelsmann and Les Presses and of BCA and Leisure Circle therefore ceasing to be distinct.

6.3. As has been mentioned in paragraph 6.1, the reference specified the test—generally known as the assets test—prescribed by section 64(1)(b) of the Fair Trading Act. We are satisfied that the relevant assets are those of BCA and that these exceed £30 million (paragraph 2.33). The reference does not exclude the alternative test, in section 64(1)(a)—generally known as the market share test—but we have not found it necessary to consider whether this test, too, is applicable.

6.4. We therefore conclude that arrangements are in contemplation by Bertelsmann and Les Presses for the joint ownership and control of BCA and Leisure Circle which, if carried into effect, will result in the creation of a merger situation qualifying for investigation.

6.5. In reaching this conclusion, we have not overlooked the arrangements, referred to in paragraph 4.4, by which, in December 1986, Bertelsmann acquired Doubleday and, in consequence, a 50 per cent interest in BCA. These arrangements were not (and could not now be) the subject of a merger reference and it would not now be appropriate for us to consider whether these arrangements gave rise to a merger situation qualifying for investigation or to speculate on what conclusions we might have reached if such a reference had been made. It is sufficient for us to say that we do not regard these arrangements as precluding us from investigating and reporting on the present reference and reaching our conclusion (paragraph 6.4).

The market for books

6.6. As we show in Chapter 3, there is some uncertainty about the value of the total market for new books in the United Kingdom but it is probably about £1.5 billion at retail prices. There has been little growth in the total volume of book sales over the last five years. There has nevertheless been a marked increase in the number of titles published each year; in 1986 they exceeded 57,000 of which 44,000 were new books and 13,000 reprints/new editions.

6.7. It has been estimated that 70 per cent of all book sales and 80 per cent of sales to individuals (as distinct from institutions) are through shops. For the most

part new book sales through shops are made under the terms of the Net Book Agreement at the net price fixed by the publisher. The other major channels for sales to consumers are book clubs and mail order bookselling; estimates of total sales through these outlets vary from £115 to £150 million.

Book clubs

6.8. The Publishers Association estimates that the total value of book club sales, excluding mail order booksellers, in 1986 was about £100 million. In the same year there were about 2.5 million members of book clubs. The PA administers the Book Club Regulations which are on the Register of Restrictive Trading Practices and set out the conditions under which book clubs operate within the Net Book Agreement. The Regulations do not specify levels of discount. Leisure Circle offers members books at a price at least 20 per cent and BCA at least 25 per cent below the publisher's net price, both exclusive of postage and packing. On average, Leisure Circle's prices are 27 per cent and BCA's 30 per cent below the net price.

6.9. The PA also administers the Book Club Concordat, which regulates the conditions under which book clubs compete with each other. The Concordat was agreed by publishers and book clubs in 1985 with the purpose of maintaining at least minimum competitive conditions between the clubs, and was accepted by the Office of Fair Trading as not being required to be on the Register of Restrictive Trading Practices. The objective was to ensure that no single club or group of clubs acting together could obtain exclusive book club rights to a book for such a period of time or for such a large number of titles that other book clubs were unable to obtain the books they needed to attract and retain members. The principal terms provided that, to qualify for an exclusive licence to a title, a book club must purchase from the publisher or produce itself a minimum of 1,500 copies (including copies for export), and they limit the period of exclusivity to three years. The Concordat was not retrospective. BCA's practice, for instance, had been to negotiate exclusivity for a period of five years and some of these contracts are therefore still in force. The Concordat permits book clubs to combine their purchases of a title in order to compete for a title and to share exclusivity if this is obtained.

6.10. The PA maintains a register of book clubs which have undertaken to operate in accordance with the Book Club Regulations. Including the 22 clubs owned by BCA and the 18 owned by Readers Union these total 72. BCA and Leisure Circle operate the two largest book club businesses. BCA's book club sales in 1986-87 were £63.6 million and membership totalled 1.66 million. In 1986-87 Leisure Circle's book club sales were £7.4 million and the membership of its single club some 350,000. Between them they accounted for about 70 per cent of book club sales and 70 per cent of book club membership in 1986. In terms of membership the third largest book club business is Readers Union with some 200,000 members in 1987, spread over 16 specialist and two general clubs. Only two other businesses, Books for Children and The Red House, have book club memberships over 100,000.

6.11. BCA has two large general book clubs each with about half a million members and two smaller general book clubs; altogether the four clubs had a membership of 1.2 million in 1986-87, over 70 per cent of BCA's total book club membership. The membership of Leisure Circle's single general club increased from 275,000 in 1986 to some 350,000 in 1987. None of the other general clubs has a membership in excess of 30,000. In total the membership of general clubs represents roughly 60 per cent of all book club members. There are differences between general book clubs in the age, sex and socio-economic profiles of members and these differences are reflected in the relative prominence given to types of books included in the range on offer. Notwithstanding these differences in emphasis, however, there is considerable common ground in the types of books general clubs seek to offer. We were told that unless these 'clubbable' books were included in the range on offer a general club lacked credibility and found it difficult to attract and retain new members. This was a particularly important

consideration since the average life of membership of general clubs was only about two years. Readers Union estimates that of all the titles published each year (see paragraph 3.23) not more than 500 were prime titles for general book clubs.

**Separateness of the
book club market**

6.12. We heard varying views on whether there was a separate book club market. The principal parties felt strongly that book clubs had to meet their real competition in the wider book market or even in the leisure market as a whole. The competing book clubs felt that it was the big clubs, and to a very large extent BCA, that constituted the competition; they did not see beyond that to a wider market.

6.13. We accept that there is a degree of overlap between book clubs and other outlets for books in the wider book market. We believe, however, that book clubs are essentially a separate market operating in parallel with the rest of the book market, and offering discounts on hardback books throughout the year. Book clubs cater for a distinct group of customers, most of whom would not usually buy hardback books in bookshops. Indeed it is the expressed aim of publishers and book clubs to reach this group of potential customers. Book clubs registered by the PA enjoy a special status within the Net Book Agreement which allows them to offer books at a discount on the net price. These clubs are governed by the Book Club Regulations and observe the terms of the Concordat, and as a result operate on a different basis from any other part of the book trade. As Readers Union pointed out, one bookseller cannot prevent another from stocking a title, whereas one book club can deny titles to another book club. It follows that prices and terms of business of book clubs are distinctly different from those maintained under the Net Book Agreement, which for the most part governs the rest of the book trade. We conclude that book clubs are properly regarded as operating in a separate market.

**Effects of the proposed
merger**

6.14. We found a wide disparity of views about the effects that the merger could be expected to have on the market. A range of opinions is evident amongst other parties from the summary in Chapter 5, but uniformly these witnesses considered that the merger would be harmful to their interests or the public interest—at least if remedies were not found for its harmful characteristics. Against that the principal parties were confident, from their different viewpoints, that the merger could have no baleful influence and should in fact be beneficial.

6.15. One possible confusion should be cleared away at once. It was natural for some witnesses, perhaps subconsciously, to make a comparison in forming their opinion between the conditions prevailing at the time when WHS and Doubleday shared control of BCA and Bertelsmann controlled Leisure Circle and those which could be expected to prevail when Bertelsmann and Les Presses jointly controlled the two. But that is not the issue. Nor is it part of the Commission's task to compare the situations before and after Bertelsmann acquired a half share of BCA through the purchase of Doubleday. The Commission have rather to evaluate *present* circumstances, and set that view alongside their assessment of conditions following the merger under review. We shall return to that later (see paragraph 6.27) but we have kept the possible confusion before us as we have considered the evidence that interested parties submitted.

6.16. This evidence comes essentially from five groups: publishers, printers, other book clubs, booksellers and consumers. In some respects their interests coincide, in others they are in direct conflict. Book clubs inevitably see the issues differently from booksellers—a particular difficulty when we consider remedies which might be appropriate for any apparent detriments arising from the merger.

6.17. The publishers fear that the merger will reduce competition: with BCA and Leisure Circle under common control, they will lose the opportunity of making a genuine bargain, and be compelled by a dominant purchaser to accept reduced margins. Authors as well as publishers could suffer, since the more onerous conditions which the new entity could enforce might deter publishers from going ahead with some titles. This could reduce the range of choice and

service to the public. Bertelsmann and Les Presses discounted these apprehensions, claiming that a flourishing publishing industry was necessary to their own success. It appears to us, on the evidence, that Bertelsmann's influence is already showing itself in a more bracing negotiating climate in BCA, and we can well suppose that if the merger were completed publishers would find sales of titles to the book clubs less profitable than hitherto.

6.18. This does not seem to us a decisive argument of itself, though we appreciate that a book club contract may often be important to a publisher in his decision whether to go ahead with a certain title or not. But the publishers' concerns are also closely bound up with those of the printers, since it is beneficial to the former to be able to lay off pre-publication costs by control of the printing contracts, and if the book club operator is able to assume responsibility for the printing contract himself, the publisher may lose some of that advantage. Both the publishers and the Printing Industries Federation represented to us that Bertelsmann, which has major printing interests of its own in Germany, Spain and Portugal, intended to use its dominant position to usurp much more of the book club printing business, especially the contracts for the longer print runs. We can only approach this on the basis of ensuring fair competition, and Bertelsmann has assured us that the new entity will place orders with the Bertelsmann print plants only if they can match offers from local printers. We accept that anything less would be against Les Presses's interest. Nevertheless it is evident that Bertelsmann will be able to manage the allocation of printing contracts from a central position, and we know that it plans to use that position—within the limit described—to control as many of the long print runs as possible. This affords the Bertelsmann print plants a status of first among equals at the least, given that runs of over 50,000 copies are likely to be more profitable than those of 10,000 and less. We cannot predict whether Bertelsmann is likely to adopt a pricing policy detrimental to printers in the United Kingdom. But the option seems undoubtedly to exist—and perhaps significantly to Bertelsmann's advantage in economic circumstances where it may be searching for business to keep its printing plants running at capacity.

6.19. Book clubs have always felt BCA's competition keenly. BCA has for many years been a dominant force in the market, and the Concordat was negotiated in 1985 in the hope of restoring a fairer balance between all the clubs, without recourse to a monopoly inquiry. The existence—and steady growth—of Leisure Circle under separate control (the only general club of a size to set beside BCA's general clubs in recent years) has been the best evidence of competition with BCA; and its readiness to join with other smaller clubs in the purchase of leading titles with a shared exclusivity has been of real practical importance to those clubs. Readers Union told us that its ability to buy titles jointly with Leisure Circle—in certain of its clubs a significant proportion of their titles—had been crucial to the survival of the clubs.

6.20. The fears of the smaller book clubs stemming from this situation seem to us to have some force. It is not merely the loss of a potential ally to those clubs; it is also the likely effects of the cessation of competition between BCA and Leisure Circle as such. Bertelsmann has assured us that editorial independence will continue in BCA and Leisure Circle, so that competition for titles between them will not disappear; in particular, it will continue over main selections, though a given title may appear in different clubs at different times. We note, however, the intention of BCA and Leisure Circle to combine with each other for exclusivity when it is convenient to do so. Although they may compete internally in some sense, this is a different thing from serious competition between independent clubs.

6.21. Since there has been strong competition between BCA and Leisure Circle over the acquisition of key titles in the past, the merger could lead to a loss of variety. Owing to the need to put together a reasonably comprehensive list, Leisure Circle has taken pains to secure—if necessary, to have produced on its behalf—titles, in the field of reference for instance, of which the prime examples

are held by BCA; it has also carried in any one fictional genre different titles from those chosen by BCA. We accept that the readerships of the two clubs are not the same, but in this context that should not be exaggerated; BCA's general clubs have overlapped with Leisure Circle, in fiction and non-fiction.

6.22. We have considered what will change in this respect after the merger. Bertelsmann told us that the loss of variety due to rationalisation of overlapping titles would not be more than 100 to 150 titles at the highest. The calculation is subjective at the margin, but we suspect that the number might be somewhat higher (cf paragraphs 3.21 and 3.22). There could be a significant loss of variety to book club members, even if one accepts (as we do) that the owners of the new entity will seek to maintain, and indeed increase, the numbers of copies of books distributed.

6.23. Competing book clubs have a range of further fears about the consequences of the merger, mostly based on the operation of the Concordat, and particularly on the working of the provision for exclusive rights. It is fair to say that these relatively small book clubs have never been satisfied with the Concordat. They considered that BCA, even before the link with Leisure Circle was projected, was so strong that its power could not be trimmed by a voluntary agreement of this sort. They felt that exclusive purchasing arrangements made the growth of existing small clubs and the starting of new ones very difficult. Many would therefore like to have the threshold of exclusivity raised not to 3,500 or some higher figure (as high as 20,000 in the view of Reader's Digest), but abolished altogether. Failing abolition, they would like the exclusive right to last for no longer than six months, or 18 at the most, and renewability on the ground of minor revisions not to be permitted. It was also suggested that existing rights should be retrospectively limited to one year. They would like a number of grey areas in the present system to be clarified, such as whether the exclusive right is limited to the United Kingdom or extends throughout the world, whether children's books and countryside books should be treated as general or specialist, and who should decide whether a title is to be regarded as specialist. They consider that the present limitations on the use of titles by specialist clubs could reasonably be relaxed. In general, we were told that in prevailing business conditions it was not practicable to rely on the present disputes procedure of the Concordat.¹

6.24. The other book clubs would therefore regard the disappearance of Leisure Circle as a competitor to BCA, and their merger, as a significant deterioration. We sympathise with this view, and with this approach to the Concordat. But it directly conflicts with that of another influential class of traders, who also object to the merger, though for partly opposing reasons. These are the stockholding booksellers. Their interests are inevitably at variance with those of the book clubs, and in essence they fear that the new entity, being still more powerful than BCA alone, would be able to enforce conditions on the publishers that would further widen the gap between the book clubs' terms of sale to the public and their own. They fear that other harmful consequences might follow from any attempt to restore the position of the small book clubs by amendment of the Concordat. Ultimately, they speculate that the balance might tilt so severely against them that many would be unable to provide a useful service to the public and might go out of business.

6.25. We have no direct evidence from consumers themselves, but Consumers' Association told us that it believed that the merger would bring about a more effective monopoly than at present, to the disadvantage of the public interest.

6.26. Against these opinions the principal parties have robustly defended the merger, as outlined fully in Chapter 4. Their arguments could be briefly

¹ The PA, which endorsed some of these points, also suggested (paragraph 5.8) other matters which might be addressed, eg an undertaking not to reduce the rates of publishers' and authors' net earnings, the restriction of exclusivity to main choices, and agreement that the licensing publisher should be responsible for controlling the printing order.

summarised as follows. Book clubs formed only a very small segment of the wider book market, which itself was in competition with other leisure interests. This conditioned the terms of book club trade more sharply than the structure of the book club market itself. Publishers wielded much greater economic strength than the book clubs, and did not have to capitulate to unreasonable terms. It would bring no advantage to the new owners, whose interest was to expand their business, to impose harsh terms on publishers, or to reduce the degree of variety and choice. They would readily co-operate in a search for new rules to regulate the industry more equitably, in the interest of book clubs generally.

6.27. It was also put to us by the principal parties (cf paragraph 6.15) that we ought to take account of the situation that would prevail if the merger did not take place. This is not as easy as it may seem. The position on paper is that there is a partnership between WHS and Bertelsmann as owners of BCA and Bertelsmann owns Leisure Circle. But that picture is distorted by the fact that agreements under which WHS would disappear from the partnership and Les Presses would join Bertelsmann in a wider partnership have been suspended only by the Secretary of State's reference to the Commission. Already arrangements have been set in train at managerial level, more exactly reflecting the relationship after the merger in contemplation. WHS was already wishing to withdraw, and Bertelsmann to take control.

6.28. There is thus a suggestion that the status quo is not a realistic one, or at any rate not a happy one for the businesses to be left in if the merger should not take place. We understand this concern, but as the parties themselves have stressed, we are unable to go back beyond the status quo. We consider in any event that while the circumstances of a certain business arrangement may be uncomfortable, and such as to cause the participants to look for alternatives, it is always in their own interest to operate the existing arrangement to their best advantage. Accordingly, we would expect that WHS and Bertelsmann would continue to find means to overcome the admitted discrepancy of Bertelsmann's sole ownership of Leisure Circle.

Conclusions

6.29. The merger in contemplation would present a new situation in the book club market. Instead of WHS and Bertelsmann jointly controlling BCA and Bertelsmann alone controlling Leisure Circle, Bertelsmann and Les Presses would jointly control and thus have a common interest in the merged entity of BCA and Leisure Circle. It would result in the elimination of Leisure Circle as an effective competitor with BCA and as a separate and effective purchasing centre. This would be particularly important in the area of general book clubs which have roughly 60 per cent of all book club members; Leisure Circle is the only general club comparable in size to the two largest general clubs operated by BCA (paragraph 6.11).

6.30. BCA, even on its own, has for many years been in a very strong position in the book club market. Other providers of book club services have had great difficulty in offering effective competition, in our view primarily because of BCA's ability to gain exclusive use for long periods of a high proportion of the titles most attractive to general book club members. The Concordat was originally envisaged as guaranteeing competition by allowing other clubs, and in particular specialist clubs, access to titles. It has, however, proved disappointing to most of these clubs. We recognise that the creation and sustaining of a successful book club has many ingredients of which exclusivity is only one. The marketing and holding of membership, the complex system needed for order fulfilment and the negative option, and editorial skill are all important. They are qualities which do not directly impinge on competition. Exclusivity, however, is a direct exploitation of market power which does have an impact on both existing and potential competition.

6.31. It has been put to us very strongly, and we accept, that the proposed merger will make an already difficult situation for the remaining independent book clubs and any potential new entrants materially worse (paragraph 6.19 et seq).

6.32. We understand that, under the contemplated arrangements, Bertelsmann would be responsible for management of the merged entity and, because of their long association as partners in a very successful book club in France, would enjoy the complete confidence of Les Presses (paragraphs 4.10 and 4.11). Clearly Bertelsmann would be the leader of the merged entity. If the merger did not go ahead, working relationships between WHS and Bertelsmann would be very different from this. WHS has a long-standing 50 per cent interest in BCA and a deep knowledge of its working arrangements; and BCA is by far the largest provider of book club services in the United Kingdom. WHS also brings to the present partnership with Bertelsmann in BCA a different style of management and the knowledge, experience and interests of a leading bookseller. Bertelsmann, on the other hand, displays a marked degree of vertical integration; it is a printer, publisher and provider of book club services, alone or in partnership on a world-wide basis. There may well be a degree of tension between WHS and Bertelsmann which manifestly would not exist between Bertelsmann and Les Presses.

6.33. It has been put to us by Bertelsmann and Les Presses that the proposed merger would enhance the quality of the services provided by BCA and Leisure Circle and that there would be certain economies of scale in distribution. BCA and Leisure Circle would each be editorially independent preserving the variety of books presently available to their members. Consumers would benefit from the expertise of the new partners in the merged entity. We believe, however, that the best way to ensure quality of service and choice for members and potential members of book clubs is, so far as possible, to sustain effective competition between book clubs. We have noted that since the merger situation that we have identified arose, there have been changes to the purchasing and other procedures of BCA and Leisure Circle which already undermine their ability to compete with each other in the ordinary sense (paragraphs 4.27, 5.40 and 6.20). We accept that sharing central resources such as computer systems and warehousing may be expected to make it possible for the merged entity to operate with somewhat lower overheads and manpower than the separate clubs. We are, however, unable to give this potential saving much weight in the consideration of the public interest.

6.34. We conclude that the effect of the proposed merger would be to reduce or distort competition and would clearly be adverse to the maintenance and promotion of effective competition between suppliers of services in the book club market. This would be a serious detriment to the public interest and we therefore conclude that the creation of the merger situation qualifying for investigation which we have identified may be expected to operate against the public interest.

6.35. The particular effects adverse to the public interest which, in our opinion, the creation of that situation may be expected to have are as follows:

- (a) the elimination of Leisure Circle as an effective competitor of BCA in the supply of book club services to the consumer (paragraph 6.29);
- (b) the elimination of Leisure Circle as a separate and effective purchasing centre (paragraph 6.29); and thus
- (c) the high level of exclusive access to titles for long periods already enjoyed by BCA would be reinforced to the detriment of existing competitors and would also result in the discouragement of new entry into the book club market, particularly in the area of general clubs (paragraph 6.30).

6.36. We gave some thought to whether the buying power of the merged entity would be likely to reduce publishers' margins and result in a reduction in the number of titles they were able to offer, recognising that this would also adversely affect authors and booksellers, and imply a reduction in the range of choice and

service to the public (paragraph 6.17). There is force in Bertelsmann's and Les Presses's argument that compared with BCA and Leisure Circle combined, many of the publishers are commercial giants which should be capable of withstanding the buying power of the merged entity. Nevertheless, the sharpness of focus that the combined clubs could bring on any one publisher and on any one title does pose some dangers to competition. We also considered whether the intention of Bertelsmann to undertake as many as possible of the more profitable long print run requirements of the merged entity, albeit on an arm's length basis, in its own printing plants would be likely to distort competition for such printing work to the detriment of printers and therefore of employment in the United Kingdom (paragraph 6.18). We therefore understand the misgivings of those publishers and printers who made representations to us on these matters but on the evidence before us we are unable to attach sufficient weight to them to support the finding against the public interest.

6.37. We have considered whether any action, other than the merger not being permitted to proceed, could be taken for the purpose of remedying or preventing the adverse effects of the proposed merger that we have identified (paragraph 6.35).

6.38. In the first place, therefore, we considered whether Bertelsmann could be required to dispose of Leisure Circle but concluded that it was not open to us to make such a recommendation. Nor did we believe that in this context it would be appropriate to suggest to Bertelsmann that it should voluntarily dispose of Leisure Circle.

6.39. In our view, however, competition would be enhanced if exclusive access to titles by the merged entity were either eliminated or very substantially modified by means of an increase in the minimum number of copies required to be ordered before exclusivity may be enjoyed, a reduction in the period of time during which exclusivity may be maintained, and the removal of a book club's ability to renew exclusivity for every new edition however modest the revisions.

6.40. Although in theory exclusivity might, so far as the partners in the merged entity are concerned, be dealt with by undertakings on their part, we regard the problem as more complex. For example, publishers, authors and booksellers would be affected as well as book clubs. We therefore believe that, subject to any steps which the Secretary of State may consider necessary to preserve the status quo, it would be desirable to have further consultations within the industry with a view to revision of the Concordat. This would enable all interested parties, including of course the parties to the merger in contemplation, to be consulted and have a full opportunity to give their views. Publishers, authors and booksellers could be affected, as well as book clubs. We recommend that these consultations could most effectively be carried out under the aegis of the Director General of Fair Trading. We believe that the rights to exclusivity would need to be eliminated or substantially changed as noted in paragraph 6.39 and that the resulting Concordat should have an improved disputes procedure. It may at the same time be desirable to meet the other suggestions made to us for improving the provisions of the Concordat (paragraph 6.23 and footnote). Consideration would also have to be given to the effectiveness of any revision of the provisions without some retrospective action affecting existing contracts between publishers and book clubs.

6.41. We further recommend that, should our recommendation above be adopted but should the Director General be unable to arrange a satisfactory modification of the Concordat within a period to be determined by him, the proposed merger should not be permitted to proceed.

6.42. As a final observation, we hope that the Director General will keep developments in the book markets under review. The book club market nowadays functions with great emphasis on simultaneous publication and introductory

offers in formats identical, or practically so, to the original publisher's edition. Such a special market in discounted hardbacks to some extent owes its existence to the Net Book Agreement, which prevents the discounting of publishers' ordinary editions. In the course of our inquiry we have noted that some of the conditions which prevailed when that Agreement was tested before the Restrictive Practices Court in 1962 no longer apply (paragraph 3.4 *et seq*). The Director General might, in the exercise of his duties under the Restrictive Trade Practices legislation, consider whether there were grounds to review the Agreement after 25 years of operation. However he decides on this larger market, it is always open to him to consider making a monopoly reference of book club services to this Commission.

R G SMETHURST (*Chairman*)

C C BAILLIEU

A M HEAD

P K R MANN

R YOUNG

S N BURBRIDGE (*Secretary*)

9 December 1987

Note of dissent

1. I agree with my colleagues that the merger in contemplation may be expected to have effects which are against the public interest for the reasons given in paragraph 6.35: the merger eliminates Leisure Circle as an effective competitor of BCA in the provision of book club services to the public and also eliminates Leisure Circle as an effective and separate buying centre, ie as the publisher's largest alternative book club customer for a book which BCA does not want to buy (or does not want to buy except on very stringent terms). Conversely the merger removes the possibility of one of the other book clubs, eg Readers Union, combining with Leisure Circle to produce an order large enough to obtain exclusivity on a book which BCA does want to buy.

2. The situation before and after the merger in terms of membership numbers of the largest clubs, based on 1986 data, is as follows:

		<i>Before the merger</i>		<i>Ratio</i>
		Leisure Circle	350,000	
		Readers Union	200,000	
		Books for Children	100,000	
		The Red House	100,000	
BCA	<u>1,600,000</u>	Others—Total	<u>750,000</u>	2-13:1
		<i>After the merger</i>		
Leisure Circle	350,000	Readers Union	200,000	
BCA	<u>1,600,000</u>	Books for Children	100,000	
		The Red House	100,000	
BCA Group Total	<u>1,950,000</u>	Others—Total	<u>400,000</u>	4-87:1

As will be seen, not only does the largest of the four non-BCA book clubs cease to exist as a separate entity but the ratio of BCA membership to that of other sizeable book clubs goes up from 2:13:1 to 4:87:1, signifying a large increase in buying power as well as in marketing power.

3. I do not think that the remedy proposed by my colleagues (ie the re-negotiation of the Concordat, in the ways indicated, under the aegis of the Office of Fair Trading), desirable though this will be, will on its own significantly or sufficiently mitigate the adverse effects of the merger. Leisure Circle will still be eliminated as a competitor of BCA and as a separate and independent buying centre; the buying power of BCA and Leisure Circle combined will still be formidable. Also there will be little likelihood in the foreseeable future of any new book club being created and developed to the size that Leisure Circle now is and with the corresponding capacity to compete with BCA.

4. I also disagree with my colleagues as to which part of the merger arrangements in contemplation should be considered. They have chosen (paragraph 6.2) to consider the total arrangement whereby Bertelsmann sells to Les Presses a 50 per cent interest in BCA and a 50 per cent interest in Leisure Circle, whereas in my view the crucial act in the merger arrangement is the acquisition by Bertelsmann of the 50 per cent interest in BCA owned by WHS (in addition to the 50 per cent interest in BCA already acquired in December 1986 through the purchase of Doubleday). This act gives Bertelsmann complete ownership of BCA at a moment in time when it also owns all of Leisure Circle—and effectively results in the enterprise carried on under the name BCA ceasing to be distinct from the enterprise carried on under the name Leisure Circle. The onward sale by Bertelsmann of 50 per cent of both enterprises to Les Presses is irrelevant in this context: it does not alter the nature or effect of the merger although it may perhaps obscure the issues.

5. I think the issue of public interest arises entirely out of the acquisition by Bertelsmann of the 50 per cent interest in BCA owned by WHS (in addition to the 50 per cent interest in BCA previously acquired). The detriments to the public interest which have been identified arise directly from BCA and Leisure Circle thereby coming under common ownership and not at all from the sale of part of the resultant commonly-owned enterprises to Les Presses.

6. In my view the acquisition by Bertelsmann of the 50 per cent interest in BCA owned by WHS and thus its onward sale to Les Presses should not be allowed unless Bertelsmann also disposes of 100 per cent of Leisure Circle as a going concern to a third party who is not a shareholder in BCA: running down or closing down Leisure Circle would not be an acceptable alternative. I realise that such disposal cannot be enforced under the Fair Trading Act 1973 and that it could only happen as a voluntary act on the part of Bertelsmann. I also realise that such an act would effectively eliminate the merger between BCA and Leisure Circle as well as the detriments arising from it.

N L SALMON

9 December 1987