

Anticipated acquisition by Brightsolid Group Limited of Friends Reunited Holdings Limited

ME/4212/09

The OFT's decision on reference under section 33 given on 2 November 2009. Full text of decision published 20 November 2009.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Brightsolid Group Limited (Brightsolid Group)** is a wholly-owned subsidiary of **DC Thomson and Company Limited** and is also the holding company for **Brightsolid Limited (Brightsolid)** and **Find My Past Limited (FMP)** which are active in the supply of genealogy data and services,¹ as well as a related online magazine.² Brightsolid digitised³ the 1911 England and Wales census (1911) and operates the official 1911 census website in association with The National Archives. Brightsolid also owns a separate business that acts as the contractor for The General Registrar of Scotland for the provision of genealogical information derived from Scottish public authority records (ScotlandsPeople). In the financial year to 31 March 2009, Brightsolid had a UK turnover of £[] and Brightsolid and FMP had UK turnover of £[] and £[] respectively.
2. **Friends Reunited Holdings Limited (Friends Reunited Holdings)** is a wholly-owned subsidiary of ITV plc and consists of three principal businesses: (1) an online social networking site that allows individuals to locate and communicate with friends from the past (**Friends Reunited**), (2) an online dating website (**Friends Reunited Dating**), and (3) a social networking online genealogy website (**Genes**). In the financial year ended 31 December 2008, Friends Reunited Holdings had a UK turnover of £18.3 million and Genes had a UK turnover of £[less than £70 million].

¹ Through websites including: FindMyPast.com, AncestorsOnboard.com, 1911census.co.uk and FamilyTreeExplorer.com.

² DiscoverMyPast.com.

³ See paragraph 9 below.

TRANSACTION

3. Brightsolid Group believes that the proposed transaction will lead to synergies arising from combining its UK genealogy businesses with the Genes business e.g. by using some of its own data sources rather than those of third parties to supply Genes' customers, and by providing them with earlier access to the 1911 census data than would otherwise be the case. Following the merger, Brightsolid Group informed the OFT that [].
4. The parties notified the proposed transaction on 4 September 2009. The extended administrative target date for the OFT to announce a decision in this case is Monday 2 November 2009.

JURISDICTION

5. As a result of this transaction Brightsolid Group and Friends Reunited Holdings will cease to be distinct. The UK turnover of Friends Reunited Holdings does not exceed £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is not satisfied.
6. However, the parties' combined share of supply of online genealogy services in the UK exceeds 25 per cent. It has been estimated by the parties to be [25-35] per cent.⁴ Accordingly, the OFT believes that the share of supply test in section 23(2) of the Act is met.⁵
7. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

BACKGROUND

8. 'Genealogy' refers to the study or investigation of ancestry and family history. Researchers of family history can make use of various public documents such as census or births, marriages and deaths ('BMD') data records. These can help a researcher trace back their family tree and to locate distant relatives. The total market for online genealogy and social networking in England and Wales has been estimated by the parties to be approximately £50 - £60 million. In addition, it is estimated that approximately 2 million individuals in the UK access genealogy websites each month.

⁴ See paragraph 28 below.

⁵ The OFT notes that it would alternatively be possible to assert jurisdiction on the basis of the supply online genealogy services in the UK by large 'full service' providers (see footnote 11 below), in relation to which the parties would have more than 25 per cent share of supply.

9. Traditionally, researchers of family history had to attend the location of the physical copies of original data holders (e.g. The National Archives in Kew or Registrar Offices) or rely on relevant offline material contained in books/CDs to access historical records. However, the proliferation of internet use in recent years has allowed much archive data held by original data holders to be made available online, through a process of digitisation: scanning, transcribing and indexing the data into searchable databases.
10. Original data holders tend to be public bodies which may not have the resources (or remit) to digitise and retail the data sources themselves. Accordingly original data holders tend to offer access to their records via partnerships with private companies that are able to digitise the data, known as digitisers. The digitiser will typically scan and transcribe the data source in return for a period of de facto exclusivity⁶ whereby they are the sole retailer of the data. The digitiser may also retail this data online to end users or it may partner with an online retailer or retailers.⁷ There are currently four main 'full service'⁸ online retailers of genealogy services in the UK: Ancestry, FMP/1911, Genes and the Genealogist.⁹
11. In light of the above, and as set out in Figure 1 below, the supply chain for online genealogy can be characterised as comprising four main constituent parts: (1) original data holders, (2) digitisers, (3) retailers (who market and sell the data and/or related services to end users), and (4) end users (who obtain information by either purchasing it, accessing publicly available information, or by sharing information with other end users).

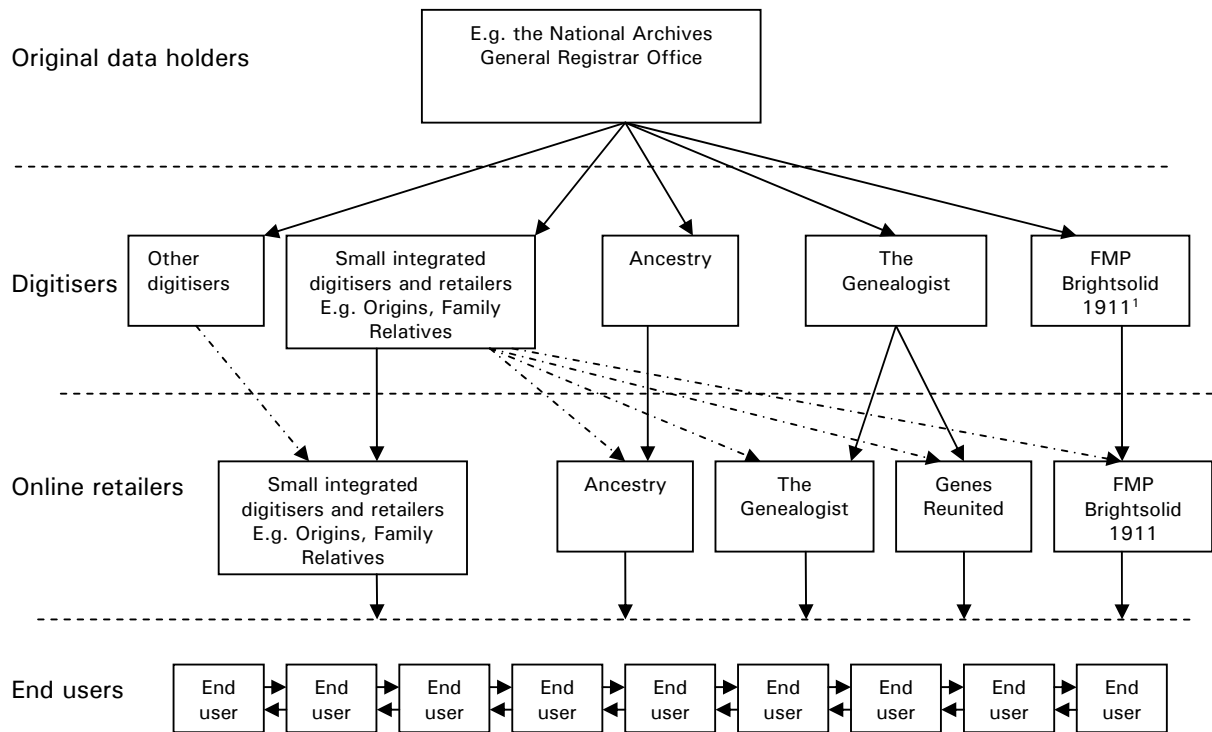
⁶ This exclusivity may arise in some instances because the digitiser scans from the original paper documents itself. Once this process is complete the digitiser returns scanned images of those documents to the original data holder. However, the return of the images may take from a few months to almost a year, during which time the digitiser gains a 'first mover' advantage, in that it is able to start the transcription process (and thus make the data available to end users) ahead of other providers.

⁷ Although, the OFT notes that there appears to be only limited wholesale supply of the core data sets.

⁸ The term 'full service' relates to the online retailing of the majority of England and Wales censuses and BMD records, which have been described as key data sets of most interest to end users. Indeed, one third party stated that a website without census records is comparable to 'a car with only three wheels'.

⁹ The Genealogist trades under a number of websites including, TheGenealogist.co.uk, RootsUK.com, BMDIndex.co.uk, and BMDRegisters.co.uk.

Figure 1: Structure of the online genealogy industry



MARKET DEFINITION

12. Both parties are active along the online genealogy supply chain and overlap in the online retailing of genealogy data and related services in England and Wales.¹⁰

Product scope

Digitisation of data sources

13. Digitisation of a data source is a broad term incorporating the different stages of scanning, indexing and transcribing of archive data into searchable databases. FMP is active in the digitisation of data. Although Genes is not currently active in the digitisation of data, it is a significant purchaser of digitised data sources.

¹⁰ DC Thomson is engaged in the dating market through a small amount of activity in its regional newspapers (with turnover of approximately £[] per annum). This activity potentially overlaps with Friends Reunited Dating online service. However, given the negligible scale of the overlap and the consequent absence of competition concerns, the dating market will not be considered further in this decision.

Online retailing of genealogy and related services

14. The parties overlap in the online retailing of genealogy data and related services. This can incorporate a wide variety of activities, including some or all of the following: access to datasets (including 'family history' data not strictly of a narrow genealogical type, such as emigration records, military service records and electoral rolls), family tree building software, ancestor matching (comparison between family trees), advice/tips on the website and networking between end users (e.g. uploading photos and sending messages between end users).
15. Brightsolid Group submitted that the market should be drawn no more narrowly than online retailing of genealogy/family history data and related services. In particular, the OFT notes that some online retailers do not provide all of the above services and some customers may pick and choose services from more than one online retailer. However, on the basis of the evidence before it, the OFT agrees that it is not necessary for the purposes of this assessment to delineate the market further.¹¹
16. However, Brightsolid Group also submitted that the relevant market in this case is much wider than online genealogy services and should include offline genealogy services.¹²
17. In this regard, despite the apparent functional similarities between online and offline genealogy services, no third parties advanced arguments that offline should be included with online. Indeed, third party digitisers and retailers overwhelmingly stated that original records require a great deal of time and expense to view in person, such that a digitised database is a much more affordable and convenient way to access data. Further, that offline databases available on CD are not easily searchable and may require the end user to search numerous pages to find records. Accordingly, CDs are a declining part of the industry, as the internet is both cheaper and easier.
18. Neither did the OFT receive any evidence of online genealogy service retailers losing business to offline resources. This is supported, in part, by

¹¹ However, the OFT notes that as discussed in paragraph 81 below, given the competitive constraints from smaller online genealogy providers may be limited, that the market may be drawn more narrowly to only the large 'full service' providers.

¹² For example, Brightsolid Group referred to a 2009 survey conducted by Dick Eastman in the United States in which 90 per cent of respondents that identified themselves as intermediate (or above) in their degree of technical and genealogical expertise, revealed that only 5.5 per cent of them were using online family tree software. However, the OFT notes that the level of genealogy user in that survey was more advanced than the average user. Further, the OFT considers that a survey conducted in the United States may not be representative of end users in the UK. Accordingly, the OFT attaches limited weight to the Eastman survey.

Brightsolid Group's response to the OFT's Issues Letter which indicates that although [].¹³

19. In light of the above, the OFT considers that the relevant product market is the online retailing of genealogy/family history data and related services ('online genealogy services').

Geographic scope

20. Brightsolid Group submitted that the relevant geographic market can probably be defined as the UK or, more accurately, England and Wales.
21. It would be expected that the majority of customers interested in UK online genealogy would be based in the UK. This was supported by the parties who estimated that [greater than 80] per cent of their revenues come from UK customers. This was supported, in part, by a third party online provider which stated that the majority of its customers are based in the UK or in the English speaking world (i.e. the UK and Ireland, with less emphasis on Australia, New Zealand, and the United States).
22. In addition, the OFT understands that all key genealogical data in Scotland is primarily accessible on the ScotlandsPeople website, which is operated by Brightsolid on a contract basis.¹⁴ The General Register Office for Scotland []. Furthermore, it is possible that a high proportion of end users in England and Wales would have at least some interest in Scottish genealogy data, and vice versa. Therefore, while the subsequent discussion will focus on the potential lessening of competition within England and Wales, conclusions here also may have current or future relevance to the online genealogy market for Scottish archive data.
23. On the basis of the evidence before it, the OFT considers that the most appropriate geographical market definition for assessment of this merger would be England and Wales, potentially with Scotland forming a separate market.¹⁵

Conclusion on market definition

24. Therefore, in light of the evidence above, the OFT considers that the most appropriate market definition in this case to be the supply of online genealogy services in England and Wales.

¹³ The Response to the OFT's Issues Letter.

¹⁴ Genes does not provide access to Scottish census and BMD records and, to this extent, there is therefore no overlap between the parties with regard to the provision of core Scottish data.

¹⁵ In relation to Northern Ireland, Brightsolid Group stated that Northern Irish records are not generally available online due to policies and institutions.

COMPETITION ASSESSMENT

UNILATERAL EFFECTS

25. Brightsolid Group argued that the transaction would raise no prospect of a substantial lessening of competition because the merged firm will be constrained post-merger by Ancestry and other smaller domestic online genealogy providers (including free providers), and by foreign online genealogy providers.
26. However, for the reasons set out below, the OFT considers that the proposed transaction creates the realistic prospect of a substantial lessening of competition on the basis of unilateral effects, i.e. that after the merger the merged entity might unilaterally increase prices or worsen another aspect of its genealogy proposition.¹⁶

Market shares

27. The OFT considers that it is worth noting that market definition is not an end in itself, rather it is a framework for analysing the direct competitive pressures faced by the merged firm. Brightsolid Group argued, and the OFT agrees, that online genealogy products are far from homogeneous, as the offerings of the different online providers are differentiated. Even where transcriptions are based on the same data sets (for example the 1901 census), they can be differentiated by their qualitative aspects (for example, the accuracy and quality of transcription,¹⁷ the number of searchable fields and ease of search, and pricing etc). In addition, subscription products are differentiated by which underlying data sets they allow access to. Accordingly, as these genealogy products are differentiated, market definition creates a risk of drawing bright lines that either overstate or understate the degree of competitive constraints posed by respective suppliers on one another.
28. Brightsolid Group submitted that, post-merger, they would have a combined market share by value of online genealogy services in the UK of [25-35] per cent (FMP/1911 [10-20] per cent and Genes [10-20] per cent).¹⁸ However, the parties argued that this market share is dwarfed by the largest online genealogy provider in the UK, Ancestry, which has a share of [40-50] per cent. The parties estimated the remaining [25-35] per

¹⁶ In this regard, third parties indicated that parameters of competition in online genealogy services include price, range of data sources, quality of transcribed data and website 'added features' (such as family tree making and/or matching).

¹⁷ The parties stated that increasing the quality from [].

¹⁸ Estimated on 2009 turnover. In addition, the OFT notes that although these shares relate to the UK, the OFT believes that they would be a reasonable proxy for the supply of online genealogy services in England and Wales. This is due to the fact that there is very limited Scottish and Northern Irish data included in these figures.

cent to be fragmented: with Genealogist [0-10] per cent, Family Relatives [0-10] per cent, Origins [0-10] per cent and My History [0-10] per cent as the largest of a long 'tail' of 'Others'.¹⁹

29. Market share could also be defined by using one of various 'volume' metrics. For instance, in August 2009,²⁰ 42 per cent of those internet users researching genealogy used Genes, 16 per cent and 10 per cent accessed Brightsolid's FMP and 1911 census website, respectively.²¹ As another example, 12 per cent of all genealogy related page views were attributable to Genes, 7 per cent and 4 per cent to FMP and the 1911 census website respectively.
30. In relation to market shares cited by the parties above, the OFT notes that the parties' calculations includes various companies that the OFT considered unlikely to compete with the parties (for instance, online companies selling offline materials). Accordingly, the OFT considers that the parties' combined market share may be higher than that submitted.
31. Brightsolid Group argued that these market shares may overstate the merged group's position in the market post merger as:
 - it excludes offline and free family history genealogy services²²
 - it temporarily overstates its position due to the addition of the 1911 census data²³ (which will decline as it loses its first mover advantage), and
 - it incorrectly includes searches for non-genealogical purposes (that is probate lawyers seeking relatives).
32. In relation to the three points made by the parties above:
 - the evidence submitted by Brightsolid Group, together with the OFT's market testing, is not supportive of the inclusion of offline services (see paragraph 17 above)
 - while the OFT accepts that Brightsolid's current revenues associated with the 1911 census may be particularly significant at present, the OFT also considers it likely that falling revenues associated with the

¹⁹ The OFT considers that the parties may have overestimated the share of supply of at least some smaller competitors.

²⁰ Nielsen.

²¹ Due to the fact that unique users may look at more than one website, these figures should not be interpreted as mutually exclusive market shares.

²² This includes small family history societies, monthly magazines, public free censuses and some free online genealogy providers

²³ Fully released on 18 June 2009.

1911 census website may be mitigated, at least partially, by future revenue attributable to the 1911 census on the FMP website,²⁴ and

- finally, the OFT does not consider it appropriate to exclude from the parties' market shares searches for 'non-genealogical purposes'. In particular, in the absence of any evidence in support of their exclusion from Brightsolid, the OFT cannot assess whether 'non-genealogical' customers face sufficiently different conditions of sale and enjoy a sufficiently wide range of alternative sources of supply to warrant exclusion on the basis that they essentially are a separate market.
33. Brightsolid Group argued that a market share of approximately [25-35] per cent is not indicative of market power. Although there is no safe harbour level, the OFT accepts that combined market shares of less than 40 per cent will not usually be expected to give the OFT cause for concern over market power leading to unilateral effects.²⁵ However, as stated in paragraph 27 above, the OFT considers that market shares may not be a good indicator of the competitive constraints posed by the respective suppliers in a differentiated product market such as this. Further, as discussed in more detail in the section below on 'closeness of competition', irrespective of the exact level of market shares, the OFT considers it more significant that the proposed transaction combines two of the three largest 'full service' providers (accounting together for approximately [70-80] per cent) of online genealogy services in England and Wales, who may be expected to compete much more closely with each other than with 'niche' providers.
34. Third party enquiries revealed that no other genealogy supplier that falls within the 'Others' category (of [25-35] per cent) is of a size approaching that of the three largest 'full service' providers. Moreover, the OFT notes from an article in Your Family Tree magazine that the parties are estimated to have 'around half of the UK paid-for genealogy market' – although the OFT acknowledges that given the known size of Ancestry this may overstate the parties' market share but may still be indicative of their perceived significance within the market.²⁶

²⁴ The OFT notes that Brightsolid Group forecast 2010 revenue for the official 1911 census website to be £[]. However, the National Archives restricted access to the 1911 census to the official www.1911census.co.uk website up to October 2009. Accordingly, to date, FMP have been unable to incorporate the 1911 census into its own FMP subscription package. A survey conducted by Your Family Tree magazine (November 2009) indicates that 52 per cent of respondents would look at the 1911 census more closely once available on the FMP website. As existing subscribers of FMP are unable to access the 1911 census, this implies that a large proportion of the genealogy user base may consider signing up to FMP (with 1911 access) in the future. This, combined with the fact that [], suggests that FMP's growth through the 1911 census in market shares may not be as temporary as Brightsolid Group suggests.

²⁵ See Draft Joint CC/OFT Merger Assessment Guidelines (page 35, footnote 68).

²⁶ Your Family Tree, October 2009, at page 13.

Closeness of competition between the merging parties

35. Unilateral effects concerns can arise in differentiated product markets where the merger combines two close choices for a substantial proportion of customers and where countervailing factors such as other choices, low barriers to entry or buyer power are not sufficient to constrain the loss of this close competition. In particular, in the absence of such constraints, the merged firm is likely to be able to recoup the revenues associated with any sales lost by increasing the price or reducing the quality, range or service ('PQRS') offer of a customer's first choice when it also owns that customer's next best choice. While customers may be able to switch to a third, fourth or more distant choice, there may nevertheless be latitude for the merged firm profitably to raise price or equivalently reduce QRS by a small but significant amount before this happens to any significant extent.
36. A primary focus of the OFT's investigation has therefore been whether – and, if so, in which respects – FMP/1911 and Genes are close competitors.
37. Third parties indicated that the market can be characterised by five main parameters of competition: (1) range of data sources, (2) pricing, (3) quality of transcribed data sets, (4) brand reputation, and (5) functionality of website. These factors are discussed below by way of introduction to the consideration of closeness of competition.

Range of data sources

38. Third party retailers stated that customers want to subscribe to websites offering the widest and most comprehensive selection of databases. This enables end users to source all their census and BMD needs in one place and avoids the need to have several subscriptions in order to access the key core data sets. In addition, unique data sets, such as the release of the 1911 census, provide the retailer with a competitive advantage over others.
39. Several small integrated digitisers/retailers commented that smaller and more unusual data sets (such as, emigration passenger lists and military service records) can also attract end users to their sites. Overall, all retailers have to keep adding more data to their subscription packages in order to ensure that they remain attractive to consumers.

Pricing

40. []. This was confirmed by an original data holder who told the OFT that, over time, the retail price for access to a specific data set falls dramatically. This is due to the combination of the data itself becoming less

useful, and also the effect of competition as more companies release rival products.

41. Both the parties and third parties agreed that there is price competition in the market. Brightsolid Group stated that FMP and Genes regularly reviewed their pricing and package structures with prices moving up and down in response to commercial pressures. To support this, Brightsolid Group submitted evidence of periods of discounting applied to the price of its subscription packages.

Quality of transcribed data sets

42. Third parties stated that the quality of the transcribed data sets is particularly important and includes the visibility of images, the accuracy of transcriptions and the number of fields transcribed.²⁷
43. The parties agreed that the accuracy of transcribed data was important. It is notable that despite several 1901 census transcriptions being available online, FMP has decided to invest in its own version which it asserts will be more accurate and detailed than the version provided by Genes.

Brand reputation

44. Brightsolid Group stated that the cost of digitising data can range from £100,000 to £200,000² for smaller data sets, to millions of pounds for large data sets (such as a census). Accordingly, with such an upfront expense, several third parties stated that brand recognition and marketing was crucial to the success of a retailer's ability to get the information out to end users.
45. Several third parties pointed to the large marketing campaigns undertaken by Ancestry to explain why such large providers have the leading position in the market. Genes has been regarded by third parties as an anomaly in that it had not undertaken similar marketing campaigns (as it has been able to amass over 9 million registered users, due in part to its links with the Friends Reunited website which meant it had been able to market to the large base of Friends Reunited customers).

Functionality of website

46. Several third parties told the OFT that providing additional website features is a key parameter of competition between online retailers. Such features can include family tree builders, ancestor matching, facilities for uploading photos and creating home pages. Indeed, one third party referred to such

²⁷ For example, a census may have 20 to 30 fields and some digitisers may only transcribe the most important 10 fields, whereas a family historian would typically prefer that all fields be transcribed.

features as potentially making websites 'sticky' to the effect of deterring customers from switching to competitors. Moreover, Brightsolid told the OFT that [].

Closeness of competition

47. Brightsolid Group submitted that Genes and FMP/1911 offer largely complementary, rather than competing, genealogy services; specifically that FMP/1911 and Genes provide online genealogy propositions which each have a different focus, and as a result, the parties are not each other's closest competitors. Moreover, they argued that there is no reliable evidence that, absent the merger, the parties would be likely to become closer competitors in the foreseeable future.
48. The OFT accepts Brightsolid Group's argument that Genes has an emphasis on genealogy services and social networking that is not matched by FMP/1911. The OFT also accepts that FMP offers more comprehensive, albeit more expensive, retail data than does Genes, which may attract more experienced family historians.
49. Nevertheless, while the offering of each of the merging parties is somewhat different, it is not obvious that their different propositions are not substitutes for a large proportion of consumers. In particular:
 - there is a substantial degree of direct overlap between them in that they both overlap in the retail of core genealogy datasets, including six censuses (1841 to 1901)²⁸ and BMD data (1837 to 2004)
 - many parties stated that the parties basically compete against each other, although some third parties confirmed that to a certain extent FMP and Genes tend to specialise in different sectors, and
 - this was supported by several internal Brightsolid Group and Genes documents.²⁹
50. Moreover, third parties also indicated that only Ancestry closely competes with the parties and that smaller online genealogy providers likely impose a much lesser constraint on the three large 'full service' suppliers than the large suppliers do on each other. In this respect it is significant that Genes' internal documents indicate that [].
51. Furthermore, on the basis of the parties' internal documents, it appears that, absent the merger, this close competition between the parties would

²⁸ With the exception of the 1881 census, which Genes does not offer.

²⁹ For example, in a Brightsolid Group internal document (Annex 8 of the Submission), it acknowledges that although []. Another Brightsolid internal briefing stated []. Further, a Friends Reunited Board paper (Financial Update, 24 January 2008) shows that Genes [].

continue (rather than being, say, only a consequence of a growth in demand for the 1911 Census).

52. For example, a Brightsolid Group internal document identified that the overlap between the FMP and Genes websites would be more of a threat in the event of the acquisition of Genes by a company willing to invest in improving its data offering (which would compete more directly with FMP).
53. Further, even absent a third party acquisition, there is some evidence that Genes was actively considering focussing to a greater degree on the supply of archive data. For example, in an Information Memorandum³⁰ relating to the sale of Genes, it was expected that []. The Information Memorandum anticipated that [].³¹ Other Genes internal documents revealed that it [].
54. Third parties corroborated that Genes [], with several third parties stating that [].
55. In addition to Genes improving its data sets, there is some indication that Brightsolid Group might well in future have improved its social networking offering. For example, Brightsolid Group submitted that social networking will become a more important element of family history services and that 'FMP needs to provide its own compelling user-generated content'.³² In the absence of the merger there is a realistic prospect that Genes would have sought to improve the scope of its data sets and FMP would have continued to develop its Family Tree Explorer feature to compete more closely with each other.

Conclusion on closeness of competition between the parties

56. In light of the evidence discussed above, although the OFT acknowledges that the focus of the offering of each of the merging parties is —to a certain extent— different, it is not obvious that their different propositions are not substitutes for a significant proportion of consumers. In other words, the parties are clearly close competitors for a substantial proportion of their customer base. As a result, the OFT considers that the merger will result in the removal of current and future competition between FMP and Genes, thereby reducing the number of large 'full service' providers of online genealogy services in England and Wales from three to two.
57. The remainder of this decision will consider whether the parties will be subject to sufficient competitive constraints after the merger that unilateral effects do not arise.

³⁰ Annex 2 of the Submission.

³¹ Based on internal OFT calculations of the table on page 75 of Annex 2 of the Submission.

³² See Brightsolid Group's response dated 21 September 2009 (Question 16).

Customer switching

58. Prior to examining whether the parties would be constrained post-merger, it is necessary to determine whether end users would easily be able to switch, as the competitive constraint posed by competitors and/or potential competitors is determined in part by the ease with which end users have the ability and willingness to switch between providers.
59. According to Brightsolid Group, customer switching is easy as customers are not generally tied to long-term contracts and can simply switch away from their current genealogy supplier. The parties provided survey evidence demonstrating that customers tend to shop around and multi-source and calculated that the average life of a paying customer is 4 months. In addition, they cited figures from Ancestry which report a monthly churn rate of [] per cent and stated that, at this rate of churn, this could potentially result in [] per cent of all subscribers ceasing their subscriptions with Ancestry within one year. Finally, Brightsolid Group stated that there were no 'sticky' features, that would inhibit a customer from switching, as data (such as family trees) can easily be exported and used either offline with genealogy software, or uploaded to another online retailer's site.
60. However, several third parties commented that customers may be unwilling to switch in the event of a 5-10 per cent price increase. Reasons included that providers may include 'sticky' features or that customers may become comfortable with one site's interface and become less likely to switch. Whilst the OFT acknowledges that it may be possible to export data offline to another online site, an internal Brightsolid Group document³³ indicates that Brightsolid Group consider that encouraging Genes customers to switch provider may incur some difficulty where the customer has functionality and data imbedded.
61. Accordingly, in light of mixed evidence discussed above, the OFT is unable to conclude that switching is easy, or would be likely in the event of a price increase. Moreover, the OFT notes that it is not only the height of any barriers to switching that matters, rather, it is the combination of switching costs with the number of alternatives to which customers can switch that determines market outcomes (discussed further in the next section).³⁴

³³ Annex 7 of the Submission.

³⁴ Indeed, one third party stated that even if the merged entity were to increase their subscription price by 10 per cent, end users may not switch simply because they would lack alternatives to switch to.

Competitive constraint exerted by other online genealogy providers

Constraint from Ancestry

62. Brightsolid Group argued that Ancestry is by far the largest online genealogy provider (by turnover) with approximately [40–50] per cent of the market and that the merger would result in a stronger competitor to Ancestry. Ancestry was said to compete directly with Genes (for the mass market) and well as FMP (for experienced family historians).
63. The internal documents provided by the parties revealed that they both consider Ancestry to be a key competitor. Indeed, FMP considered []. Genes' internal documents revealed that [].
64. Third parties also indicated that they perceived Ancestry to be the key competitor to the parties (for example, its data offering would be similar in quality to that offered by FMP).
65. Accordingly, on the basis of the evidence provided, the OFT concludes that Ancestry competes closely with both parties.

Constraint from the Genealogist

66. The Genealogist is a digitiser and retailer of genealogy data, as well as tree building software, and has an almost complete set of census and BMD records on its website. The Genealogist is currently the main supplier of Genes' data requirements, which are licensed to Genes in return for a royalty payment.
67. Brightsolid Group argued that the Genealogist is a close competitor to the parties and after Ancestry, FMP/1911 and Genes, the Genealogist is the next largest online genealogy provider (by turnover) with approximately [10-20] per cent of the market.³⁵
68. Brightsolid Group told the OFT that the Genealogist was not referenced more in internal documents because it does not believe that the Genealogist is setting the bar in terms of product or branding.
69. In addition, several third parties stated that the Genealogist was not an effective constraint on FMP as it does not have the entire range of core data sets and due to quality issues concerning the transcription of the data.

³⁵ The Genealogist provided revenue figures that indicate to the OFT that their market share is in the region of [0 to 10] per cent, or less than [0 to 10] per cent if excluding the proportion of turnover due to royalties from Genes (which licences most of its core data sets from the Genealogist) and which would not be available post-merger (see paragraph 3 above).

70. [].

71. In light of the above, the OFT considers that the Genealogist currently competes only to a limited extent against the large 'full service' providers.

Constraint from other online genealogy providers

72. Brightsolid Group submitted that, in addition to Ancestry and the Genealogist, they also face competition from many smaller retailers of historic records – other fee-based domestic genealogy providers,³⁶ free genealogy providers³⁷ and foreign providers³⁸ – selling to UK residents that will act to constrain the behaviour of the merging parties.

Fee based domestic providers

73. In relation to other paid-for domestic providers, Brightsolid Group submitted details of 11 online genealogy providers selling census data and 13 online genealogy providers selling BMD data.

74. Having analysed the retail propositions of the online genealogy providers listed by the parties, the OFT considers that there does not appear to be this number of independent retailers (for instance, The Genealogist, RootsUK and BMDIndex are not distinct enterprises). Moreover, the OFT remains concerned that the lack of market penetration of these independent smaller providers indicates that any constraint, either individually or collectively, on the parties may not be significant.

75. Several third parties considered that they competed to a certain extent with the three large 'full service' providers, but did not refer to other smaller players. This may be indicative of asymmetric constraints.³⁹ Some other paid-for retailers considered themselves to be niche players while another considered that the large players can outspend their rivals in this market. In addition, one competitor indicated that large players are able to attain exclusive (or near exclusive) deals to obtain data access that their smaller rivals cannot compete with.

³⁶ For example, Origins and Family Relatives.

³⁷ For example, FreeBMD.

³⁸ Such as, Family Search, operated by the Mormon Church in the United States.

³⁹ See Draft Joint CC/OFT Merger Assessment Guidelines at paragraph 4.73 'In particular, as firms often differ from one another in several important ways, the competitive constraints they impose on each other may not be symmetric. In other words, a hypothetical Firm A may constrain Firm B's pricing behaviour while Firm B's prices have no effect on A's pricing strategy. An example of this might be grocery retailing, where large stores might constrain the prices of smaller stores while the reverse may not be true'.

76. The OFT notes that these third party views are corroborated by the Information Memorandum prepared by Credit Suisse,⁴⁰ which only considers market shares in terms of the main three providers (Ancestry, FMP and Genes). In addition, the majority of internal documents from Genes []. A market report by Shreeveport, commissioned by FMP in 2006 notes that 'there is clear blue water' between the three the large 'full service' providers and others, which are limited either by breadth and quality of data, or UK presence.

Free online providers

77. In terms of free genealogy providers, Brightsolid Group argued that although the data available on the free sites is of a lower quality, it nevertheless provides a tangible constraint on the parties. This was supported by an internal FMP survey which stated that [60-70] per cent of its (now discontinued) Discovery subscribers however used free websites in addition to FMP.
78. Third parties gave mixed opinions regarding the level of constraint offered by free online providers. The majority indicated that free providers would not be able to constrain the parties due to the fact that the data sets contained gaps and were incomplete, or were of inferior quality.
79. Further, the OFT considers that the fact that [60-70] per cent of lapsed FMP users surveyed also used free sites may suggest that the free sites are complementary, not substitutable.

Foreign online providers

80. In relation to foreign online providers, Brightsolid Group raised several examples of genealogy websites based overseas that supply UK genealogy data worldwide (and that potentially focus on UK customers). However, it also conceded that more recent overseas entrants were more fledgling than domestic competitors, as they are constrained by efforts to establish themselves in their home country.

Conclusion on constraint from other online genealogy providers

81. In light of the evidence discussed above, the OFT considers that the merger is most accurately regarded as a three to two among the larger 'full service' competitors. As a result, and particularly given the limited evidence available to it regarding market penetration or product quality and range, the OFT is unable to conclude that these smaller online domestic, free or foreign genealogy providers would be able to constrain the parties sufficiently post-merger in order to allay any competition concerns that may arise in this case.

⁴⁰ Annex 2 of the Submission.

Barriers to entry and expansion

82. New entry, the threat of new entry, and expansion by existing suppliers, can all represent important countervailing factors, constraining the competitive behaviour of the merged entity post-merger.

New entry not realistic

83. Due to the necessity to build sufficient content, Brightsolid Group inferred that entry through a subscription based business model would therefore be unlikely in the near future.⁴¹ Instead, due to the length of time required to build sufficient content to warrant a subscription package, Brightsolid Group stated that the most plausible entry method would be through offering Pay Per View structures initially, later migrating to offering both Pay Per View and subscriptions.
84. In terms of evidence of new entry, Brightsolid Group pointed toward to rapid growth of history related applications on social networking sites, such as Facebook. Brightsolid Group also stated that the threat of new entry by large online community sites or search engines would discipline any concerns regarding concentration. Finally, Brightsolid Group foresees new entry by foreign genealogy providers such as Geni and MyHeritage.
85. Brightsolid Group submitted that entry into the retailing market is relatively easy and does not require large sums of capital. In support of this assertion, Brightsolid Group submitted a list of online genealogy providers selling BMD data to UK customers and stated that the list demonstrated that entry is not dependent on access to large amounts of capital, technical skills or employees.
86. However, third parties cited several barriers to entry in order to operate in online genealogy, namely the ability to digitise data sets, the range of data sources, and brand reputation (also discussed in part at paragraphs 38 to 45 above).
87. Historical records need to be either digitised or licensed from a digitiser.⁴² Brightsolid Group conceded that digitising very large data sets, such as the 1911 census, can be expensive (for example, digitisation of the 1911 census cost FMP £[]). However, they argued that smaller data sets can be digitised for less than £200,000.² In addition, where a retailer is unable to digitise them, it is able to licence the data from another digitiser.

⁴¹ Brightsolid Group response to OFT questions, dated 14 September 2009.

⁴² Although, the OFT notes that there appears to be only limited wholesale supply of the core data sets.

88. In terms of technical expertise, the ability to be taken seriously as a potential digitiser of data sets was cited by third parties as a possible barrier to entry. The fact that several millions pounds are required to digitise large data sets was supported by several third party digitisers/retailers who stated that while entry to this market is possible, digitisation costs are a huge upfront expense, and that bank funding can be difficult to secure.
89. In relation to access to the requisite data sets, third parties confirmed that in order to compete with the large online retailers and to attract a large number of subscribers to their sites, it is vital to be able to provide the core data sets (that is the censuses and BMD data) and therefore be a 'full service' provider. This allows end users to source the majority, if not all, of their genealogical data needs from one provider, usually on a subscription 'all you can eat' basis. Those retailers who do not offer the core data sets to their customers considered themselves to be 'niche' players, focussing on providing unusual data sets (not provided by the large players) in order to attract customers.
90. Those retailers unable to digitise data must obtain core data sets (that is census and BMD data) from elsewhere. Whilst Brightsolid Group stated that this was easy, one third party retailer stated that it had sought to licence the core data sets from digitisers and had been turned away. Accordingly, it had considered whether to digitise and transcribe the data itself, but considers that the marketing and transcription costs to bring the censuses to market means that such an investment may not be viable.

Brand reputation as a barrier to entry

91. In relation to brand reputation, third parties stated that branding was key and potentially a high barrier to entry and/or expansion in the industry. The three large 'full service' providers appear to spend a significant proportion of their revenues on marketing. One third party stated that Genes has an advantage in the market place by virtue of its easily recognisable and understandable brand. Genes' brand awareness is confirmed by a YouGov survey showing that 56 per cent of the public recognise the Genes brand (with 34 per cent and 9 per cent recognising Ancestry and FMP, respectively). Similarly, an FMP commissioned 'Brand Tracker' survey showed that of a representative group, [].
92. Further, several third parties also stated that Genes provides the largest access to customers, as it has over 9 million users. The OFT considers that this may be a distinct advantage for Genes (or indeed, any entity that acquired Genes), not least due to network effects attributable to having the largest amount of end user family trees, on a scale which is not replicated by any other provider. This was supported by an internal document from

FMP⁴³ which considers that obtaining a customer base on the scale of Genes may not be achievable given that the market has reached maturity. Moreover, one third party told the OFT of how its limited brand recognition has inhibited its success. Further, they highlighted the difficulties it might experience in building a new brand, essentially starting from 'scratch' with no guarantee of success.

Expansion by the Genealogist uncertain

93. Currently, save for the 1901 census and World War I and II data, Genes sources its data sets from the Genealogist, for which the former pays a royalty fee. However, according to Brightsolid Group, post-merger and as part of the synergies of the transaction, Genes will source its core data requirements from FMP/1911 (see paragraph 3 above).
94. The OFT considered whether, once free from the relationship with Genes, the Genealogist would be able to licence its core data sets to other online providers, or expand its own online retail arm, and therefore constrain the parties, post merger.
95. [].
96. [].
97. [].
98. Having analysed the competitive landscape, and in particular the profile of the smaller online genealogy providers, the OFT has not been able to identify a suitable alternative partner with a large number of end users that would allow the Genealogist to exert a competitive constraint of a size comparable to that of Genes pre merger. Several third parties also queried whether the quality of the data sets offered by the Genealogist was comparable to those of FMP or Ancestry.
99. Accordingly, although the Genealogist competes to a limited extent against the large 'full service' providers, post merger, this might be expected to become more limited as the market polarises towards two large 'full service' providers.

Conclusion on barriers to entry

100. In light of the significant digitisation costs and need for brand awareness (resulting in heavy marketing spends), the OFT is of the view that new entry or expansion by other online genealogy service providers currently in the market is not expected to be timely, likely or sufficient such as to allay the competition concerns described above.

⁴³ Annex 8 submission.

SUPPLIER POWER

101. Brightsolid Group argued that the merged entity will be significantly constrained by supplier power in the market. The parties pointed to original data providers, such as The National Archives, imposing restrictions such as dictating maximum retail prices and price increases, service levels and transcription accuracy, such that the merged entity would be prevented from increasing price or reducing quality by the original data holders.
102. The OFT notes that as more companies digitise and transcribe the same data set, that data becomes less expensive for the end user (see paragraph 40 above). Accordingly, whilst large and important data sets, such as the 1911 census, are subject to price caps and quality assurances, this would appear to only apply to the first company to digitise and transcribe the data. It is also unclear to what degree the National Archives, or other original data holders, can impose restrictions on the price of subscription packages.
103. Accordingly, whilst there is an element of supplier power in this market that may protect consumers in relation to certain data sets, the OFT considers that it will not be sufficiently strong or sufficiently comprehensive in spectrum to allay competition concerns in this case.

BUYER POWER

104. Customers are individual consumers and do not have buyer power. Accordingly, the OFT does not expect that there will be sufficient buyer power to allay possible competition concerns in this case.

Conclusion on unilateral effects

105. The OFT considers that the weight of the above analysis indicates that the proposed transaction gives rise to competition concerns on the basis of unilateral effects. In particular, the transaction represents a reduction from three to two of the largest 'full service' providers of online genealogy services in England and Wales.
106. Furthermore, the OFT does not consider that the competitive constraint exerted by domestic paid-for or free and/or foreign online genealogy providers is sufficient to allay competition concerns
107. Finally, the OFT considers that the large upfront digitisation costs and need for brand awareness represent significant barriers to entry. In light of the

above, the OFT is not persuaded that the timeliness or scale of any entry and/or expansion would be sufficient to prevent consumer harm from arising.

COORDINATED EFFECTS

108. As the proposed concentration reduces the number of large 'full service' providers of online genealogy services England and Wales from three to two, the OFT has considered whether the merger might give rise to a realistic prospect of a substantial lessening of competition based on coordinated effects.
109. The OFT has received no evidence to suggest that the market is already coordinating, so the issue is whether the merger makes this more likely to occur.
110. The OFT notes that certain conditions necessary for coordination exist in this case, for example small number of 'full service' firms, some limited degree of product homogeneity (similar data sets),⁴⁴ price transparency (subscription and Pay Per View pricing available online), fairly easy monitoring of the main parameters of competition, and limited possibility for non-coordinating firms (as well as potential competitors or customers) to disrupt coordination.
111. Brightsolid Group submitted that there was no evidence to suggest that the proposed merger may be expected to result in coordinated effects. In particular, the parties submitted that Ancestry and the merged entity would be far from symmetrical, as Ancestry would be much larger and its genealogical proposition (that is international presence etc) far outstrips those of the merging parties. However, the OFT considers that a merger which reduces the number of large integrated 'full service' genealogy retailers from three to two could make it easier for players to reach and monitor coordination. In addition, the combination of FMP and Genes would potentially result in a much more similar business model to Ancestry. This increase in symmetry could make it easier for Ancestry and the merged entity to coordinate their behaviour.
112. Second, Brightsolid Group argued that online genealogy products are far from homogenous, as the offering of different online providers are clearly differentiated in that the data sets themselves are differentiated, and even where providers have the same data sets (for example the 1901 census) they are and will continue to be differentiated by reference to their qualitative aspects (for example as a result of variations in the accuracy and quality of transcription, number of searchable fields and ease of

⁴⁴ See paragraph 112.

searching etc). However, notwithstanding the differentiation of the data sets, the OFT notes that the data sets relate to the same core data (for example 1901 census) and therefore –to this very limited extent– there is an element of homogeneity.

113. In relation to the transparency of pricing, Brightsolid Group argued that while headline subscription or Per Per View rates are available to view online, these can be often reduced through email shots offering discounts. Further, whilst prices may be superficially transparent, volumes are not. As a result, it is not possible for providers to ascertain how many customers are paying for subscriptions or Pay Per View on a competitor’s site. While the OFT does not consider that access to volume data is a necessary condition, it also notes that the parties have access to some data concerning volume through public sources, such as Nielsen.
114. Further, the Brightsolid Group argued that it would not be possible to monitor compliance and there would be no effective punishment mechanism for deviation. Finally, the parties submitted that given the other players in the market, such as the Genealogist, external sources of competition would easily undermine any attempted coordination. The OFT considers that the parties are able to monitor each other through online pricing and mail shots (which may include limited discount offers). Punishment could be enforced by, for example, price decreases to gain market share. Finally, as noted early in the decision, the OFT does not consider smaller online genealogy providers, such as the Genealogist, to provide an effective constraint upon the parties.
115. Accordingly, while the OFT recognises the force of the counterpoints made by the parties, given that the test for reference is met in relation to unilateral effects concerns, it has not been necessary for the OFT to conclude on this alternative theory of harm.

VERTICAL ISSUES

116. [].

117. The OFT spoke with several original data holders, [], who did not express concerns to the OFT over a lessening of choice of partner for a digitisation project. Although []. Moreover, no other online providers raised any concerns over their access to digitisation services, although one digitiser did have some concern that the merger may result in the loss of a potential future customer in Genes.

118. Further, the OFT has considered the impact that this transaction may have at different levels of the genealogy supply chain, and these have been addressed, where appropriate in this decision.

EFFICIENCIES AND CUSTOMER BENEFITS

119. Brightsolid Group submitted that the transaction would result in synergies arising from combining the UK businesses e.g. by using some of its own data sources rather than those of third parties to supply Genes' customers, and by providing them with earlier access to the 1911 census data than would otherwise be the case.
120. However, the OFT notes that Brightsolid Group did not quantify the efficiencies, nor did it show that the benefit of these synergies would be passed onto the end consumer. Accordingly, the OFT has been unable to conclude that any efficiencies arising from the proposed merger would be of a verifiable and quantifiable scale to offset or outweigh any consumer detriment that may arise in this case.
121. The OFT also notes that the merger may allow the parties to compete more effectively against Ancestry, and therefore may be pro-competitive. However, the OFT did not receive sufficient evidence that competition in the market would be stronger, given the potential lessening of competition by removal of a key player in the market.

THIRD PARTY VIEWS

122. Comments from third party customers and competitors have been addressed where appropriate throughout this decision.

ASSESSMENT

123. The proposed concentration reduces the number of large 'full service' providers of online genealogy services in England and Wales from three to two. The OFT considers that, as a result of the merger, there is a realistic prospect of a substantial lessening of competition in relation to the supply of online genealogy services in England and Wales. In addition, it may be the case that the merger gives rise to concerns on the basis of coordinated effects, although the OFT has not needed to conclude on this point.
124. In relation to the parties' arguments that they would be constrained post merger by Ancestry, the Genealogist and a number of smaller online domestic, free and foreign providers, (apart from Ancestry), the OFT did not receive sufficient evidence to conclude that these constraints, either individually or collectively, would be sufficient to prevent unilateral effects from arising as a result of the merger. Furthermore, the OFT does not believe that entry or expansion would be sufficient in scale, timely and likely to prevent any consumer harm that may arise otherwise as a result of the merger.

125. Therefore, assessed against the appropriate counterfactual of the prevailing pre-merger conditions of competition, the OFT believes that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom – that is, in relation to the supply of online genealogy services in England and Wales.

UNDERTAKINGS IN LIEU

126. The parties made no offer any undertakings in lieu of reference to the Competition Commission.

DECISION

127. The OFT has therefore decided to refer the anticipated acquisition by Brightsolid Group of Friends Reunited Holdings to the Competition Commission pursuant to section 33 of the Act.

ENDNOTES

1. Brightsolid Group has informed the OFT that its digitizing arm also supplies data to small integrated digitisers and retailers.
2. Brightsolid Group has informed the OFT that many smaller projects can be delivered for a few hundreds or thousands of pounds.