The decline and fall of the Net Book Agreement 1962–1997: a study of cause and effect

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BILSC no.: DX225843
The decline and fall of the Net Book Agreement

By
James A. Dearnley

A Doctoral thesis submitted in partial fulfilment of the requirements for the award of Doctor of Philosophy of Loughborough University.

December 1997

Supervisor: Professor J.P. Feather.

Acknowledgements

I wish to thank my supervisor, Professor John Feather, for his help, friendship and forthright opinions on this thesis over the last four years. I specifically thank him for his support during 1997, which has been a difficult year indeed.

Many people have helped me with this thesis. Some, notably the eleven booksellers, three publishers and Office of Fair Trading employees who were interviewed remain anonymous, but I sincerely appreciate their help in 1996 and 1997. My thanks go to those who made time and effort to help with this work - Gordon Graham, editor of Logos for his time and opinion in the summer of 1997, plus a splendid lunch; Dr Frank Fishwick of Cranfield School of Management for devoting several hours of his time to a splendid argument over the Net Book Agreement in March 1997; Geoffrey Smith for his lucid account of the NBA’s application in relation to his career; Terry Maher for a candid and interesting interview regarding Pentos in April 1996, and last but certainly not least, Peter Maunder of the Department of Economics, Loughborough University, for his help in getting me to grips with resale price maintenance.

I also thank those who provided information for the thesis - notably Clive Bradley of the Publisher’s Association and Anne Tahon of the Federation of European Publishers in Brussels. At Loughborough I appreciate the help given by members of DILS over the last five years, notably Dr Paul Sturges, John Sumson (plus Sharon Fletcher and Mary Ashworth at LISU) and Inese Smith. I affectionately remember those other students studying for higher awards at DILS, in particular Dr Karlis Kreslins, Dr Liangzhi Yu, Dr Kyung-Mook Oh and Sally Maynard. My thanks also go to Professor Joan Day at the Department of Information and Library Management, University of Northumbria at Newcastle, for her support during 1997.

I thank my parents for their financial help and support over the last five years. I would like to think that my Father will now accept that the trade without the Net Book Agreement is little different to before! Finally, I must thank my partner, Anne, for picking me up after the initial disappointment in December 1996 and instilling both the confidence and urgency to continue.
Abstract

This thesis in equal part considers the contributory factors which caused suspension of the Net Book Agreement (NBA) in September 1995, and, via a number of interviews, the immediate effects of NBA abolition on the bookselling trade. Comparisons are drawn between the UK experience of NBA suspension and that of other European countries (France, Belgium, Netherlands).

Chapter One starts by defining a theoretical framework for the thesis, including an introduction to the practice of resale price maintenance (RPM), of which the NBA was an example; the form and structure of the NBA; and an overview of another retail sector which continues to use RPM, the over-the-counter pharmaceutical trade. From the theoretical framework, five questions are raised which Chapters Three to Eight explore in depth. These are discussed in Chapter Two.

Chapters Three to Five consider the contributory factors which led to NBA suspension, and finally in March 1997, formal abolition. Chapters Three and Four demonstrate a changing view by competition authorities on the benefits (or not) of resale price maintenance in the post-war years. Chapter Five considers the effects of three sectors of the book trade on the ending of the NBA - book clubs, supermarkets and the Dillons bookshop chain. Each of these three sectors was to put the NBA under pressure in the 1980s and 1990s.

Chapters Six and Seven consider the effects of NBA suspension, and in particular how the UK bookselling trade has coped without the Agreement. Chapter Seven collected the opinion of eleven booksellers in the UK in the summer of 1997. These chapters conclude that the effects of NBA abolition have not been severe, and that the trade continues much as it did before.

Finally, Chapter Eight considers RPM on books in three other European countries, and how they have coped with either introducing RPM (France) or abolishing RPM (Belgium). Comparisons will be drawn with the UK experience. Conclusions are then offered.
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### Glossary

#### Acronyms

<table>
<thead>
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<th>Acronym</th>
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<tr>
<td>BA</td>
<td>Booksellers Association;</td>
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<td>BCA</td>
<td>Book Club Associates;</td>
</tr>
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<td>BCR</td>
<td>Book Club Regulations;</td>
</tr>
<tr>
<td>CFI</td>
<td>Court of the First Instance;</td>
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<tr>
<td>DGFT</td>
<td>Director General of Fair Trading;</td>
</tr>
<tr>
<td>DTI</td>
<td>Department of Trade and Industry;</td>
</tr>
<tr>
<td>EC</td>
<td>European Commission;</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice;</td>
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<tr>
<td>EEC</td>
<td>European Economic Community;</td>
</tr>
<tr>
<td>EU</td>
<td>European Union;</td>
</tr>
<tr>
<td>FEP</td>
<td>Federation of European Publishers;</td>
</tr>
<tr>
<td>ICA</td>
<td>Irish Competition Authority;</td>
</tr>
<tr>
<td>IEA</td>
<td>Institute of Economic Affairs;</td>
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<tr>
<td>MMC</td>
<td>Monopolies and Mergers Commission;</td>
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<tr>
<td>MMPB</td>
<td>Mass Market PaperBack</td>
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<tr>
<td>NBA</td>
<td>Net Book Agreement;</td>
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<td>OFT</td>
<td>Office of Fair Trading;</td>
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<tr>
<td>PA</td>
<td>Publishers Association;</td>
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<tr>
<td>RRP</td>
<td>Recommended Retail Price;</td>
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<td>RPM</td>
<td>Resale Price Maintenance;</td>
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<tr>
<td>RTPC</td>
<td>Restrictive Trade Practices Court;</td>
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<td>TGI</td>
<td>Target Group Index;</td>
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Chapter One.

1.1 Introduction and theoretical framework.

On 17 September, 1995, the Net Book Agreement\(^1\) (NBA\(^2\)) was suspended from operation following a meeting of the Publishers' Association (PA) Council\(^3\). Suspension was not unexpected. Attacks on the NBA came from publishers, booksellers, supermarkets and both UK and European Union (EU) competition authorities. It was successively undermined in the 1980s and early 1990s. This thesis is concerned with the ending of the NBA. It will explore and assess the reasons for suspension. It is also concerned with the effects of NBA suspension and will analyse how the trade has fared without the Agreement.

1.1.1 Theoretical framework

This thesis is presented in eight chapters. Chapters Three to Eight each analyse a hypothesis relating either to the downfall of the NBA, or the effects of NBA suspension. However, before these hypotheses can be presented, and the NBA examined in depth, it is necessary to put the practice of resale price maintenance (RPM), of which the NBA was an example, into context. To do this, a theoretical framework has been adopted to guide the reader through the salient aspects of RPM and the NBA. This theoretical framework underpins the thesis and, from it, five hypotheses are developed. It is illustrated in Figure 1.1, page 2.

The framework is comprised of three sections, starting with the theoretical concept of RPM; it then moves to consideration of legislation regarding RPM in the UK and, finally, moves through to the practicalities of the NBA itself. Therefore, the framework moves from the theoretical arguments over RPM to the practicalities of RPM - in our case, the NBA.
Figure 1.1 Theoretical framework.

Theoretical framework

Resale Price Maintenance

Resale Price Maintenance legislation in the UK and EU

The Net Book Agreement

Thesis framework (Figure 2.1, p. 36), and hypotheses
• Section 1.2 provides an overview of the concept of RPM. It will consider theoretical justifications for the practice. Four theories will be discussed. This section will also discuss why the practice can be viewed as acceptable or unacceptable.

• Section 1.3 focuses on the UK legislation which is intended to control the practice. It will discuss the original thinking behind the introduction of legislation in the 1950s, and will discuss proposed changes to legislation in the 1980s. It will become apparent in this section that legislation has had a profound effect on RPM agreements in the UK.

• Section 1.4 discusses the NBA itself, the RPM agreement which is the main subject of this thesis. It will provide an overview of the salient aspects of the NBA. Additionally, it will provide an overview to a statement which has become inextricably linked with the NBA - *books are different*.

• To illustrate these arguments more clearly, Section 1.5 will compare book trade RPM with a similar agreement existing in the pharmaceutical industry.

Throughout these underpinning sections, questions will be raised. Five hypotheses have been formulated for examination in the thesis, these being presented in Chapter Two and illustrated in Figure 2.1, p. 36. A framework for the thesis is illustrated, and is accompanied by an overview on the layout of the thesis.
1.2 RPM - discussion of the concept and practice

1.2.1 The concept of RPM

Resale Price Maintenance (RPM) can be defined thus:

a system in which a supplier of a product sets a minimum or fixed price which commercial buyers of the product have to respect.

In other words, the manufacturer (in our case, the publisher) sets a floor price for the product (books), below which commercial buyers (booksellers) cannot sell the book. RPM can be imposed by individual companies or by collective agreement between manufacturers in the same sector. The NBA was an example of the latter; a collective agreement to which individual publishers subscribed and which was policed by a trade association - the Publishers' Association. Price-fixing by a manufacturer (upstream) which has to be observed by commercial buyers (downstream) is often called a vertical restraint - a restrictive agreement which is imposed by manufacturers on commercial buyers who sell their product to the public. Sanctions on the commercial buyer for breaking this vertical restraint can include withdrawal of supplies, blacklisting by manufacturers or (in the NBA's case) collective enforcement by the Publishers' Association against an erring bookseller.

RPM can also be imposed by buyers on manufacturers, either in collusion or to put pressure on manufacturers. In the NBA's case, pressure for implementation of RPM came from buyers (booksellers) on manufacturers (publishers). This has happened twice in the UK book trade; first, in the short period of RPM between 1829 and 1852, and again in the 1890s, leading to the introduction of the NBA in 1900. Therefore, although the NBA was enforced by manufacturers, the impetus for RPM came from the buyers.

RPM gives buyers a guaranteed margin between the cost of the product (i.e., the price of a book from the publisher, taking into account discount) and the selling price of the product to the public (in our case, the 'net' price below which booksellers cannot sell).
Imposition of a vertical restraint can be argued to give both manufacturers and buyers power: by giving fixed margins to buyers, the manufacturer helps to stimulate demand for his product; buyers might spend money saved on price promotions (and loss of margin), on advertising, providing better services, and stocking larger and broader inventories. Therefore, RPM can be argued to benefit manufacturers (stimulating demand for products), and to benefit the buyer (fixed margins). Conversely, RPM can be viewed as allowing a manufacturer to fix resale prices which are purely in its own interest; buyers are then denied the opportunity to fix prices which reflect their own interests. Whichever of these views is taken, both point to the conclusion that, without price competition, buyers will engage in non-price competition - as above, advertising, better services, larger and broader inventories.

RPM agreements fall into two distinct categories; minimum and maximum price agreements.

- Minimum price agreements involve the fixing of a floor price below which the buyer cannot discount. Buyers can raise the floor price above the fixed price set by the manufacturer. RPM agreements examined in this thesis fall into this category; the UK’s NBA \(^6\) was a minimum price agreement, as is an agreement currently in force in the Netherlands. France has also enjoyed a minimum price agreement since 1981 but retailers there are allowed to discount up to 5% of the publisher’s fixed price.

- Maximum price agreements involve a manufacturer setting a ceiling price on a product. Buyers are free to discount the ceiling price as they wish but cannot set prices above the ceiling price. Maximum resale prices (normally called recommended resale prices (RRP)) are common on books in several countries and have been introduced following abandonment of RPM on books. Australia introduced an RRP system following abolition of RPM in 1971 \(^7\), and RRP is currently used by UK publishers following NBA suspension in 1995.
1.2.2 The concept of RPM - four theoretical justifications of the practice

Justification of RPM must centre around the fact that implementation of the practice solves a problem. This problem, as we will see below, could be the so-called practice of 'free-riding' by competitors; it could be that RPM introduction increases efficiency. Conversely, justification of RPM is difficult where there is evidence of intimidation by strong manufacturers of the weak, and where the practice promotes collusion.

1.2.2.1 The justification of cartels

RPM can be linked with cartels. For example, if RPM is imposed by a group of manufacturers on buyers, it might be done in collusion to make a pricing system easier to control, transgressions being more visible and easier to detect. If buyers were able to charge whatever price they liked for a product and a manufacturer was concerned with undercutting the cartel price to increase his profits, detection in a free pricing environment would be hard to detect. With RPM, detection is easier and, in addition, the manufacturer has little incentive to break the cartel if its lower prices cannot be passed on to the consumer (and hence improve the volume of sales).

As we will see later in this chapter, the perceived need to fight cartels and collusion was a justification for British legislation on restrictive practices in the 1950s. As we will also see with regard to the NBA, at least two commentators viewed the NBA as effectively amounting to a cartel. However, RPM can also be argued to achieve objectives other than collusion. These theories are based on the observation that demand for manufacturers' products can depend on more than price alone.

1.2.2.2 Telser's special service argument

Telser's 'free-rider' theory was first published in 1960 and has enjoyed considerable influence. The rationale for RPM was argued thus: retailers offering customer services and a good range of products and advertising do not want competitors not offering these services and selling the product cheaper to benefit from information given on a product.
Low-price buyers therefore 'free-ride' on the pre-sale services offered by the high-price buyer. The threat of free-riding can discourage buyers from introducing new services or expanding existing ones and this will have a knock-on effect in damaging the sale of product. Introduction of RPM prevents free-riding on information by low-cost buyers, and gives buyers the opportunity to compete on services rather than price. The free-rider theory has increasingly been applied with caution.  

Applying the free-rider theory to the NBA can be seen from this example; protection of booksellers by using RPM allowed publishers to use the bookshops for practical market research. As the publishing industry is based on risk (little or no market research being carried out by publishers prior to publication), it is desirable for a publisher to have his entire stock held by booksellers. Not all books will give the publisher a competitive return but the publisher gambles that one or more titles will yield a supracompetitive return (i.e., become bestsellers) to make up for losses on other titles. If the NBA did not exist, low-cost booksellers would merely have to wait to see which books the high-cost bookseller sold in quantity and then stock up in quantity on those books alone. Therefore, if this example is valid, the NBA stopped low-cost booksellers from free-riding on their high-cost competitors. Chapter Seven gives indication of this practice being detected in the post-NBA trade.
1.2.2.3 Marvel and McCafferty’s quality certification theory

The free rider theory was extended in the 1980s by Marvel and McCafferty, who presented a different view of Telser’s theory. The *quality certification* argument is as follows; if a manufacturer sells its goods to a high-price buyer, the placement of product certifies that the product is good quality to the consumer. This allows the consumer, who might find it hard to judge the quality of a product before purchase, to rely on the reputation of a buyer when making purchases. If a buyer improves its service, it gains a reputation for quality and, hence, reputation for the manufacturer. Therefore, by protecting buyers’ margins, RPM might encourage manufacturers to gain a reputation for high standards and quality which they could not afford without RPM. Free riding comes into this theory for the following reason; if low-price retailers are able to sell the same product cheaper, the high-price retailers lose their incentive to stock the product. They will no longer be prepared to go through the selection process which gives their goods the cachet of being ‘quality’.

This is illustrated by the reaction of Books etc’s Managing Director during the 1991 price war (started by Dillons, and considered in Chapter 5.2.5). Richard Joseph told *The Bookseller*:

> I cannot understand why quality new hardbacks are discounted in this way ... they give the customer the impression we can’t sell them, and that they’re somehow inferior because we’ve discounted them.\(^\text{13}\)

1.2.2.4 Preston and Gould’s retail outlet theory

This theory is based on the hypothesis that demand for a manufacturer’s product is not based solely on either the price of the product or the extent of pre-sale services but is also dependent on the number of buyers choosing to sell that product. This theory is held to be important where a significant number of consumer purchases is opportunistic and, in particular, where consumers buy the product because it is displayed or promoted and not because they planned to buy it. If this theory is accepted, it can be judged that, with a
greater number of buyers, the manufacturer has a better chance to sell greater volumes of his product - more retailers, higher sales. To go further, if RPM encourages buyers to either enter the market or to choose to stock the product, this can be judged to be a sound marketing strategy for the manufacturer. Buyers gain a guaranteed margin through RPM from the manufacturer and, in return, the manufacturer increases sales through greater availability of the product.

This theory, although published three years after the RTPC hearing in 1962, was applicable to the UK book trade. At the 1962 RTPC, it was accepted that:

These consequences, which we think would flow from condemnation of the Net Book Agreement, can summarily be stated as (1) fewer and less-well-equipped stockholding bookshops; (2) more expensive books; (3) fewer published titles ... We are satisfied, moreover, that each of these consequences would arise in a sufficiently serious degree to make its avoidance a substantial advantage\textsuperscript{15}. [emphasis added]

The Court accepted that the number of outlets selling books was crucial with regard to the decision to exempt the NBA from the 1956 Restrictive Trade Practices Act and that, without the Agreement, there would be fewer outlets, more expensive books (greater risk for publishers, smaller print runs) and, hence, fewer published titles. Chapters Six and Seven explore whether NBA suspension has borne out this prediction. There is some evidence that it has.

1.2.3 Under what circumstances is RPM acceptable?

If the RPM agreement is in no-one's interest, it is unlikely to exist.\textsuperscript{16}

Whether RPM is acceptable or unacceptable can be considered in three ways. First, it can be viewed as totally unacceptable and should be banned at all costs and across all agreements. However, there are problems in attacking all vertical restraints and these can
be illustrated with regard to the UK book trade; W H Smith and supermarkets have all made use of ‘own-brand’ books - these often being produced in-house or as ‘special editions’ by publishers. For example, one prominent publisher\(^\text{17}\) commented:

In the context of supermarkets, publishers were very keen to find a way out of the straitjacket. They [supermarkets] had always been non-believers. We did a lot of non-net packages and special editions to supermarkets, though some of these special editions were anything but special.

Therefore, problems exist within firms in regard to vertical restraints as well as vertical agreements between firms. More importantly, as the publisher above noted, ‘special editions’ sold to supermarkets were, in some cases, repackaged versions of books already on sale in bookshops. This point - that books were available net and non-net, depending on the buyer - was not lost on Allan and Curwen\(^\text{18}\). So, if vertical restraints are viewed as totally unacceptable, this would catch a large number of intra-firm products, the classic example being Marks and Spencer’s St Michael products. Secondly, the question of whether RPM is acceptable or not can be viewed pragmatically - it can confer benefits on consumers (i.e., pre-sales service; full choice of product) or it can act against the interests of consumers (collusion; artificially high prices). A pragmatic approach toward RPM was taken by the European Commission and, as Section 1.3.5 considers, a similar approach was considered for revising UK legislation\(^\text{19}\).

If RPM acts in the interests of both the manufacturer and consumer, then there should be no problem with the practice. If RPM is thought to be in the manufacturer’s interest alone, then investigation should be carried out to judge whether this is in conflict with the consumer’s interests. If RPM is not in the consumer’s interest (for example, if it helps to perpetuate high prices and lack of price choices) then RPM should be banned. If the manufacturer imposes RPM which is in the consumer’s interest but misguided (i.e., it is uneconomic) then that is the manufacturer’s problem. Thus, RPM could be considered acceptable when there is no conflict between the manufacturer’s interest and the consumer’s interest.
Third, RPM agreements can be viewed with lenience and tolerance. The reasoning has been put forward in the United States by Posner; if RPM increases output in the trade, this increases the efficiency of the trade\textsuperscript{20}. This opinion helped cause a sea-change in policy toward RPM in the United States in the early 1980s; vertical restraints were rarely challenged by competition authorities unless there was suspicion that RPM was distorting trade between the manufacturer and buyer\textsuperscript{21}. Vertical restraints between the manufacturer and buyer were not seen as \textit{per se} objectionable. If manufacturers chose to impose RPM, this must be because the measure enhanced efficiency, both for them and buyers.

The argument that RPM increases output, and therefore efficiency, was used in defence of the NBA in 1989\textsuperscript{22}. The factors for increased output in the book trade were held to be caused by growth of ‘small-run’ publishing, ‘more efficient data capturing’ and a ‘better capacity from buyers to absorb new titles into stock’.\textsuperscript{23} The PA did consider that increased title output contributed towards efficiency but it did comment, in the same report, on delivery times from publishers to bookshops, notably the issue of “overcoming the problems of making 400,000 titles readily available”.\textsuperscript{24} Therefore, while output of new titles had arguably increased efficiency, the sheer number of titles posed logistical problems with distribution.

\begin{itemize}
\item \textbf{1.2.4 Under what circumstances is RPM acceptable? Conclusions.}
\end{itemize}

Three arguments have been put forward here to assess whether RPM is an acceptable practice. Which is the right answer? Argument one, complete outlawing of RPM, is surely impossible to implement. Examples noted (notably Marks and Spencer) point to the fact that vertical restraints operate both within and between companies. Policing of a total ban would be impractical.

The second argument - a pragmatic approach - seems the most sensible. If this is accepted, RPM agreements should be allowed to continue if they operate in the public interest and banned if they do not do so. It is this argument, weighing up individual agreements for their acceptability, which underpins UK and EC law, although each presume RPM
agreements to act against the public interest until proved otherwise. Therefore, this approach judges whether a conflict between the manufacturers' interest and public interest exists. If such a conflict does exist, RPM should be banned.

The third approach, tolerance, has been implemented in the United States. RPM agreements are left alone unless suspicions are raised that the practice distorts a market. The view is taken that manufacturers will know best, and that they will implement RPM to increase efficiency. This *laissez-faire* approach, in which RPM is not viewed as objectionable, is in contrast to UK and EU legislation, where RPM is viewed as objectionable *per se*.

RPM can be viewed as acceptable when it is the solution to a problem - a collective action being the only method of enforcing an effective marketing strategy for the whole trade *which is also in the public interest*; individual RPM imposed and policed by manufacturers would be infeasible because of the problems of other manufacturers free-riding on their support for buyers. If collective RPM is the result of strong-arm tactics by large manufacturers, and reflects the vested interests of those who seek to impose it, the practice should be viewed as unacceptable.

1.3 What have been the particular emphases on RPM in the UK?

The previous section discussed the concept of RPM, theoretical justifications for it, and arguments about when the practice may be considered acceptable. This section moves forward from the theoretical debate surrounding RPM to examine legislation in the UK which has been specifically introduced to control the practice. It traces a hardening political stance toward RPM over the last fifty years, whether collectively or individually enforced.

Legislation passed in the UK between 1956 and 1973 will be discussed. This consists of the 1956 Restrictive Trade Practices Act (amended in 1968 and 1976), the 1964 Resale Prices Act (amended in 1976) and the 1973 Fair Trading Act. This section will discuss EU legislation on vertical restraints in Article 85 of the Treaty of Rome. Legislation drafted in
the late 1980s to bring UK law into line with EU law was not introduced. The reasons for this will be considered. One effect was crucial to the survival of the NBA from 1988 to 1993.

UK competition law covers five main areas. Two laws, the 1976 Restrictive Trade Practices Act and the 1976 Resale Prices Act cover restrictive agreements or arrangements and RPM, respectively. Monopolies, oligopolies and mergers (crucial in terms of a Monopolies and Mergers Commission investigation into the book club BCA/Leisure Circle merger, 1987) are controlled by the 1973 Fair Trading Act. The 1980 Competition Act monitors anti-competitive behaviour of individual firms. No substantive change of law has been introduced regarding competition matters since 1980.

1.3.1 Restrictive Trade Practices Act, 1956 (amended 1968 and 1976)

The origins of law regarding RPM can be traced to Government policies during the Second World War. A 1944 White Paper on Employment Policy paved the way for post-war legislation on restrictive practices and monopolies. The primary reason for legislation was the desire for full employment, industrial expansion and stable prices - this being achieved "by preventing the artificial dampening of demand by profiteering and restrictions on output." In 1948 the Monopolies and Restrictive Practices (Inquiry and Control) Act was enacted. Over the following seven years, tribunals comprising legal, industry and lay members investigated cartels for the newly-formed Monopolies Commission.

In 1944, it was estimated that 2,500 trade associations used RPM. By 1959, 2,240 agreements had been registered with the Registrar of Restrictive Trading Agreements. Over the 1948-56 period, the Monopolies and Restrictive Practices Commission only produced seventeen reports, compared to fifteen judgements produced by the RTPC between 1958 and 1961.

This legislation did not condemn agreements, found by the Commission to be objectionable, as necessarily illegal. Trade associations had the power to alter agreements.
A contentious aspect of so-called restrictive practices was the policy of 'collective discrimination'. For example, under Common Law, a buyer blacklisted by an association for price cutting (which a buyer could be under the NBA prior to redrafting in 1957) had no redress against the association in law and might have to pay 'fines' to be re-supplied. In 1955, the Monopolies and Restrictive Practices Commission published *Collective Discrimination*\(^\text{32}\). The recommendations of this report led directly to the control of 'horizontal' agreements set out in the 1956 Restrictive Trade Practices Act.

The Act created two distinct bodies - the Restrictive Trade Practices Court (RTPC) and a separate Monopolies Commission. These two bodies were overseen by the Registrar of Restrictive Practices. Where an agreement was considered to be restrictive, and the Act by design assumed that all registered agreements were illegal, the Registrar could refer the agreement to the RTPC. After hearing evidence from trade associations and the Registrar's objections, the RTPC had the final say on whether or not the agreement was in the public interest.

This Act assumes that all agreements registered with the Registrar are contrary to the public interest unless the plaintiff can prove that abrogation of the agreement would cause substantial detriment to his trade. The 1956 law provided seven conditions ("gateways") which, if one could be satisfied, exempted the agreement. In addition to the gateways, the agreement also had to pass a 'tailpiece' clause providing that continuation of the practice would not cause detriment to the public, customers or competitors. As we will see later in this chapter, the NBA passed through the gateway 21(b); removal of the Agreement would 'deny the public, as customers, specific or substantial benefits'. Satisfying a gateway was not certain to result in a positive outcome via the tailpiece. An example of this was the *Yarn Spinners* case in 1959\(^\text{33}\). The Court held that abrogation would, under Section 21(c), cause 'an adverse effect on local employment'. It did not pass the tailpiece. The RTPC held that the agreement inflated output in a declining industry.

There were flaws. In particular, the Court did not necessarily have the expertise to choose between different economic analyses presented by the prosecution and the defence\(^\text{34}\). Allan and Curwen point to these problems:
In the course of his judgement, Mr Justice Buckley uttered the now famous words 'Books are different', sentiments with which the publishing industry concurred wholeheartedly. Unfortunately, the economics profession just as wholeheartedly rejected the Judgement as erroneous, and the controversy thus engendered has never fully died down.\(^3^5\)

The RTPC's powers were wide, and feared. Between 1957 and 1969, 1,240 Agreements were abandoned before reaching Court, 960 were "varied" (removal of all restrictions) and 90 lapsed\(^3^6\). Of thirty-three cases brought before the RTPC between 1958 and 1968, twenty-three were banned and ten upheld (including the NBA)\(^3^7\). This Act dealt a severe blow to restrictive practices from 1956 onward. It was amended in 1968 and 1976\(^3^8\).

1.3.2 Resale Prices Act, 1964

Antipathy towards restrictive practices continued in the 1960s and led to legislation banning the practice of RPM *per se*. Allan and Curwen attest to the importance of B S Yamey's *Hobart Paper* on RPM in hardening the government's stance against RPM\(^3^9\).

Under the 1956 Act, individual RPM was allowed (an individual manufacturer supplying a buyer without colluding with rivals). The Resale Prices Act's purpose was to 'restrict the maintenance by contractual and other means of minimum resale prices'.\(^4^0\) Defence of RPM was based on satisfying one of five gateways. The successful defence of the NBA in 1962 and the fact that it would have to be defended again under this law caused understandable worries in the book trade\(^4^1\). After lobbying in Parliament, Edward Heath, who had not included a provision for exempting agreements successfully defended at the RTPC, amended the Bill to include the following provision:

> On a reference under this section in respect of goods in any class which have been the subject of proceedings in the Court under Part I of the Restrictive Practices Act 1956, the Court may treat as conclusive any finding of fact made in these proceedings and shall do so unless prima
facie evidence is given of material change in the relevant circumstances since those proceedings. Under this provision, the NBA was granted exemption from the Act as an unreported session of the RTPC in 1968. Future re-investigation of the NBA would depend on prima facie evidence of change to the 1962 situation. Two products were exempted from this law; books and pharmaceuticals (1970). Other trades, notably the Chocolate and Sugar Confectionery Reference (1967) were not exempted; in this case, the RTPC accepted that retail outlets would decrease without RPM, but those outlets remaining in business would meet demand. Books and pharmaceuticals kept their exempted status following amendments to the Act in 1976.

These two laws, covering restrictive practices and RPM formed the basis for legal examination of the NBA in Britain. It is also necessary here to discuss the Fair Trading Act. As we will see later in this thesis, it was an investigation under this piece of legislation in the 1980s which voiced fresh doubts over the NBA’s validity.

1.3.3 Fair Trading Act 1973

The 1973 Fair Trading Act established the post of Director General of Fair Trading (DGFT), this taking over responsibilities of the Registrar of Restrictive Trade Practices, Administrative support for the post comes from the Office of Fair Trading (OFT). The Act also modified investigation of monopolies, the Monopolies and Mergers Commission (MMC) replacing the Monopolies Commission. The Act gives a wide definition of what constitutes a monopoly. Investigations are instigated when a manufacturer supplies a quarter of all goods and services in his trade. Similarly, mergers are investigated when two or more firms create or enhance a 25% market share, or their combined assets exceed £30 million. The MMC, as we will see in Chapter Five, was crucial in bringing the NBA to the OFT’s attention following a 1987 MMC investigation into the proposed merger between two book clubs, Book Club Associates (BCA) and Leisure Circle.
1.3.4 European Union legislation - Article 85

Emphasis on RPM in the UK has changed since Britain’s accession to the European Community in 1973. As we shall see, application of EU legislation has affected both the working of UK legislation and the NBA. Article 85 is the instrument used for controlling restrictive practices within the EU and, within the scope of this thesis, deals with vertical restraints such as RPM. Introduced in 1962, this legislation is enforced by the European Commission (EC). The EC is responsible for initiating proceedings against suspected restrictive practices. If an agreement is found to infringe Article 85, it becomes automatically void. Exemption from Article 85 rests on satisfying paragraph (3):

[an agreement] ... which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not: (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.44

EU legislation was to have direct effect on the NBA in the 1980s, due to application of the Agreement in Ireland (and thus interstate trade within the EU). Book RPM agreements operating between other EU member states were also effected by Article 85 and, as we will discuss in Chapter Eight, comparisons can be drawn.

1.3.5 Proposed changes to UK Competition Law 1987-1993

Legislation on restrictive practices was successful in breaking up cartels in the 1950s and 1960s. Changing trade and industrial practices in the 1970s led to an increasing amount of references being dealt with by the OFT45; problems of compatibility between UK and EU law caused problems. Thus, a move towards removing legislation “to a museum, where it belongs”46 was proposed in 1987 but finally abandoned in 1993. A Department of Trade and Industry (DTI) report, DTI - the Department for Enterprise47, addressed problems with
• The Restrictive Trade Practices Act and the Resale Prices Act were drafted in the 1950s and 1960s. They have fundamental weaknesses for examining agreements in the modern business climate;

• UK law is based on different principles to EU Law;

• The laws are costly and complex to administer.

Having admitted the need to change legislation, the DTI proposed bringing UK law into line with EU law. A DTI White Paper and a Green Paper on reform of UK competition policy were followed by a booklet explaining new legislation, and the need to change existing legislation. Proposed legislation could have taken two broad approaches. The first was based on European Union competition legislation, notably Article 85’s prohibition of restrictive agreements. The second approach was prohibition of agreements which were seen as being particularly undesirable. This approach was abandoned due to difficulties in defining what “particularly undesirable” practices were. Despite the fact that, in 1987, the DTI regarded present legislation as “extremely weak” and that “proposed reform will be far reaching in its effects”, new legislation was not introduced.

The assumption that new law would be implemented saved the NBA from referral to the RTPC in 1989. Sir Gordon Borrie (then DGFT) announced that “proposed new legislation would require me to review all agreements with restrictions previously upheld by the Restrictive Practices Court”. New legislation was formally abandoned on 14 April, 1993, when Neil Hamilton, the Corporate Affairs Minister, announced:

The Government have decided that the best choice is to strengthen the existing system. With this strengthened regime we can retain the current wide scope and flexibility of powers without increasing the regulatory burden on firms.
1.3.6 Section 1.3 - Conclusions.

Legislation regarding RPM and restrictive practices in the UK has remained basically the same since 1964. Three pieces of UK legislation have been considered plus one EU law. We have seen that UK legislation was deemed inefficient in the 1980s. Despite a desire from the DTI to change legislation to reflect changing trade practices and European Union legislation, it was abandoned in 1993. From observation of legislation relating to restrictive practices, it is possible to detect changes in emphasis at points since 1948. Fishwick comments:

   UK competition policy is rather like a patchwork quilt, with fragments reflecting prevalent thinking at the time of their introduction. 54

In the first section, we considered four theories relating to RPM - these ranging from the negative (collusion) to the positive (raising efficiency). It was noted that theories on the desirability of RPM have developed and changed over the years. Overstreet and Fisher stated:

   over time, different sects have more or less influence over the courts and the political arena. 55

As theory has developed, political emphasis on RPM in the UK has followed. This is illustrated by returning to Allan and Curwen's stress on the importance of Yamey's 1960 Hobart Paper on RPM in hardening the government's stance on RPM 56 via the Resale Prices Act. As they go on to comment, the Resale Prices Act received a very mixed response from Parliament in 1964, and might have contributed to the Conservative's election defeat in that year 57. Why was new legislation not introduced in the 1990s along European Union lines? If we accept the reasoning of Fishwick, it was attributable to political factors, notably the problems faced by the Conservative Party over European integration 58. If the work of these three commentators is accepted, it can be surmised that the emphasis on RPM in the UK has been affected by political considerations, and not only by economic reasoning.
1.4 The Net Book Agreement

Sections 1.2 and 1.3 discussed the concept of RPM and the legislative framework which controls RPM in the UK. As we have seen in both sections, emphasis on RPM has changed over the years - both in terms of economic theory and legislation. We now move on to specifically discuss the RPM agreement which is the principle focus of this thesis - the Net Book Agreement. This section will locate the NBA in the legislative structure discussed in Section 1.3. It will comment on the 1962 case which exempted the NBA from this legislative structure. It will also lead the reader toward the five hypotheses which this thesis explores.

1.4.1 The NBA - principal characteristics

The NBA came into force on January 1st, 1900. It was altered in 1957\textsuperscript{59} to come into line with UK legislation (the 1956 Restrictive Trade Practices Act\textsuperscript{60}) and, in 1992, to take into account a Court of the First Instance (CFI) appeal decision banning application of the Agreement in Ireland\textsuperscript{61}. It was exempted from the provisions of the 1956 Restrictive Trade Practices Act at a hearing in 1962. The Agreement was voluntarily suspended from operation (but not abolished) on 28 September, 1995. It was formally abolished at a session of the RTPC in March 1997. Application of the NBA is now illegal.

The Agreement allowed publishers to impose individual RPM on their books if necessary. Publishers selling books net signed up, or were signatory, to the NBA Standard Conditions. No publishers were required to impose RPM on their books and the Standard Conditions of the Agreement put the publisher under no obligation to net or non-net any specific book or categories of books. Signatory publishers did not have to be members of the PA to impose RPM, nor were all members of the PA required to sell books net. A notable example of a signatory publisher which was not a member of the PA, but was a signatory of the NBA, was HMSO. Publishers were free to determine the net price, trade terms with booksellers, de-netting of titles and returns of net books.

The NBA was designed to be a mechanism for the administration and enforcement of
individual RPM. Publishers signatory to the NBA and wishing to use RPM complied to the Standard Conditions and enforced those conditions, either on instruction of the PA, or by allowing the PA to enforce breaches of the NBA.

Exceptions to the Standard Conditions were contained in the Agreement for certain categories of sales - these being authorised by the PA. They included the Library Licence (introduced in 1926) and Book Club Regulations (BCR - 1939). The latter scheme, although under the NBA umbrella, was separate from the standard conditions and amounted to a set of regulations concerning when books published net could be offered as book club editions. As we shall see in Chapter Five, BCR posed serious difficulties for the PA in the 1980s. They were amended on two occasions (1974 and 1985).

Enforcement of the Standard Conditions could be undertaken either by recourse to law of contract (bookseller-publisher contract), or by using Section 26(2) of the 1976 Resale Prices Act, where books had been acquired with indication of the standard conditions. Enforcement of the NBA took the form of injunctions issued by the PA on the behalf of signatory publishers.

The PA’s role, beyond issuing injunctions against breaches of the NBA, was effectively that of an administrator. It maintained a list of signatories, issued notices on publishers joining or leaving the Agreement and required signatories to enforce or report breaches in the standard conditions.

1.4.2 Key Features of the NBA

- The PA administered the NBA and was a respondent at the 1962 RTPC. In this and other cases, the PA acted on behalf of all NBA signatories via a representation order. The PA was allowed to represent non-members who were signatory to the NBA.

- The NBA was an agreement between signatory publishers. It was not an agreement between publishers and booksellers, even though the initial impetus for
RPM came from booksellers, not publishers. As we will also see, the NBA was justified primarily in 1962 as directly benefiting stockholding bookshops, not publishers.

- According to the PA, the NBA was “a very liberal agreement”.

- The NBA was not a price-fixing agreement. There was no collective imposition of prices between publishers. The NBA was not a cartel. Prices were (and are) set competitively. It was, in the PA’s words, “a simple system for the administration of individual RPM for books”. Others disagreed.

1.4.3 Books are different?

In 1962, the NBA was investigated by the RTPC under the terms of the 1956 Restrictive Trade Practices Act. The hearing took place over 24 days in June of that year and judgement on the NBA was given by Mr Justice Buckley on 30 October, 1962. This judgement was positive; the NBA was held to act in the public interest, and was thus exempted from the 1956 Act. The hearing provides us with the first detailed assessment of the NBA from the standpoint of booksellers, publishers and economists. A full transcription of the hearing is contained in Barker and Davies’s 938-page epic, Books are Different.

1.4.3.1 The 1962 RTPC hearing

It was argued by the book trade, and accepted by the Court, that the NBA did act in the public interest. The Court rejected the Registrar’s contention that the NBA amounted to a publishers’ cartel. The Court accepted that ‘books are different’ from other products, and that the publishing trade was unique:
Books are different ... may be accepted as true in two respects: for first, no two literary works are the same or alike in the way in which or the extent to which two oranges or two eggs may be said to be; and, secondly, the production and marketing of books involve problems that are different from those which arise in connexion with other commodities.66

Bagnall’s aphorism at the 1962 RTPC hearing, ‘books are different’, and repeated by Buckley in his judgement, remains the most famous comment on the NBA. The essence of the argument that ‘books are different’ was based on the principle that the book trade was unique; each book being in competition with each other, and this included books produced by the same publisher. The Court’s opinion that the book trade was indeed unique is absolutely central to the positive judgement on the NBA. Buckley raised the point in his judgement that the uniqueness of each title made publishing a speculative trade; the publisher could have no indication before publishing whether the book would be successful or not:

The uniqueness of a new book makes the task of judging whether it will appeal to the public particularly difficult, especially in the field of fiction and of books intended mainly for the entertainment of the reader, where it seems almost as hard to discern whether a new book will catch the public fancy and so be a commercial success as it is notoriously difficult to foretell whether a theatrical production will succeed.67

The Court accepted that books have a strong educational and cultural value, and that there was a social argument for maintaining a strong bookselling trade. If the NBA were to be abolished, and price discounting were to occur, bookshops would lose their profit margins and go out of business. This would knock-on to publishers, who would produce fewer books and of a lower quality. In the detailed judgement, the Court accepted evidence given to it that abrogation of the NBA would cause a ‘tripod’ of negative effects:

• Fewer and less well-equipped stockholding bookshops;
• More expensive books;

• Fewer published titles.

These forecasts were justified thus:

In our judgement each of these heads is sufficiently explicit, definable and distinct in character to justify the description `specific', and the avoidance of any of these disadvantageous consequences can properly be termed a specific benefit or advantage. We are satisfied, moreover, that each of these consequences would arise in a sufficiently serious degree to make its avoidance a substantial advantage.

The RTPC held that collective administration of the NBA by the PA, the enforcement mechanism adopted, and the ability of publishers to impose individual RPM on books where necessary was in the public interest. Only by applying RPM in this method could the trade hope to avoid the detrimental effects predicted by the book trade, and concurred with by the Court. The book trade was held to be unique and difficult, and that the element of risk taken by publishers - the need to have all their product on display, the need to avoid free-riding by competitors justified RPM in the trade. The 1962 hearing was a vindication for the bookselling trade, and provided the legal platform from which the PA was to argue for continuation of the NBA in later years.

In many respects, the question of whether books are different marks the starting point of this thesis. As hypothesised in this thesis, the 1962 judgement throws up a number of direct and related questions which need to be answered:

• Was the judgement in 1962 sound?

• Was the judgement still sound in the late 1980s?

• What factors changed over the 1962-95 period to make this judgement invalid?
• Were the detrimental effects predicted by the Court seen after NBA suspension?

1.5 Are pharmaceuticals different?

Nobody ever died for want of a bookshop. Medicines are another matter.

Exemption from the 1964 Resale Prices Act was not granted to the NBA alone. On 7 April, 1970, the pharmaceutical trade defended an RPM agreement on over-the-counter (OTC) medicines at the RTPC. Pharmaceuticals available only by prescription are not covered by this Agreement. RPM on OTC drugs remains in force in 1997, but is to be re-examined at the RTPC sometime in 1998.

RPM in 1970 was confined to 2,500 OTC brands, mainly painkillers, cough linctus and indigestion remedies. In a decision announced on 5 June, 1970, the RTPC judged the Agreement to act in the public interest, it resulting in “a plentiful and well distributed supply of chemists shops essential to the public”. In comparison, the 1962 RTPC judged NBA abolition would result in “fewer and less well equipped stockholding bookshops”.

RPM was to remain unchallenged in the pharmaceutical trade until 1995, when the Asda supermarket chain started a discounting campaign aimed to end RPM. This followed from Asda’s high-profile campaign against the NBA, which is considered in Chapter Five.

The arguments used to defend RPM in the pharmaceutical sector in 1970 are similar to those employed by the book trade in 1962. For instance, it was argued that without RPM supermarkets would cut prices and threaten the survival of independent pharmacists. In the NBA case, the threat of supermarkets on independent booksellers was also noted. It was argued that chemists served an essential social function, both by the large number of chemists close to doctors’ surgeries, and advice given by pharmacists for OTC drugs. This parallels the RTPC’s view that independent booksellers served a social role, in that a wide range of books (encouraged by RPM) provided the public with a vital educational and cultural service.

Medicines are not ordinary items of commerce.
RPM on both OTC medicines and books was argued to serve the public interest, though we are not comparing like with like. The underlying difference between the cases is that local chemists were held to provide an essential service in terms of the health needs of the general public. While bookshops provide a public service, it would take a bookseller of extreme opinions to judge that his trade was essential to the general public. Any organisation wishing to end RPM agreements, and potentially causing local pharmacists to close might prove hugely unpopular. The National Pharmaceutical Association concurred:

It is short-sighted to risk losing a valuable local pharmacy service just to save 10p on a bottle of vitamins.\textsuperscript{26}

This point appears to have been recognised by Asda in their campaign against the Agreement in 1995 - they did not want to be seen to do the 'dirty work' in potentially forcing independent pharmacists out of business, preferring to leave this to the OFT.\textsuperscript{77}

There is little or no commonality in terms of how books and pharmaceuticals are designed, manufactured, marketed or sold. For example, an argument against RPM in the book trade would go along the lines of discounted books leading to greater sales and, hopefully, encouraged more people to read. We cannot use the same logic for OTC pharmaceuticals. It is perhaps neither sensible nor ethical to hypothesise that discounting drugs would cause greater sales, and encourage more people to use drugs.

Abolition of these Agreements was held by the RTPC to have potentially severe impacts on retail outlets and, therefore, was against the public interest. Public interest is the commonality between the two cases. As we will see in Chapter Five, opponents of RPM argued that these agreements were cartels, and operated against the public interest by maintaining high prices. We also see that the emphasis by UK competition authorities in the 1990s tended to support the view that these two agreements were cartels, and did operate against the public interest.
1. **Publishers' Association.** *The Net Book Agreement, benefits, how it works, the terms* [pamphlet], 1994. Full text of the Agreement is in Appendix I, p. 295.

2. A list of acronyms used in this thesis are contained in the glossary, page ix.


6. 'Net' is used specifically in the UK book trade to denote a book for which a publisher has designated as subject to the terms of the Net Book Agreement.


12. Ibid., pp. 346-359.


16. Davis & Flanders. ref. 8, p. 8.

17 All publishers and booksellers interviewed for this thesis, unless indicated otherwise, remain anonymous. The reasons for this are twofold; some publishers specified that their identity must be concealed, others made available financial information which was commercially sensitive.

18. Allan & Curwen. ref. 9, pp. 53-54.


21. Davis & Flanders. ref. 8, p. 9.


29. Swann, D. et al., ref. 27, p. 51.


34. The RTPC took evidence from Canadian experience of RPM abrogation in 1951. Arguably, this evidence did not compare like with like - as Chapter eight will make clear, comparing different countries' experience of RPM must be approached with caution.

35. **Allan & Curwen,** ref. 9, p. 13.

36. **Swann, D. et al,** ref. 27, p. 76.

37. **Swann, D. et al,** ref. 27, p. 73.


39. **Allan & Curwen,** ref. 9, p. 9.

40. **Halsbury's Statutes,** ref. 25.

41. **Barker & Davies,** ref. 14, p. xii.
42. Halsbury's Statutes, ref. 25.


48. Ibid., p. 8.


51. Department of Trade and Industry, ref. 47, p. 15.


54. Fishwick, ref. 45, p. 144.


56. Allan & Curwen, ref. 9, p. 9.

57. Allan & Curwen, ref. 9, p. 9.

58. Fishwick, ref. 45, p. 150.


60. Halsbury's Statutes, ref. 25.


64. Allan & Curwen, ref. 9, pp. 24-26.

65. Barker & Davies, ref. 15, p. 4.

66. Barker & Davies, ref. 15, p. 4.

67. Barker & Davies, ref. IS, p. 4.

68. Barker & Davies, ref. IS, p. 4.

69. Pennington. The Times, 24 October 1995, p. 27.

70. White, S. Cut price for drugs ruled out by Court. The Times, 6 June 1970, p. 11.

71. Ibid, p. 11.

72. Ibid, p. 11.

73. Barker & Davies, ref. 15, p. 261.

74. Pennington, ref. 69, p. 27.


77.  **Pennington.** *The Times,* 17 October 1995, p. 27.
Chapter Two.

2.1 Thesis structure and methodology

Chapter One offered a theoretical framework and historical background for this thesis. In it we noted the concept of RPM, legislation controlling RPM and brief discussion of two RPM agreements which have been sanctioned in the UK. Changes in emphasis on RPM, due to changing economic argument and political reasoning were discussed. These sections provided a platform for specifically discussing the NBA, which we now move on to consider in greater depth. In Chapter One, various questions were raised in regard to the effect of UK and EU legislation on the NBA, and the 1962 RTPC judgement on the NBA. Five of these questions (illustrated in Figure 2.1 overleaf) provide a structure which the thesis will explore. It is the remit of this thesis to address these questions:

- Was the RTPC judgement in 1962 valid? (Chapter Three)
- What were the effects of change in UK and EU competition law on the NBA in the 1980s and 1990s? (Chapter Three, Chapter Four)
- What factors in the UK book trade changed over the 1962-95 period to put the NBA under pressure? (Chapter Five)
- Has evidence gathered since NBA suspension concurred with or disproved the 1962 judgement? (Chapter Six, Chapter Seven)
- Does evidence of RPM suspension parallel experience in other countries which have introduced or removed RPM? (Chapter Eight)
Chapter One - Theoretical framework.

Chapter Two - Thesis structure & methodology

Chapter Three. The NBA 1900-1997
An overview of developments and legal challenges in the UK.

Chapter Four. The NBA in Europe:
An overview of legal challenges and effect.


Chapter Six. Suspension of the NBA -
The immediate effects, 1995-1997.

Chapter Seven. Reaction in the trade to the NBA’s suspension.

Chapter Eight. Does evidence of RPM suspension parallel experience in other countries which have introduced or removed RPM?

This chapter provides an overview of the NBA. It explores the NBA from its origins in the nineteenth century through to suspension in 1995 and the formal ending in 1997. It will provide an overview of why RPM was considered to act in the interests of the book trade over this period, additions to the Agreement (notably the Library Licence, Book Club Regulations), changes to the Agreement in 1957 and a brief overview of challenges to the NBA. It also considers UK competition authority investigations into the NBA's validity in the 1980s and 1990s in the UK and EU. It will examine the 1962 RTPC hearing on the NBA, and will discuss evidence given to the RTPC which was held to prove that 'books are different'. It will conclude that proposed changes to competition law were crucial in a decision not to re-refer the NBA back to the RTPC in 1989, and that regulatory inertia had significant negative effects on the book trade in the 1989-1995 period.

Chapter Four. The NBA in Europe: an overview of legal challenge and effect.

Chapter Four considers Article 85 of the Treaty of Rome, under which the NBA was challenged in 1986. It will consider the actions taken by the European Commission on book RPM, and will explore various book RPM ‘frameworks’ which were proposed in the 1980s. Chapter Four also examines the case brought against the NBA, and the effects of this on the UK book trade.

Chapter Five. What factors in the UK book trade changed over the 1962-95 period to put the 1962 judgement under pressure?

This chapter considers three sectors of the UK book trade which had profound effects on the suspension of the NBA. It considers the cause and effect of book clubs (BCA), book retailers (Dillons) and supermarkets (Asda) on the ending of the NBA.

These three sectors differ. Book clubs were a catalyst for NBA suspension, yet, as we will see, had no logical reason to bring down the Agreement. Book clubs enjoyed growth
under the NBA, which gave them under licence (Book Club Regulations (BCR)) the right
to discount net books. Without the NBA their future in a free-price market would be less
assured. Dillons and Asda attacked the NBA because they could not discount books.
Dillons was the single most effective protagonist in the NBA's fall. Its campaign
effectively attacked the NBA, practices in the book trade and competition authorities in the
UK and EU. Supermarket chains such as Asda carried on the Dillons campaign, but their
reasons for fighting the NBA differed from Dillons. Supermarket chains were new
entrants to bookselling, they carried a narrow range of stock and had a stronger seasonal
focus (Christmas).

Chapter Six. Has evidence collected since NBA suspension concurred with or
disproved the 1962 judgement?

Suspension of the NBA in 1995 gave the chance to test empirically whether the 'tripod' of
ill-effects which the RTPC predicted (few and less well equipped stockholding bookshops,
more expensive books, fewer published titles) would actually happen. This chapter
assesses change in the bookselling trade over the two year period following suspension,
and refers to the work of Fishwick et al in this regard.1 The chapter concludes that
suspension has not had the dire effects which were predicted in 1962.

Chapter Seven. Interviews with booksellers

During 1997, eleven booksellers were individually approached to answer a range of
questions on the NBA. Questions probed the booksellers' thoughts on the prime cause of
NBA suspension, and the effects of suspension on their businesses. In tandem with
Chapter Seven, these interviews lend weight to argument that NBA suspension has not had
a severe impact on the bookselling trade. It also becomes clear in this chapter that
suspension has had some positive effects on the UK book trade.
Chapter Eight. Does evidence collected since NBA suspension parallel experience in other countries which have either removed or introduced RPM?

Chapter Eight considers the experience of three EU member states which have experienced both abolition and introduction of RPM in their book trades; France, which introduced specific law to protect its book trade in 1981; the Netherlands, which still has an RPM agreement but which lost an interstate agreement between itself and Belgium in 1984. Belgium is the last country to be considered, it both losing an interstate agreement and RPM within its borders. These three examples give insight into the complexities of EU competition law, and the different emphasis taken by these countries in regard to RPM on books in comparison to the UK.

2.2 Methodology: introduction

This thesis makes use of primary sources of information, where available. These fall into six categories:

- **Interviews** with trade organisations and individuals conducted by the author. These included structured interviews with booksellers, publishers, trade associations and influential figures in the UK book trade;

- **Autobiographies**. Of particular interest was Terry Maher's autobiography, which described Pentos's attacks on the NBA. An interview with Terry Maher clarified and explored his opinions on the NBA;

- **Press releases**;

- **Annual reports**;

- **UK and EC reports** on legal challenges to the NBA, plus, in the EC's case, reports into the European book trade and application of RPM.
Secondary sources of information are available on the NBA, RPM, UK competition law and EC competition law. In some cases, sources cited act as both primary and secondary sources. For example, the *Bookseller* contains both primary material (editorials) and secondary material (articles written on the NBA). It has been included in the ‘secondary’ sub-section for these purposes. Statistical information, which is primary information, also to an extent straddles the two. Raw data collected for the PA’s PASCS statistics series is manipulated by various statistical methods (i.e., *chained Laspeyres indices*) to arrive at meaningful conclusions.

2.2.1 Interviews

A variety of interviews was undertaken for this thesis, including booksellers, publishers, trade associations and influential figures in the UK book trade. Interviews were designed to collect primary information or explore areas of particular interest.

**Interviews with booksellers and publishers.**

Eleven booksellers were interviewed in the summer of 1997 to investigate the effects of NBA suspension on their businesses. Results of these interviews, analysed in Chapter Seven, were to prove that suspension did not have the negative effects which were forecast. These results, in part, back up the larger body of research carried out by Fishwick *et al*, which is considered in Chapter Six. In all cases the identity of the booksellers remains anonymous. Some information divulged was commercially sensitive.

Ex-Pentos chairman Terry Maher was interviewed in April 1996. Maher, whose autobiography was an excellent source of primary information for Chapter Five (Dillons’ campaign against the NBA), talked about the Dillons campaign at length and in depth.

Three publishers were interviewed in the summer of 1997. Along with the eleven booksellers, and for the same reason, they remain anonymous. These interviews were designed to obtain inside information on what these publishers actually thought of the
NBA in the period leading up to its suspension. Information gathered from these interviews is used in the narrative of this thesis.

**Interviews with NBA commentators.**

Two respected commentators on the NBA, Dr Francis Fishwick, Reader in Economics at Cranfield School of Management, and Gordon Graham, editor of *Logos* were interviewed in the summer of 1997. Dr Fishwick's work on the NBA since 1981 provides a bedrock of useful information on the Agreement, plus research on book RPM in other countries (notably Australia). He has been employed by the PA as an advisor on the NBA.

Gordon Graham is editor of the world publishing journal *Logos,* and has devoted himself full-time to this position since retiring as Butterworth's Chief Executive in 1989. *Logos* has published a number of articles on book RPM around the world, notably from Zifcak⁴ (Australia), Heker⁵ (Germany) and Koutchounow⁶ (Columbia).

Once again, due to the sensitivity of some information, transcriptions of these interviews are not included. Information gathered from these interviews is used in the narrative of this thesis.

**Interviews with trade associations.**

Representatives from two trade associations, the PA, and the Federation of European Publishers (FEP) were interviewed in 1996. The PA's remit was to defend the NBA on behalf of signatory publishers, and this was reflected in the interviews. The PA's line, as set out in its publications, was a true record. Little information was gained from this interview which either deviated or added to the published record.

The FEP, based in Brussels, represents all European Union publishers' associations (and Norway). It primarily acts as a publishers' lobbying organisation to the European Commission. An interview with its secretary-general, Mathilde von Alleman, was most useful. The FEP were able to supply a number of useful primary documents on their
dealings with the European Commission (EC) and European Parliament as well as
documentation on the European book trade.

Interview with the OFT.

Two OFT employees were interviewed in the summer of 1995. Both interviews were
transcribed but strictly off-record. This was due to the fact that the OFT was still working
on its submission to the RTPC proceedings. The interviews were useful. Primarily, they
gave an indication of the political 'problems' of competition policy at that time, and the
then Conservative Government's stance on restrictive practices.

2.3 Primary sources

Primary sources came from UK and EU law reports, EU documents, submissions from the
PA and other trade organisations, autobiographies, statistics and press releases.

A detailed critique and transcription of the 1962 RTPC case, which is both a primary and
secondary source is Barker and Davies's *Books are different*. This book is the most
detailed book ever written on the NBA and covers the 1962 RTPC proceedings in full.

The 1962 case, and the methodology used in attacking and defending the NBA, were of
great importance when considering the NBA's downfall in 1995. The legal framework
under which the NBA was been exempted between 1962 and 1997 was found in
*Halsbury's Statutes*. UK statutory competition law covers four main areas - *the 1976
Restrictive Trade Practices Act*, the *1976 Resale Prices Act*, the *1973 Fair Trading Act*
and the *1980 Competition Act*. All four of these Acts can be found, with commentary, in
Halsbury's Statutes.

Submissions to the OFT from the PA and others provided excellent summaries of the
arguments for and against RPM on books. In particular, the PA's 1989 submission to the
OFT, and Pentos's (Dillons) 1989 submission to the OFT provided overviews of the
style, substance and stance adopted in these proceedings. Autobiographical sources
relevant to the recent book trade were scarce. Terry Maher's *Against my better judgement* provided an in-depth, detailed account of Pentos's campaign against the NBA. Material in this book, plus *Bookseller* reports (see secondary sources, sub-section below), and others, formed the basis for an interview with Maher in 1996.

The book trade is well served by statistical data. Data on the UK trade was obtained from three main sources: the Publishers' Associations' *Book Trade Year Book 1995*; Book Marketing Limited's *Book Facts*; and Pira's *UK Printing and Publishing Industry Statistics*. Statistics on the European book trade were obtained in Euromonitor's *Books: the international market*. Unfortunately, Euromonitor's detailed bi-annual survey of the UK book trade, *UK Book Report*, was discontinued in 1994. Statistics relating to book clubs and supermarkets came from the firms themselves. Disinformation was suspected for some book club statistics and supermarket book sales. Data on market share for these three parts of the trade came from *Book Facts*. Data are compiled from the PA's PASCS, the Business Monitor *PAQ 4753*, *The Bookseller* and the BML *Books and the Consumer survey*.

Information on European aspects of book RPM was available from a variety of sources. Individual cases regarding the NBA and other books RPM cases were reported in the *Official Journal of the European Communities* and *All England Law Reports*. In addition, summaries of cases and background to decisions were found in annual *Competition Reports*. The EC produced a variety of Documents and Reports on book publishing and RPM for debate within the European Parliament and Council of Ministers, notably: *Communication from the Commission to the Council on the creation of a Community framework system for book prices*, *Communication by the Commission to the Council on the European dimension with regard to books* and *Report drawn up on behalf of the Committee on Youth, Education, Information and Sport on the European dimension with regard to books*. 

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2.4 Secondary Sources

*The Bookseller*, a weekly journal published by Whitakers, provided current information on the UK and European trade. *The Bookseller*’s owner, David Whitaker, and editor, Louis Balm, were reportedly in favour of the NBA. Terry Maher remarked in his interview that *The Bookseller* did extreme damage to the Dillons campaign against the NBA. It was the only journal in the UK covering the book trade. Others, notably *Logos* (Quarterly), catered for an academic market and was wider in scope and detail. Although the NBA was much written about in *The Bookseller*, with articles also appearing in the quality broadsheets from time to time, few serious academic studies were carried out on the NBA. Notably, Allan and Curwen’s slim volume, *Competition and Choice in the UK Publishing Industry*\textsuperscript{22}, argued against the NBA in 1991. Other academic work on the NBA was rare. Of note was the Consumer Association’s, *The Net Book Agreement: an economic assessment*\textsuperscript{23} (1991), which summarised arguments for and against the NBA without bias. A previous publication by this Association, *The Net Book Agreement: A Which? Campaign report*\textsuperscript{24} (1978), was critical of the NBA. Beyond these reports, the NBA was not well studied in the academic field.

Research on RPM in the European book trade, apart from Commission Documents referred to in the previous sub-section, was been scarce. Two studies of book RPM were excellent starting points. Nicolas Charbit’s *Resale price maintenance in the European publishing sector*\textsuperscript{25} gave an overview of the EC’s policy on book RPM from 1981 to 1993. Stephen Hornsby’s *Public and private resale price maintenance systems in the publishing sector: the need for equal treatment in European Law*\textsuperscript{26} gave a broad overview of the EC’s early attempts to rule on transnational RPM agreements, and compatibility of EU law with Member State national law.


Fishwick et al., ref. 1.

Zifcak, M. Australia without resale price maintenance: Who were the losers? The public. Logos, 1991, 2(4), pp. 204-208.


14 Maher, ref. 2.


Chapter Three. The NBA 1900-1997. An overview of developments and legal challenges in the UK.

3.1 Introduction

In March 1997 the NBA was declared illegal by the RTPC following a low-key two week hearing in January 1997. Had the NBA survived 1995 these proceedings would have been as vitally important as the 1962 proceedings. This chapter considers treatment of the NBA from its origins and introduction in 1900; the landmark 1962 RTPC case which found the Agreement to act in the public interest, and the decision in March 1997 to ban the Agreement. It will become apparent that a hardening attitude toward RPM from UK competition authorities was to successively undermine the NBA in the 1980s and 1990s. It is perhaps ironic after these series of cases, plus the ongoing European case, that the NBA’s end was precipitated by elements in the trade.

3.2 Origins

The NBA came into force on January 1st 1900 with sixty-three publishers signatory to the Agreement. The Agreement drawn up in 1899 remained largely unaltered until suspension in 1995. A principal change was the removal of the ‘stop-list’ clause in 1957 to avoid conflict with provisions of the 1956 Restrictive Trades Practices Act. Under that clause, booksellers not maintaining net prices had supplies withheld by publishers or were fined by the PA. Alterations in 1957 allowed the PA to take legal injunctions against retailers breaking terms of the Agreement.

The desire for RPM in sections of the UK book trade was evident before the NBA was introduced. In 1829 RPM was introduced by booksellers in London, these ‘regulations’ were enforced by a ‘Booksellers Committee’. The regulations were held to:

- excite thro’out the trade mutual harmony and confidence;
- increase respectability in the trade;
• enable both publishers and booksellers to enjoy those profits to which they are respectively entitled\(^3\).

RPM lasted in the London book trade until 1852. The practice was stopped after the findings of the Campbell Committee, which found that the imposing of free prices was against the principles of free trade\(^4\). In addition, Campbell held that the Bookseller’s Association was actually and potentially a coercive force. With the ending of RPM in 1852 the first UK book trade association, the 1848 Booksellers Association, also collapsed\(^5\). Argument surrounding the end of this Agreement are not dissimilar contextually to debate over the NBA in the late 20th century. For example, defence of the NBA in 1962 rested strongly on the principle that the NBA gave booksellers the ‘confidence’ to stock books for which there was no guaranteed market. One ‘quality’ bookshop in the 1991 price ‘war’ held that price discounting made their stores less appealing to ‘respectable’ customers\(^6\). The exact wording of the regulations are not available, but this Agreement differed from the NBA for these reasons: -

• The regulations were imposed and monitored by booksellers, and not publishers.

• It is not clear whether book prices were kept the same in all London bookshops by means of a cartel type Agreement organized by the Booksellers Committee.

The desire for organized RPM on books re-emerged in the 1880s. In 1890 Frederick Macmillan published the economist Alfred Marshall’s book *Principles of Economics* at net price, this being the first book published ‘net’\(^7\). In the same year the London Booksellers society was formed to promote the trade, and more importantly to promote the re-introduction of organized RPM. The reasons why booksellers wanted RPM stemmed from the increasing number of titles being published and the policy of ‘undercutting’ by retailers. Moves toward RPM in the 1890s came from booksellers with some support from individual publishers (e.g. Macmillan and Heinemann). In 1895 the London Booksellers Society expanded to cover the whole United Kingdom and Ireland, and was renamed the Associated Booksellers of Great Britain and Ireland (AB). A year
later the lead of the booksellers was followed by the publishing trade, the Publisher’s Association was formed in 1896. These two trade associations remain the only mainstream bodies representing the respective trades. Unlike other retailers (e.g. the UK grocery trade) the book trade has not been characterised by specialised trade associations representing all aspects of the industry.

In the late 1890s the AB consistently argued and put forward plans for RPM to be introduced. These plans were rejected by the PA, who cited reasons against RPM including higher retail prices for books and larger trade discounts to bookshops. In the first fourteen years of the NBA, books published ‘net’ rose from 2,322 in 1901 to 6,650 in 1914. 5,675 books were published non-net in 1901, by 1914 this dropped to 3,944.

3.3 The NBA. 1900 - 1957

The introduction of the NBA in 1900 owed much to the AB’s efforts and the few publishers who openly supported RPM. The 1895-1900 period was a paradigm shift in respect of the greater influence an organised bookselling trade had on publishers. Another paradigm shift in power moving away from publishers happened during the rapid growth of independent bookshop chains in the early 1980s; Waterstones, Dillons and Blackwells amongst others. The latter paradigm shift set in train events which led indirectly to NBA suspension in 1995.

The NBA in 1900 was supported by many booksellers, though dissenters existed in the form of large bookshops unwilling to lose their ability to discount. Publishers were sceptical about the NBA in its early days, and the publishing of ‘net’ books grew slowly through the first two decades of the century. Gradually, the publishing of fiction ‘net’ began to turn the tide in favour of the NBA, and by 1920 the trend of higher prices following the introduction of the NBA began to even out.

The period up to 1916 saw a steady increase in books published net and a corresponding decrease in books published non-net. Paper shortages were common. Book production was more expensive, and, as a result, book prices increased. This was counterbalanced
by the increase in books sold to the armed forces during this period. The period of boom during the war and immediately after it reduced the booksellers' incentive to discount, the AB took advantage of this to limit discounts given on non-net books to 2d in the shilling\textsuperscript{12}. After twenty years the NBA was consolidated, 70\% of books were published net. Policing of the Agreement was largely the domain of the AB, who controlled price discounts given to non-net books by booksellers therefore reducing the incentive for publishers to publish non-net. The PA's role in policing the Agreement was restricted to operating a 'stop-list' for booksellers transgressing the NBA. Although the AB was responsible for reporting transgressions, sanctions against publishers or booksellers breaking terms were rare\textsuperscript{13}.

The 1920s saw the emergence and divergence of various sectors of the book trade. Educational books, which had never been published at net prices in any quantity, remained outside the Agreement. This remained the largest publishing sector outside the NBA until suspension in 1995. In 1929 the first book clubs began operation.

In an attempt to tidy up the NBA and its enforcement, a Joint Committee was set up in 1928 comprising members of the AB and PA. The Committee's recommendations marked the point at which the Agreement was used more effectively to control transgressions; the implementation of a Joint Advisory Committee meeting several times each year between members of the two Associations allowed better policing of the NBA. Two major recommendations were made by the Joint Committee and implemented. From 1929 onwards a 'List of Recognized Booksellers' party to the NBA was held, these being in effect \textit{bona fide} retailers. Additionally, the Joint Committee drew up trade terms for sections of the book trade. These were divided into three categories. General booksellers were entitled to full trade terms from publishers (33\% discount from publishers), other booksellers were entitled to full trade terms on books which were related to the product they sold, but not on other books. Book Agents were divided into four categories, Ordinary Book Agents, Temporary Book Agents, Quantity-buying Book Agents and Library Book Agents. Other categories were added when necessary, notably regulations for Remainders, Cheap Editions and Revised Editions (1936) and Book Club Regulations (1939). By the beginning of the Second World War the Agreement which
was to remain in place with only cosmetic changes until 1995 had become a standard part of the trade.

- The NBA was brought in to safeguard the interests of the vast majority of booksellers and not the general public;

- Publishers were not initially enthusiastic about the NBA. PA President John Murray stated in 1900 “we made it very clear to the booksellers that we did not enter on this step through any wish of our own - we should be content to let matters go on as they are”

- Policing of the NBA up to 1928 was haphazard. Sanctions against booksellers or publishers transgressing the NBA were rare;

- The AB ensured the NBA’s success by limiting discounts given by booksellers on non-net books.

Enforcement of the NBA was carried out by ‘stop-lists’ against publishers or booksellers breaking the terms of the Agreement. Following the 1928-1929 Joint Committee, enforcement was made easier and more successful by better definition of trade terms and better methods of catching infringements. The PA altered the NBA in 1957 to avoid conflict with the 1956 Restrictive Trade Practices Act. The main change to the NBA was removal of the ‘stop-list’ method of punishing retailers and publishers. The PA replaced this clause by drafting the following changes:

- The PA gained consent from members to act as the legal representative in enforcing transgressions of the Agreement;

- All booksellers on the List of Recognized Booksellers were sent details of the revised Agreement, and were required to acknowledge receipt of the changes;
• Breaches of the NBA were reported, as before, to the Joint Advisory Committee. In cases where the bookseller flouted calls to stop discounting the Committee could recommend the PA to take legal action against the retailer. Costs for Court action were to be paid for by the PA, and not individual publishers affected by discounting;

• The List of Recognized Booksellers was renamed Directory of Booksellers, and was marketed after 1957 as a service to publishers rather than being a list of bona fide booksellers. When the Registrar of Restrictive Practices notified the associations in 1959 that the NBA would be investigated he accepted that the Directory was not restrictive. The European Commission investigation into the NBA from 1986-1988 found that the Directory was restrictive by tacitly endorsing barriers of entry into the trade.

3.4 The NBA at the RTPC, 1962

The 1956 Restrictive Trade Practices Act caught restrictive agreements via two methods. Part I of the Act required registration of Agreements which dealt with restrictive Agreements between two parties (ie in this case the supplier (publisher) and the dealer (bookseller)). Under Part I of the Act the PA was forced to register the NBA. All Agreements registered under Part I were presumed to be against the public interest unless the defendant could justify the Agreement via one of seven gateways and a subsequent balancing (or tailpiece) provision. Part II of the Act made it illegal for suppliers of goods to boycott price-cutters or their suppliers on terms less favourable than those given to dealers not discounting. To avoid clashing with part II of the Act, the NBA was redrafted in 1957. This did not prevent the NBA from being referred to the RTPC under Part I.

The burden of proof for proving whether the NBA passed through one of the seven gateways rested with the PA. The PA defended the NBA on three main points: -
• Wording of the Agreement, including the Standard Conditions of Sale and the Sanctity of Contracts clause and their implications on the signatory publishers was clear;

• The PA had to prove that RPM would not be maintained individually by publishers if the NBA were abrogated;

• The Agreement maintained a satisfactory distribution system for books.

The PA satisfied the RTPC that the Agreement, although restrictive, allowed publishers to deal more effectively with price cutting than they could individually. The Registrar could not conclusively prove that publishers would either continue or discontinue RPM if the Agreement were abrogated. The NBA successfully negotiated Gateway 21(1)b that abrogation would cause three detrimental effects to book distribution - fewer stockholding bookshops, higher prices overall and fewer and less varied titles.

• Wording of the NBA.

The PA successfully argued that the 1957 Standard Conditions of Sale were intended to ensure a fair distribution of net books to all dealers - signatory publishers agreeing not to supply net books at net prices to some and not others. Exemptions to the Standard Conditions included the library licence and reprint rights for book clubs. Policing of the Standard Conditions was contained in the Sanctity of Contracts clause, which allowed the PA, via the Council of the Association to take legal action against firms breaching the NBA.

A problem faced in the NBA's wording was the word 'we' in the clause "except as we may otherwise direct", which could be taken to mean 'we' in the sense of all signatories to the Agreement, or 'we' in the sense of individual publishers. The Court accepted that taking "as we may otherwise direct" in terms of individual publishers would effectively render the NBA meaningless, as this would give publishers, at their discretion, power to change the Agreement. The PA successfully argued that powers granted to individual publishers "otherwise to direct" when a book could be sold at less than net price could
only be used in exceptional circumstances, and that the whole ethos of the Agreement was that exceptions would not be made to the Standard Conditions.

- **RPM**

The PA had to prove beyond reasonable doubt that if the NBA was abolished publishers would not continue to use RPM on their books. Under the 1956 Act individual publishers could legally set and enforce prices. A benefit claimed by the PA was that the NBA effectively removed the burden of publishers having to police their own products.

If the Registrar could prove that publishers would carry on much as before this would render the NBA irrelevant to the trade. The PA argued that publishers would not generally continue with RPM if the NBA did go, and that those who did continue with individual RPM would not have the means to defend against price-cutting. The Registrar could not gauge the extent to which RPM would or would not be applied after abrogation or whether it would cause detriment to the public. Wary that any contention on what might happen in these circumstances could backfire on the Court, the Registrar conceded that publishers would not be able to control book prices satisfactorily without the NBA.

- **Distribution**

The Court concluded that the NBA was necessary to preserve a good distribution system for books. The Court set a precedent which only the *Pharmaceuticals* case was later to follow. Previous cases, notably the *Chemists Federation Agreement* (which had argued unsuccessfully that closure of chemists in rural areas would have had negative effects on the National Health Service), had tried to argue their case via gateway 21(1)b. The PA initially relied upon getting the NBA through either 21(1)b and 21(1)f (exports), or both; the hedging of bets as to which gateway the NBA might pass through had much to do with the fact that no positive precedents had been set in previous cases. Mr Justice Buckley concluded that the NBA passed through gateway 21(1)b:
The removal of the restriction would deny the public as purchasers, consumers or users of any goods other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction or of any arrangements or operations resulting from them.\textsuperscript{17}

The Registrar could not prove conclusively what section of the public would suffer loss from abrogation, or who would gain. In the opinion of the Registrar, purchasers of 'less popular books' would be worse off without the NBA, while institutions such as libraries would be better off. Arguably, higher prices of books after abrogation would eventually cancel out any short term gains for institutions.

The PA had to prove under the balancing (tailpiece) provision alleged benefits to a significant majority of the public were not outweighed by disadvantages to another section of the public. The Registrar could not argue conclusively that "unrestricted resale price competition might produce unspecified new patterns of distribution which might yield unspecified advantages to the public,"\textsuperscript{18} The NBA passed the balancing provision.

The NBA was seen as the most effective method of controlling prices in the book trade. Unusually in a case brought under the 1956 Act, the RTPC took into account both the form of the Agreement, which under that law is all that is required, \textit{and} the potential effects. There were no precedents from other trades and the RTPC was reviewing an Agreement which few at the Court could remember the trade without. The NBA escaped, and was given the benefit of the doubt.

\textbf{3.5 Book Club Associates (BCA) & Leisure Circle proposed merger, 1987.}

In January 1988 Lord Young, then Secretary of State for Trade and Industry rejected a MMC majority decision that a merger between BCA and Leisure Circle should go ahead, with the proviso that further investigations should be carried out into the nature of the Book Club Concordat.
The MMC enquiry did not confine itself to commenting upon the proposed merger between the two firms. It was strongly critical of the Concordat and the NBA, arguing that the Book Club Regulations (BCR) and the Concordat were restrictive and outdated.

In 1986 the German owned Bertelsmann group bought US publisher Doubleday, thus acquiring a half share in the UK book club BCA with W.H. Smith. Bertelsmann already owned one of BCA's main rivals, Leisure Circle. W.H. Smith, who were not bound contractually to a third party other than Doubleday agreed to sell its share in BCA to Bertelsmann for £69 million.

Subsequently, Bertelsmann proposed to sell half of BCA and half of Leisure Circle to the French publishers Presses de la Cité for £59 million. A result of the latter Agreement was the intended merger of BCA and Leisure Circle into one club. Under section 64 (8) of the 1973 Fair Trading Act the Secretary of State (on the recommendation of the DGFT) referred the proposed merger to the MMC.

The MMC procedure for investigation was clear. It considered evidence only on the status quo in the trade in question, and not situations prior to the investigation. The MMC, regardless of its findings could not take a final decision on action, this being the responsibility of the Secretary of State. The MMC Committee took evidence from publishers, printers, book clubs, booksellers and consumers. In its conclusions the MMC made reference to:

- Bertelsmann's buyout of Doubleday and the effects on BCA;
- The Book Club Concordat (which was exempted from being put on the Register of Restrictive Practices on formation in 1985).

The tacit assumption from these references is that both should have been referred to the MMC at the time they were made, which would seem to go against the policy of looking only at the status quo. Evidence and opinions from the book trade and other parties concluded that the merger would be harmful to both vested interests and public interest.
The potential effects of a merger could have different repercussions on different sections of the trade. Book clubs considered that the merger would further restrict the availability of exclusive titles. Booksellers considered the merger could create a book club large enough to enforce conditions on publishers, and so widen the gap between book clubs' terms of sale and their own. The Consumers Association considered that the merger would "bring about a more effective monopoly than at present". The Committee noted the particular adverse effects of the merger as being:

- Leisure Circle would cease, through the merger, to be an effective competition with BCA;

- Leisure Circle would cease, through the merger, to be a 'separate and effective purchasing centre';

- BCA's market share would give it a better opportunity to gain exclusive rights to titles, and would limit entry into the book club market. A merged club would enjoy an estimated 70% of the book club market in 1986, and 70% of book club sales.

Bertelsmann argued that:

- book clubs were a small percentage of the UK book trade;

- merged clubs would have no interest in imposing hard terms on publishers as this would serve no long-term advantage.

Despite unanimous disapproval in the trade, the Committee decided that the merger should go ahead only if the Concordat was modified to allow greater competition. Proposals for this included shortening the exclusive rights period a book club could sell a title from three years to periods of as little as six months. Another proposal concerned raising the number of books which had to be bought from a publisher to gain exclusive rights from 1,500 up to, in one estimate, 20,000 copies. If the Concordat could not be
modified in a period of time to be determined by the DGFT, the merger should not go ahead.

The Committee did not reach a unanimous decision on the merger. Neil Salmon's minority report argued that revision of the Concordat would not by itself "significantly or sufficiently mitigate the potential adverse effects of the merger". The majority conclusions of the MMC report contained a sting in the tail for the NBA:

As a final observation, the special market in discounted books to some extent owes its existence to the NBA, which prevents the discounting of Publishers' ordinary editions... in the course of our enquiry we have noted that some of the conditions which prevailed when the Agreement was tested before the RTPC in 1962 no longer apply.

In particular, the provision of 'sale or return' and the growth of different book formats since 1962 were noted. Having concluded that "book clubs are properly regarded as operating in a separate market", referral to the NBA was arguably not within the remit of this investigation. BCR and the Concordat were.

The MMC investigates quickly as a matter of course. Procedures create uncertainty for the parties, and a slow investigation would give parties time to prepare complicated defence of their intentions. Arguably the BCA / Leisure Circle merger investigation did not have sufficient time (or experience) to consider the full implications of some of its findings. The fact that the Secretary of State found with Salmon's minority view and pointed out that revision of the Concordat would throw the book club trade into even more uncertainty perhaps justifies this observation.

As we will see in Chapter Five, this enquiry was to have great impact on the trade. Dillons seized on the Majority Conclusion regarding the NBA's viability. This investigation also focussed on a sector of the book trade which was becoming increasingly high profile; book clubs.
3.6 OFT investigation of the NBA, 1989.

The 1987 MMC investigation, followed by a speech in May 1988 given by Pentos Chairman Terry Maher to the BA which was critical of the NBA, brought the NBA question to the OFT’s attention. In February 1989 Pentos submitted a report outlining its case against the NBA. Subsequently the DGFT, Sir Gordon Borrie, announced on 28 April 1989 a wider enquiry into the NBA. A detailed report from the PA followed in May. The inquiry into the NBA, carried out by the OFT measured _prima facie_ change in the industry via seven criteria:

- Structural change in the publishing and bookselling industries since 1962;

- Technological change in publishing and the bookselling industries;

- Changes in the number of titles published;

- Changes in the price of books (retail) compared to the RPI;

- To what extent changes had altered risk in the respective industries;

- Foreign experience of RPM on books.

In August 1989 the DGFT announced that “on a matter of fact, partly of analysis and partly of judgement” not to refer the NBA back to the RTPC. While Borrie concurred with the Pentos submission that changes had occurred in the publishing and book trades these were:

not of such magnitude to lead to a different conclusion on the effects of ending the NBA.

This decision arguably had little to do with the NBA itself. Revisions to UK competition law meant a new investigation would take place if law was introduced. This decision
was a small victory for the PA, but importantly it showed a measure of intent from the OFT to keep the NBA under observation:

there is an insufficiently strong basis to justify me in making an application to the Court to reopen the case.\textsuperscript{36}

Borrie's announcement must be viewed in context:

- New legislation seemed in 1989 almost certain to be introduced. If this had been the case, the NBA would have been re-examined under new law to judge whether it merited an exemption;

- The PA was in 1989 appealing to the Court of First Instance (CFI) against the EC's ruling that the NBA could not be enforced within interstate trade in the EU. If the appeal was successful under Article 85(3) there were grounds for believing that the RTPC could not ban the NBA in the UK;

- It would be unfair to subject the PA to an investigation of the NBA when it was involved with another NBA case subject to different laws and different authorities.\textsuperscript{37}

3.7 OFT investigation, and referral back to the RTPC, 1993 - 1997.

In April 1993 the decision was made not to introduce new competition legislation, but instead to strengthen existing law. The decision to re-examine the NBA was taken by the DGFT, Bryan Carsberg, who was more determined than his predecessor to strike down the NBA. Evidence of this comes both from his professional background and secondary sources:

- Carsberg was a member of the Institute of Economic Affairs (IEA) (who published Allan and Curwen's \textit{Competition and choice in the UK book trade}\textsuperscript{38}).
He was a former director of the Economists' Bookshop, and had trade experience;

- According to Dillons' Terry Maher, where Borrie was 'agnostic' about the NBA, Carsberg "I was almost certain ... did not think much of the NBA".39

On November 23 1993 Carsberg announced that the OFT was to conduct an investigation into the NBA40. The method and scope of the enquiry in gauging the extent of prima facie change in the industry was the same format as the 1989 enquiry. Carsberg announced:

It is now more than thirty years since the RTPC decided that the Agreement did not operate against the public interest. We must now consider the possibility that the Court would reach a different judgement today on the effects of the Agreement.41

The enquiry therefore measured change over the 1962-1993 period, and not the 1989-1993 period. The 1989 enquiry, which concluded that changes were not of such a magnitude as to throw the 1962 judgement into question was overlooked, or brushed to one side. On 16 August 1994 Carsberg announced that the NBA was to be referred back to the RTPC42. In March 1995 Sir Bryan Carsberg left his post as DGFT to return to academia. On 12 December 1995 his replacement, John Bridgeman, was granted leave by a RTPC Committal Proceeding to present a case against the NBA to the RTPC43. The Court would consider an Agreement no longer in use and undefended by the PA. The OFT satisfied the RTPC Committal Proceeding that prima facie change in the industry had occurred. Legal action put serious pressure on the NBA without a full hearing. The OFT wanted:

RPM on books made unlawful and the restrictions of the NBA, or any similar Agreement made void.44
NBA suspension gave the OFT an opportunity to argue at the RTPC that exemption granted to the NBA in 1962 and 1968 should be withdrawn, seeing as the trade saw fit to end the Agreement. After suspension, the OFT announced in October 1995 that it would continue action against the NBA. The OFT argued that action would continue on the grounds that although the PA had suspended the NBA, individual publishers were still free to set prices and enforce them.

The Court accepted the OFT’s case that sufficient evidence had been presented to show “material change in relevant circumstances since 1962”. These changes were summarised thus:

- Change from hot metal printing to lithography and the introduction of DTP packages had reduced the cost of producing books;
- The growth of chain bookshops had increased the number of well stocked bookshops in the UK;
- Growth of wholesalers allowed a faster delivery of books and better ordering services to small bookshops;
- Changes in terms of supply has allowed bookshops to return unsold copies to publishers (sale or return);
- The decision of the PA not to enforce the Agreement after October 1995.

Although the PA withdrew from policing the NBA individual publishers could still legally enforce RPM on books. Although the PA abandoned the NBA this did not stop it criticising the OFT’s decision:

We are disappointed that the OFT is not prepared to wait and see what the outcome of the current situation is, and that it has taken no account of the benefit RPM can have in improving the distribution of commodities such as books.
While we are not seeking to enforce or defend the Agreement, we are seeking to keep the NBA on the statute books for as long as possible, so we can monitor the effects of its non-operation on the UK book business.  

3.8 The last rites. The NBA at the RTPC, January 1997.

The NBA returned to the RTPC in January 1997, the case lasting ten days. Described by Fishwick as “a hearing more like an inquest than an enquiry”, the NBA was undefended by the PA and BA. No legal representation was available for the two publishers, John Calder and Jenny Glazer, who presented a case for exempting the NBA from the laws. This compared to the OFT:

The OFT proceeded as if nothing had changed since September 1995. It was there in strength, its barristers, solicitors, economists and statisticians in serried ranks assembled. Indeed, most of the time they outnumbered all the other bodies in Court.

Witnesses for Calder and Glazer included prominent trade figures and writers, notably Tim Waterstone, Tom Stoppard and Auberon Waugh. Fishwick was cross-examined for six hours on the findings of Effects of the Abandonment of the Net Book Agreement: First Interim Report, which is considered in Chapter Six. Witness evidence did not, in Fishwick’s view, help the case for the NBA:

The whole process created the impression that RPM conflicted both with modern economics and with commercial sense. Under cross-examination they came across as nice people, rather than the kind of ruthless entrepreneurs on whom our very survival is now assumed to depend.

In March 1997 Mr Justice Ferris’ verdict declared the NBA illegal:

It is an example of the way in which resale price maintenance can fail to keep down prices, not a tendency for prices to rise in the absence of RPM.
We are by no means satisfied that where a bookshop which is part of a retail chain in close competition with an independent bookshop, the public interest will be served by protecting the independent at the expense of curtailing the freedom of the retail chain.\textsuperscript{54}

Reaction to the decision only merited three columns in the \textit{Bookseller}, which indicated the minimal impact of the decision on the trade. Fishwick's observation that the RTPC hearing was 'an inquest' summed it up. Defence of the Agreement was left to a small group of individuals with no legal representation. PA Chief Executive Clive Bradley (who attended proceedings twice) summed up the formal end of the NBA with these words:

\begin{quote}
The current ruling is uncomfortably final.\textsuperscript{55}
\end{quote}

3.9 Conclusions

- Procrastination over the introduction of new legislation between 1987 and 1993 caused confusion in the book trade, and, arguably, allowed the NBA a stay of execution between 1989 and 1993;

- Present legislation, and the PA defending the NBA under EU law, coupled with the possible introduction of new law stopped a full-scale reinvestigation in 1989. This was complex and unfair on the PA, who would be forced to justify the NBA under different legal systems;

- The threat of action against RPM was arguably a more effective weapon than actual enquiries. The OFT investigations in 1989 and 1993 - 1995 did not cause abolition of the NBA. The book trade itself unilaterally suspended the NBA in 1995. Therefore, while the OFT played a part in suspension, the threat of a referral back to the RTPC appears to have worked. The OFT made sure in the 1997 RTPC hearing that the NBA was made illegal.
The NBA was suspended by the book trade in September 1995, and was declared illegal in March 1997 following an RTPC hearing which was uncontested by the PA or BA. The decision was almost academic for a trade which had coped without the NBA for seventeen months.
1 NBA passes into history books. [Editorial], The Bookseller, 21 March 1997, p. 7.


3 Ibid., p. 16.


5 Ibid., p. 89.


7 Taraporevala maintained that isolated cases of publishers publishing books ‘net’ existed in the 1870s, an example being the publisher Edward Arber publishing all books net from 1877 having grown tired of underselling in sections of the trade.

8 The Booksellers Association represents all booksellers in the UK. There are no organizations representing, for example, small independent bookshops, library suppliers or book clubs. The problems of representing disparate sections of the trade with a single voice proved very difficult in investigations into the NBA during the 1990s.

9 Taraporevala, ref. 2, pp. 44-50.

10 Taraporevala, ref. 2, p. 46.

11 The trend of higher prices following introduction of RPM was seen in France. Re-introduction of RPM in 1981 initially resulted in price increases above the rate of inflation. By 1995 book prices were broadly in line with inflation in France. See case study, Chapter 8.1.

12 Taraporevala, ref. 2, p. 58.

13 Taraporevala, ref. 2, p. 70.

14 Taraporevala, ref. 2, p. 47.


17 Barker & Davies, ref. 15, p. 72.

18 Barker & Davies, ref. 15, p. 73.


21 The MMC approached the Consumers Association rather than 'consumers'. The Consumers Association are not noted for their wholehearted approval of RPM or the NBA - see for example the critical 1978 "Net Book Agreement - a "Which?" Campaign report".

22 Monopolies and Mergers Commission. *Investigation into a proposed merger between BCA and Leisure Circle*, 1987, p. 37.


Publishers Association. Statement of reasons why the DGFT should not seek leave of the RTPC to apply for an order to discharge its previous decisions in the cases In re Net Book Agreements 1957 (1962, 1964 and 1968), 26 June 1989.

OFT to examine NBA. [Editorial], The Bookseller, 5 May 1989, p. 1539.


Ibid., p. 465.

This point was raised by the PA at the time of the BCA / Leisure Circle merger, in which it seemed unfair for the PA to have the NBA investigated by the MMC and the OFT under different laws.


Maher, T. Against my better judgement, 1994, p. 162.

OFT renews NBA probe. [Editorial], The Bookseller, 26 November 1993, p. 5.

Ibid., p. 5.

NBA referred. [Editorial], The Bookseller, 19 August 1994, p. 5.


Ibid., p. 6.


NBA passes into history books. [Editorial], *The Bookseller*, 21 March 1997, p. 7.


Chapter Four. The NBA in Europe: an overview of legal challenge and effect.

4.1 Introduction

The NBA was subject to examination by various EU authorities between 1986 and 1995. Subject to a legal procedure under Article 85 of the Treaty of Rome ["Treaty"] in 1986, the NBA was found, in 1988, to contravene Article 85. Subsequent appeals against the decision to the Court of the First Instance (CFI) and European Court of Justice (ECJ) between 1988 and 1994 were finally successful, and the 1988 decision was annulled by the ECJ in January, 1995.

This chapter considers the effects of EU competition law on the NBA and the effects which EU action had on the campaign against the NBA in the UK. Reference is made to three book RPM cases investigated by the EC. These are included to provide, where relevant, comparisons in scope and procedure.

• 'Dutch Books' (1981)2 This was the first interstate RPM Agreement to be investigated by the EC. Concerning the Belgian (VBBB) and Dutch (VBVB) book trade associations, an RPM agreement was banned under Article 85 in 1981. An appeal to the ECJ by the Associations was thrown out in 19843.

• Leclerc (1984)4 France imposed statutory RPM on books under the 1981 Loi Lang (Lang Law). Transgressions of this law are dealt with by the French courts. The Edouard Leclerc supermarket chain, after being prosecuted under the Loi Lang for breaking the law, appealed against the convictions to the ECJ, claiming that the law transgressed Articles, 5, 30 and 85 of the Treaty. This case is more complex than the NBA and 'Dutch books' cases. Ultimately, the EC ruled that the Loi Lang was in transgression of Article 305 of the Treaty (free movement of goods as versus restrictive practices) and not Article 856.
• Germany-Austria Agreement (1994) Austria was admitted to the EU on 1 January, 1995, with a trans-national RPM agreement in place. In an unreported decision, the EC issued a 'comfort letter' exempting the Agreement from EU competition law until such time as an enquiry can be made into its operation.

Chapter Four is split into two sections:

• Sections 4.1.1 to 4.1.6 deal with Article 85, plus the role of the EC and ECJ in application of competition law. They examine the EC's deliberations on setting up a European policy for book RPM in the 1980s.

• Sections 4.2 to 4.2.4 analyse the effect of competition law on the NBA between 1986 and 1995. They gauge the importance of the 1988 EC decision and subsequent appeals on the NBA's downfall in the UK. These sections will make reference to other book trade cases investigated by the EC and will measure the effects of other enquiries on the NBA case.

4.1.1 Article 85

EU competition laws ban RPM where it actually or potentially affects trade between Member States. Article 85 of the Treaty aims to catch restrictive agreements under five different categories. Defence of RPM under Article 85(3) has to satisfy two separate conditions. Undertakings can appeal on decisions made by the EC (provided the agreement has been notified to the EC before investigation) to the ECJ, whilst, on appeal, undertakings do not have to remove restrictions.

Article 85 is concerned with the conduct of undertakings within and between Member States but not the national legislation of Member States. Article 5 of the Treaty specifies that Member States may not detract from EU law by passing legislation which stops or hinders the effectiveness of the EC implementing measures.
Member States may not introduce legislative measures which render European Union (EU) competition rules ineffective in relation to undertakings or allow private undertakings to escape from constraints imposed by Article 85. Difficulties in application of EU law to private or public undertakings are evident. France's Loi Lang enforces RPM on the book trade. Although EU law takes precedence over national competition law, there are obvious difficulties in being seen to interfere with a national law. This is particularly evident in France, which favours strong state intervention in respect to 'cultural' issues, of which publishing is only one. Compared to public undertakings, the EC has an easier task in taking private undertakings to task. In relation to RPM, the EC stated two important points following the investigation carried out under Article 85 into the VBBB/VBVB case:

- RPM systems designed to stop loss leading (or 'free riding') cannot justify imposition of RPM. Undertakings which may have been unfairly affected by loss leading have to seek recourse to law in individual countries. An undertaking can apply to the EC to investigate an alleged restrictive practice but will receive no competition from the EC if a restriction is proven;

- RPM systems designed to stop parallel importation cannot justify imposition of RPM. If products have legally been marketed in other Member States, their importation cannot be considered to be an unfair practice.

In terms of national systems of RPM, the EC takes the view that practices restricting competition and extending over the whole area of a Member State:

reinforce compartmentalisation of markets on a national basis, thereby holding up the economic interpretation which the Treaty is intended to bring about.

The fact that books are 'cultural' products and that language will provide natural boundaries has not been accepted as evidence by the EC, and these important questions were to have a significant effect on the EC's proposals for a Community RPM system. In the VBBB/VBVB case, the EC ruled that:

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existence of a linguistic community between one Member State and part of the territory of another Member State does not prevent the application of Article 85 of the Treaty, which expressly refers to trade between Member States.\textsuperscript{11}

Agreements between countries not affecting trade to an appreciable extent do not fall within the prohibitions contained in Article 85. The EC does not take action against Agreements which hold less than 5% of the total market or have turnover of less than 200 million ECU in the countries concerned.\textsuperscript{12} The decision to pursue action against undertaking requires a 'basis of objective factors of law or of fact' to judge whether the Agreement either breaks the provisions of Article 85 or has the potential to affect trade between Member States. Selective distribution schemes can pass Article 85 as long as the dealers are chosen on the basis of objective criteria such as technical qualifications, suitability of trading premises and staff training. Distribution schemes in which conditions are not laid down uniformly are outlawed under Article 85.

Although the EC does grant exemptions (as has been said, mainly R & D Agreements, and Know-how Agreements), an Agreement is required to pass both 'gateways' under Article 85(3). This contrasts with the UK's Restrictive Trade Practices Act, in which an Agreement only has to pass through one gateway to gain exemption. When opposing an Agreement's right to exemption, the EC is not bound to publish the reasons why it has not been exempted, nor to carry out a thorough examination of the advantages or disadvantages of the Agreement. If the EC is satisfied that the Agreement serves to artificially partition the common market and prevent parallel importation, this precludes thorough examination under Article 85(3). National courts are not competent to apply Article 85(3) in respect of restrictive practices although they are able to exercise advice. A major argument in favour of the UK bringing in Article 85 style law was that it would have provided decisions compatible with EU law.
4.1.2 The European Commission

The EC was formed under the 1965 Merger Treaty which unified three separate 'High Authorities' into one body. The EC's general function under Article 155 of the Treaty is 'to ensure the proper functioning and development of the Common Market'. Its powers include the formulation of recommendations and opinions (not legally binding on Member States), participation in the legislative process and limited powers of decision making. It consists of twenty-three Directorates, Directorate IV ["DG IV"] controls competition with regard to Articles 30-36 and 85-92 of the Treaty. Three principal aspects of the EC's role are:

i. EC decisions are binding on states;

ii. The EC is not accountable to member states' governments;

iii. Only the ECJ has the power to overturn decisions made by the EC or empower amendments to decisions. The Court's rulings are directly applicable to all member states. It represents the highest court in the EU.

4.1.3 The EC, ECJ and the application of competition law

The EC can exempt an RPM agreement from the provisions of Article 85(1) if it is on balance beneficial within the constraints set out in Article 85(3). Undertakings are not eligible to apply for exemption under Article 85(3) if they have not notified the agreement to the EC. By threats of fines, and no redress under Article 85(3), the EC strives to get the vast majority of agreements registered. To reduce workload on the EC, Block Exemptions have been applied to several agreements - these include exemptions on research and development between Member States and links between small- and medium-sized firms contributing to greater efficiency, better distribution and widening the market.

The EC acts as both judge and jury to cases brought before it.
The EC’s activities are monitored by the ECJ, which ensures that 'in the interpretation and application of [the] Treaty, the law is observed'. Associations caught under Articles 85-92 can appeal to the ECJ within two months of the EC’s decision. If the ECJ agrees with a challenge, the EC decision is declared void. To avoid embarrassment to the EC, cases won at the Court are generally annulled, allowing the original decision to be altered. Additionally, the ECJ has an unlimited right to review penalties or fines handed down by the EC. Procedures in the EC and ECJ are slow, workload on the Court high.

4.1.4 EU competition law: law regarding free movement of goods in the EU

Articles 85 and 86 of the Treaty are the two main regulations in force against price fixing, market-sharing agreements, production controls and abuse of a dominant position. Two cases brought by the EC against book RPM agreements\(^\text{15}\) were held to contravene Article 85 in the respect that they either affected (or potentially affected) trade between Member States. Defence of the agreements via the 'gateways' contained in Article 85(3) failed.

Article 85 is relevant legislation in terms of this thesis; the NBA was held to contravene it by the EC in 1988. However the Leclerc cases considered in Chapter Eight are different. This is due to France having statutory law on RPM. Prosecution took place under Article 36 of the Treaty and not Article 85. Article 85 concerns rules applying to undertakings (i.e., signatory publishers to the NBA). As the French RPM system is national law, the EC could not proceed against it in this context. Therefore, the EC objected to the Loi Lang on the grounds that it ‘constituted an obstacle to imports’. Article 36 sets out areas in which restrictions or prohibitions of imports or exports are allowed. The French Government argued that Article 36 provided grounds for a cultural law on books in that the Loi Lang did ‘protect national treasures possessing artistic, historic or archaeological value’. The EC rejected this argument and the ECJ upheld the Decision.\(^\text{16}\)

• Prevention, restriction or distortion of competition

The EC acts cautiously in regard to Agreements which it considers incompatible with Articles 85-92. This has the effect of slowing down investigations but also giving
judgements 'weight'. Decisions taken by the EC are seldom rejected by the ECJ. Agreements are generally analysed in both legal and economic contexts for which detailed market analysis is needed. Some classes of Agreement, namely price-fixing, market division and export bans are assumed to limit competition. Accordingly, the EC can examine whether an Agreement qualifies for an exemption under Article 85(3) without making detailed investigations into the market.

• Affecting trade between Member States

Article 85 (and 86) both emphasise that freedom of trade within the Community is of paramount importance. The purpose of this requirement is to establish a separate 'sphere of application' of EU rules over national laws and policies. A major difficulty with the application of Article 85 is the EC's attitude towards domestic RPM agreements within Member States and the potential effects of such policies on other Member States.

4.1.5 Competition reports and the EC's attitude toward RPM

Beyond case reports, the EC's attitudes towards competition policy in the 1960s were based on the outcome of individual cases and general reports on the activities of the Communities. In June, 1971, the European Parliament's Resolution concerning the rules on Competition and the position of European Enterprises within the Common Market and the World Economy ordered the EC to produce a yearly report on its activities.¹⁷ The first report, published in 1972, provided a useful commentary on the framework of competition policy as a whole and the development of policies during the 1960s. Two paragraphs contained in the 1972 Report set out the aims of the EC with regard to competition:

Restrictions on competition and practices which jeopardise the unity of the Common Market are proceeded against with special vigour ... Cases in point are Agreements on market-sharing by dividing areas. Agreements to allocate customers, and collective exclusive dealing Agreements.¹⁸
Joint price-fixing of goods sold in the Common Market is likely to affect adversely trade between Member States and seriously restrict competition.\textsuperscript{19}

Moreover, Article 85(1) can be applied to provisions prohibiting exports, re-exports or re-imports which could be viewed as preserving a price system employed in a Member State. The attitude taken by the EC was that national RPM systems have the ability, by potentially isolating national markets, to stop parallel importation of the same products at cheaper prices.

The situation in regard to RPM on books was complicated in 1981 with a formal European Parliament Resolution on RPM systems. This was followed by the discussion of four possible RPM 'frameworks' for the EU book trade.

4.1.6 The development of RPM 'frameworks' for the EU book trade

This section examines attempts made by the EC in the 1980s to discuss methods of overcoming problems faced by publishers and trade associations in applying RPM.

- European Parliament Resolution, 1981\textsuperscript{20}

On 9 March, 1981, the European Parliament passed its first resolution on the fixing of book prices in the Community, this being triggered by the VBBB/VBVB case then being investigated by the EC. In a statement which was used frequently, albeit in different forms, by trade associations defending their Agreements, the Parliament stated:

Exclusively economic criteria should not apply to the book industry and trade because of the specific nature of books as products which directly affect the interests of the citizen in the cultural, educational and information field ... the cultural identity of Europe may be jeopardised if books are left to free-market forces.\textsuperscript{21}

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In wording strongly reminiscent of the 1962 NBA defence, the Resolution identified four arguments in favour of RPM and against free pricing in the book trade. These included:

- greater disparities between small booksellers and bulk purchasers (presumably large bookshops, book clubs) on trade terms;
- disappearance of small bookshops which were not specialised or adapting to new practices, mainly in small towns;
- potentially serious consequences from a cultural viewpoint in the decline of 'literary' publishing;
- liberalisation of book pricing structures would not cause non-best-selling books to be reduced in price.

The resolution went on to request the EC to consider four points in its dealings and attitude to the book trade. These included enquiring into the development and concentration of the book trade in the Community and the situation of small and medium sized firms. The EC was asked to draw up 'necessary' proposals on how best to deal with book pricing issues "in order to guarantee a policy on books in the Community which is worthy of the unique role of this educational and cultural instrument". The Parliament justified its concern over the book trade by having a duty to:

contribute towards intensifying the dissemination of culture ... ensuring that minority, ethnic and cultural publications are distinguished from the popular mass market ... if necessary national governments should be permitted to assist those sectors where natural market forces are not sufficient to safeguard cultural interests.

These followed a meeting of the Council for ministers responsible for cultural affairs in November, 1984, when an interest was expressed:
in the possibility of introducing a pricing system based, among other things, on the possibility of establishing a single price for books.24

• EC frameworks, 1985

Two documents were produced by the EC, the first being a consultation document25 and the second a policy document following discussions with trade associations and government representatives26. The first consultation document pre-empted the findings of the second publication and showed clearly how any system introduced by the EC would have been flawed, unpopular or illegal. The EC identified difficulties involved in the publishing trade and how it wished to further the interests of those involved.

• Authors should have reasonable chance of having their work published and be able to make a decent living writing;

• Publishers should be encouraged to publish a wide range of books, especially those of literary and 'cultural' merit;

• Distribution of books dependent on a network of good bookshops providing diverse stock and easy access for readers. Booksellers needed a measure of security in their income to be encouraged to stock a wide range of books;

• The interests of the public were closely bound to the success of each part of the writing, publishing and distribution chain, noted above.

As with the 1981 Resolution, the thinking behind the four interest groups above follows arguments favoured by trade associations defending their RPM Agreements. Two major problems identified by the EC in adopting a single Agreement in the Community were the question of language and the different types of RPM used in member states. The market for books in Europe follows linguistic areas. It is unlikely that books written in different languages would compete for the same buyer. Cases investigated by the EC concentrated
on abuse of article 85 within linguistic zones (UK-Ireland, France-Belgium, Netherlands-Belgium).

**Frameworks**

In the event of a framework being introduced, both political and legal considerations would have to be taken into account. Any system adopted would have to cause little upheaval to national systems. Legally, any framework would have to fit in to the Treaty rules in respect of free movement of goods (Article 30) and competition (Article 85). Additionally, the system could not be used to back up or endorse the conduct of national firms or associations with actions contrary to either of those two Articles. Neither could a framework tacitly endorse national systems and any existing restrictions. Bearing in mind these limitations, it is perhaps unsurprising that a framework was never introduced. The EC suggested four different forms of framework for discussion based on two solutions, the retail price of books or prices charged by publishers to direct buyers.

i. **Complete freedom to determine prices**

This would have meant abolishing all national pricing systems (or having them abolished by national courts), extending to trade carried on between Member States. This proposal was opposed by the book trade. It is hard to see how the EC squared this proposal with its stance on the interests of authors, publishers and booksellers. Consumers' Associations in Member States also opposed this plan.

ii. **Obligation on publisher to sell book at same price to all buyers**

Publishers would have been obliged to sell all books at the same price to all customers (including book clubs, schools, libraries, exports). The basis of this plan was that publishers would have been able to keep national schemes but could not apply discriminatory terms when selling in the Community. It was held that this system would stop parallel and re-importation of books because there would be no economic incentive for the practice. The proposal was rejected on the grounds that publishers could not offer
discounts for quantity and quality buying (i.e., stocking slow-moving titles) to ensure good distribution of books.

iii. Publishers setting retail price (applying to the Community with an undetermined (and undiscussed) method of enforcement)

This proposal recognised national systems used in most EU countries. The EC rejected it out of hand. Legal issues regarding 30 and 85 would still have applied between the same linguistic zones. Obviously, such a system would have suited most of the parties involved in legal proceedings. In addition, such a system would have to have taken account of differing rates of VAT.

iv. Publishers setting retail price (with some flexibility)

If a framework had been introduced for book pricing in the EU, this was the most realistic proposal. The methodology was based on the French system of allowing the dealer to discount by up to 5% on cover prices. This system could allow a prescribed price (as is seen in France) or minimum price, which allows the dealer to raise cover prices to reflect his trade margin. Such a system would be accompanied by a strict limitation on how long a bookseller could keep the book at the net price. In effect, this would allow the bookseller to discount a book as he felt fit after two years (a maximum period), compared to the UK system of a minimum period whereby the publisher could (prior to suspension) either de-net the title or extend net terms. Additionally, the EC proposed that exemptions could be made for some categories of books on the basis that:

nothing in Community law prevents exemptions or more flexible rules in certain situations on the express condition that there are objective considerations which justify them.27

Exemptions were proposed for library suppliers, school books and book club editions. With fresh interest in the concept of a floor price system for books in the EU raised by the
FE at a meeting with the EC in April, 1993, it seemed possible that a version of the fourth framework (publishers setting retail price (with some flexibility)) would be reconsidered by the EC. However, the possibility of a framework for book RPM in the EU must be viewed as remote, not only for the practical difficulties of introducing a system, but also for the fact that the NBA was voluntarily suspended in the UK. The EC came to these conclusions back in 1985:

- Although the development of the European book trade is a major objective, various problems of RPM, different methods of enforcing RPM and VAT mean that frameworks are almost impossible to introduce;

- Problems encountered in RPM are confined to countries sharing the same language;

- The EC felt that national price fixing Agreements were, on the whole, operating successfully and that Member States should be able to carry on with them as long as they were compatible with Articles 30 and 85;

- The majority of governments and trade associations did not want binding European legislation on book pricing.

The 1985 proposals, apart from discussion, did not result in any concrete action by the EC to introduce a framework for book RPM. Bearing in mind that all the frameworks (except complete price freedom, the first proposal) had potential clashes with EU law this was not surprising. Cases heard after 1985 were dealt with accordingly:

The EC feels that it would be more appropriate to deal with the small number of outstanding problems on a pragmatic basis ... accordingly [The EC] considers it preferable, for the time being, not to formulate a proposal for a directive laying down a Community framework for book prices.
The final blow to any plans for an EU framework on book RPM must have come with the suspension of the NBA in 1995. As the next section of this chapter will consider, the PA were to have a notable success in overturning the 1988 EC Decision at the ECJ.

In the final analysis, the NBA was only to outlive the ECJ Decision by nine months before being suspended voluntarily.

4.2 Introduction.

On 17 January, 1995, the ECJ upheld an appeal made by the PA against a 1988 decision by the EC holding the NBA to be in contravention of Article 85(1)\(^3\). The case against the NBA can be traced back to 1978 when the PA supplied the EC with a copy of *Books are Different* and various statistical data for the UK book trade\(^3\). In 1985, more evidence was given to the EC on the NBA and UK trade, primarily for the EC's RPM framework proposals. On 23 September, 1986, the PA submitted details of the 1985 BCR to the EC. On 8 October 1986 the EC announced that proceedings would be taken against the NBA under Article 85(1). The Statement of Objections to the NBA noted that the EC was unwilling to exempt the NBA under Article 85(3). Evidence from the PA setting out its case, and oral submissions to the EC, were considered in 1987. In a Decision published on 12 December, 1988, the EC held that the NBA breached Article 85(1) on five counts\(^3\). Exemption of the NBA under Article 85(3) was not granted. The EC did not accept that the Agreement was 'indispensable' to the attainment of public interest objectives stated in Article 85(3).

The PA appealed against the decision to the ECJ in February, 1989. Subsequently, in a preliminary hearing on 13 June, 1989, the ECJ suspended the application of two Articles (2 and 4) of the 1988 Decision\(^3\). After suspension of the EC's ruling, the NBA case was referred and, finally, was heard before the CFI in October, 1991. On 9 July, 1992, the Court dismissed the PA's appeal\(^3\). Prior to this ruling, the PA, on legal advice, abandoned application of the NBA in Ireland.
The PA appealed in 1992 against the CFI ruling. It argued that decisions made by the EC and CFI were based on illogical arguments and that evidence crucial to the case (based mainly on the 1962 NBA defence) had not been given proper consideration. A brief summary of the ECJ's appeal ruling, in January, 1995, concurred with the PA's appeal - "significant errors of law and procedure" had taken place in earlier Decisions.

The 1995 ECJ Decision did not grant exemption for the NBA in interstate trade. The EC was, however, bound by the ECJ ruling to consider its initial findings.

4.2.1 EC Decision, 12 December, 1988

The EC Decision concerning the NBA's infringement of Article 85(1) consisted of four 'Articles'. These were:

i. The NBA infringed Article 85(1) of the EEC Treaty in respect of trade between Member States because of ...

- discounts allowed by the PA to libraries, book agents and other registered book buyers;
- the Code of Allowances established and published by the PA;
- BCR;
- conditions governing the National Book Sale;
- conditions for mentioning booksellers in the Directory of Booksellers.

ii. Exemption under Article 85(3) for the Agreements and related rules stated above was refused.

iii. The PA was required to take 'all steps necessary' to bring infringements to an end.
iv. The PA was required to inform undertakings affected by the Decision 'stating that the infringement has been brought to an end, stating the practical effects which this will have on the terms under which trade in books is carried on between the UK and other Member States'.

• Legal assessment - objections to NBA

The EC's objections to the NBA concerned both the application of the Agreement in the UK and in other Member States, notably Ireland. The EC held that the Standard Conditions of Sale contained in the NBA had a restrictive effect on price competition between booksellers in that they could not depart from a fixed resale price because of uniform rules on discounts. This would:

reduce the full exploitation by booksellers (or publishers) of the competitive possibilities otherwise available in the situations mentioned.36

BCR were held to reinforce the negative aspects of the maintenance of a net price system in respect of imposition of time limits for book club editions and making the remaindering of editions dependent on publishers' consent. Additionally, the EC noted that it was almost impossible for a book club to operate without respecting the PA's regulations on book clubs. Thus, the BCR was seen as reinforcing the objectives of the NBA.37

The National Book Sale was also viewed as being anti-competitive in similar respects to BCR. The National Book Sale being allowed by the PA:

in order to limit negative effects resulting from a full application of the Agreements ... conditions contribute to maintaining the net price system as effectively as possible.38

The EC argued that equally restrictive effects were intended by publication of the Directory of Booksellers. This was held to constitute a guide to bona fide booksellers; those not included were seen to be placed under competitive disadvantage. As the
Directory of Booksellers was updated every two months, the EC presumed this was actively used by publishers and booksellers.

The points raised in Article i. were held to restrict competition 'to an appreciable extent' in that they provided the PA with effective measures of ensuring compliance with the NBA. The EC held that:

the Agreements and rules have facilitated and contributed to the maintenance or introduction of fixed book prices by large numbers of publishers, and continue to do so.\(^{39}\)

**Effects on trade between Member States**

Although the EC made criticisms of the NBA's application within the UK, the effects of the Agreement in relation to interstate trade had a more direct result on the decision not to grant exemption under Article 85(3). The EC had no jurisdiction on RPM Agreements operating within Member States. However, where the EC could prove that the effects of an RPM Agreement were actually or potentially felt in another Member State, it could ban (or exempt) an Agreement. The NBA was held to directly contravene Article 85(1) because of its application in Ireland.

The NBA's application in Ireland applied to all booksellers. Along with the UK, all books re-imported from other Member States published either in the UK or Ireland were required to be net priced and where books were exported by UK or Irish wholesalers to those Member States. In addition, the EC held that the 'great majority' of books imported from the EU into the UK and Ireland were also made net. The NBA's application in Ireland was determined to "actually and potentially affect trade between Member States to an appreciable extent.\(^{40}\) [emphasis added]
• The PA's defence of the NBA

The PA defended the NBA in a similar fashion to the 1962 RTPC case. In defence, the PA stated that:

- The Standard Conditions were the most practical method for publishers to state their conditions of sale. Individual conditions of sale would be time-consuming for both publishers and booksellers;

- Booksellers would have to deal with differing, individual RPM conditions;

- Publishers were free to decide whether or not to become signatories of the NBA; they could publish books either net or non-net and de-net titles after a two-year period;

- Booksellers must be confident that competitors would be subject to the same terms;

- Abolition of the Agreement would cause discounting to become common amongst large bookshop chains. This would put small bookshops under pressure. Few books would be ordered. Stockholding bookshops would decrease. Print runs would become smaller. Prices would rise correspondingly;

- The NBA was exempted from the 1956 (1976) Restrictive Trade Practices Act and the 1964 (1976) Resale Prices Act as being in the public interest. This had been determined in two investigations of the NBA in 1962 and 1968 (unreported).

• Refusal to grant exemption under Article 85(3)

The EC refused to grant the NBA exemption under Article 85(3) of the Treaty. In its deliberations, the EC considered that at least one of the conditions of 85(3) was not satisfied, in that:
the Agreement may not impose restrictions which are not indispensable to the attainment of the objectives of the Agreements.\textsuperscript{41}

Article 85 states that exemption can only be granted when an Agreement satisfies both 'gateways' of Article 85(3) and various public interest criteria. When the EC could prove the NBA did not pass through one gateway, it had no further need to go on to consider other arguments.

The EC assumed that the same position on the NBS as in the previous VBBB/VBVB case. A collective RPM system on books, even if it improved distribution and publication of books, was not indispensable where it had a direct (or potential) affect on trade between Member States. It concluded that:

\begin{quote}
the system as currently applied precludes price competition resulting from trade between Member States at the level of distribution.\textsuperscript{42}
\end{quote}

The EC rejected the PA's defence on five major points:

- Individual conditions of sale made into a common system did not justify more far reaching Agreements such as the BCR and the National Book Sale;

- Arguments about the difficulty booksellers would face dealing with individual conditions from publishers were unconvincing. The EC drew attention to the situation in Ireland where booksellers had to convert UK net prices into Pounds on all imported books anyway. As most bookshops would only deal with a small number of publishers, extra administration would not be great;

- The EC could not accept why the PA would distrust individual members from operating individual RPM Agreements;

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• The need by the PA to ensure compliance to the NBA did not explain clearly to the EC why the Standard Conditions of Sale were indispensable;

• The argument that banning the NBA in interstate trade would make its application in the UK untenable were rejected.

4.2.2 ECJ Preliminary hearing, 13 June 1989

The PA appealed against the EC Decision to the ECJ in February, 1989. A ECJ Decision was announced on 13 June 1989. The PA admitted that the NBA was contrary to Article 85(1), and sought appeal on the Decision not to grant exemption under Article 85(3). The appeal for annulment (or suspension) of the EC's decision was based on three main points:

• The contested decision did not contain adequate statements on reasons why the NBA infringed Article 85(3);

• Publishers were free to decide whether or not to become signatories to the Agreement and public books either net or non-net;

• Agreements had been considered in depth before UK national courts in 1962 and 1968 - "said Agreements, being according to that court, indispensable in order to maintain those prices in practice".44

In order to get the EC decision annulled or suspended, the PA had to prove under Article 83(2) of the Rules of Procedure that circumstances gave rise to urgency. Second, the PA had to prove the factual and legal grounds establishing a prima facie case for annulment or suspension. The PA argued that changes to the NBA's application could cause serious and irreparable damage to publishers and bookshops in the UK and Ireland. The PA made particular reference at this stage to investigation of the NBA in 1962, which viewed the Agreement as ensuring an adequate and varied supply of books of all kinds.

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In respect of 'urgency', the ECJ concurred with the PA's belief that economic damage would occur in the industry and be irreversible if the contested decision was allowed to stand. The ECJ stated that:

at the present interlocutory stage, the application does not appear to be devoid of all foundation, and that accordingly the requirement that a prima facie case must be established is satisfied.

Having satisfied the ECJ of 'urgency' and a prima facie case, the PA was granted a suspension of the 1988 decision in regard to Articles two, three and four of that decision. This decision suspended the implementation of Article 85 until the ECJ made a full assessment of the case.

4.2.3 CFI decision, 9 July 1992

The President of the ECJ considered the PA to have a prima facie case in appealing against the 1988 decision at the interlocutory session, and the Association might have had grounds for optimism for this appeal. Exemption under Article 85(3) was refused. The PA's defence of the NBA remained based on that given to the ECJ in 1989. The PA contended:

- Although the EC was not bound by rulings in UK law, the NBA remained valid in respect of the UK and Irish markets;

- The EC's attempt to draw distinctions between effects due to the NBA's application to the UK book trade and the knock-on effects on imports and exports constituted an error of law;

- The EC's view that the NBA actually or potentially affected trade between Member States was misconceived, there being no requirement under the NBA for imported books to be made net. Any books being netted after import would be done so only after trade had taken place;
• Administrative burden on publishers and booksellers would be huge if they had to
draw up and police their own conditions of sale.

In its decision, the CFI rejected all the PA's arguments against the EC. The CFI held that
the EC had not made errors of law, relied on incorrect facts or made great errors in its
assessment of the NBA. Application for exemption under Article 85(3) was dismissed.
The CFI rejected the PA's arguments in five main points. It held:

• Anti-competitive practices within a Member State were capable of having
repercussions on patterns of trade and competition in the Community. Thus, the
EC had been correct to conclude that the NBA potentially and actually affected
trade. This view rejected the PA's claim that the NBA did not significantly affect
trade between Member States;

• Decisions made by UK national courts on the NBA were made before accession to
the EEC. As those decisions did not take into account restrictions on competition
within the Common Market, they were of no relevance to the EC's investigation.
The CFI held that the EC had not directly refuted any of the findings in the 1962
and 1968 NBA cases;

• Potential collapse of the NBA if it was confined only to the UK was regarded as
irrelevant. Any RPM system which needed to continue in order to have beneficial
effects within a Member State could contribute to partitioning of the Common
Market. The PA could not rely on any negative effects which would be felt in
Ireland following abolition to justify the NBA, even though the market was in the
same language area;

• Although the Standard Conditions were felt to reduce administrative burden, this
did not justify a system of uniform conditions of sale. The CFI held that the
Standard Conditions could not be allowed to justify an ongoing system of net
prices. The PA's reliance on using national law decisions to provide
indispensability of the Standard Conditions was not valid - national legislation could not be used to counter EC decisions;

- The PA did not establish that restrictions inherent and arising from the NBA were strictly necessary for the book industry. The CFI concluded that the PA was not justified in maintaining that the EC was wrong in its decision not to grant exemption under Article 85(3).

4.2.4 ECJ appeal decision, 17 January 1995.

Following the unsuccessful appeal to the CFI in 1992, the PA appealed to the ECJ against both the latter case and the original EC decision. The basis of the appeal rested on the following points:

- CFI decision did not take proper account of evidence upheld in the UK courts;

- CFI used illogical argument over 'indispensability', especially in regard to effects of abrogation on the Irish book trade;

- The PA noted that the EC had declared in 1985 that national systems of book RPM were working well, and were principally matters for national authorities. Taking into account the principle of subsidiarity outlined in the 1992 Maastricht Treaty, which stated that decisions should be left wherever possible to national authorities, the ECJ should refer the NBA back to the EC for reappraisal;

- Additionally, the EC should "uphold the decisions of national authorities on such a sensitive social and cultural matter as book supply in English language areas of the Community".47

A change in approach was taken by the PA. While the two previous appeals had rested on arguments of 'indispensability', the machinations of the Standards Conditions and national court evidence, the last appeal raised arguments about 'cultural' issues. In the EC's 1988
decision, the issue of culture was barely mentioned, apart from a short paragraph on the importance of books as a cultural medium. The PA submitted evidence to the ECJ orally in March, 1994. The PA was only allowed a half-hour to submit its arguments to the Court.

Following oral submissions, the Advocate-General made initial comments on the appeal in June, 1994. They were:

- The EC decision was paradoxical in the respect that, instead of supporting a single English language market, the consequence would be dividing the UK and Irish book markets along national frontiers;

- The EC decision gave too little weighting to the judgements of national courts;

- The EC decision gave the effect of not taking into account the effects on Irish bookseller.

Regardless of these findings, the Advocate General recommended that the appeal should be dismissed. This was because the ECJ could only act on errors in law, not facts or decisions within the discretion of the EC. However, in a decision on 17 January, 1995 the ECJ upheld the PA’s appeal. This decision represented a small victory for the PA:

- the EC’s 1988 decision was annulled;

- the CFI’s refusal to grant exemption was set aside;

- the EC had to pay all costs for the case (including the PA’s, BA’s and Clé, the Irish Publishers’ Association who financially supported the PA). Pentos (an intervener against the PA) had to pay its costs.

Without the ECJ’s published findings, it is not possible to find out to what degree subsidiarity and cultural arguments were important in the final decision. The NBA, if
suspension had not occurred later in 1995, would have been re-examined by the EC. With NBA suspension, a chance to observe the EC’s new case was lost. The EC’s position on book RPM in the 1990s will be determined at some point with an investigation into the Germany-Austria RPM Agreement.

4.2.5 Conclusions

Investigation of the NBA by the EC was to have important effects on the Agreement in the UK and the 1995 ECJ Decision had potential effects on other RPM Agreements in the EU.

The NBA case was significant in the UK for the following reasons:

- The PA’s appeal against the 1988 Decision, which was to drag on for seven years, gave it grounds to argue that investigation under two legal systems was unfair. This point was conceded by Sir Gordon Borrie in his Decision not to refer the NBA to the RTPC in August, 1989, but not by his successor as DGFT, Sir Bryan Carsberg, in 1993;

- The EC ruled that the NBA restricted competition, most importantly because of BCR, the Standard Conditions and the Code of Allowances. This was the second investigation into the NBS in 1986-88 (the other being the MMC enquiry into the BCA-Leisure Circle) to single out BCR as unduly restrictive;

- Although the EC did not have the right, except in extreme cases, to ban RPM Agreements operating in Member States, the 1988 Decision stated that the NBA, in terms of its restrictive nature, actually and potentially affected trade between Member States.


3. See Chapter 8.2 and 8.3 for detailed analysis of the 'Dutch books' case and the effects of RPM abolition on the two countries.


6. See Chapter 8.1 for analysis of the Loi Lang, the implementation of RPM and the Leclerc cases.


10. **Court of Justice of the European Communities.** *Digest of case-law relating to the European Communities,* Section b-4, 55.


14. The EU comprises the European Coal and Steel Community (ESCS), the European Atomic Energy Community (EAEC) and the European Economic Community (EEC).

15. Excluding the Germany-Austria Agreement, which was dealt with initially via a 'comfort letter'.


18. Ibid., p. 15.

19. Ibid., p. 28.

20. Ibid., p. 62.


22. Ibid., p. C 50/103.


27. **Commission of the European Communities.** *Communication to the Council on the European dimension with regard to books.* *Com(85) 681 final*, p. 27.


29. **Commission of the European Communities,** ref. 27, p. 28.


34. **Court of the First Instance,** ref. 31.


36. **Commission of the European Communities,** ref. 32, p. 22/19.
37. The Commission's objections to BCR were very similar to those put forward in the 1987 MMC investigation into the BCA-Leisure Circle merger. See Chapter 5.1.


41. Commission of the European Communities, ref. 32, p. 22/32.

42. Commission of the European Communities, ref. 32, p. 22/30.

43. European Court of Justice, ref. 33, pp. 1059-1066.

44. European Court of Justice, ref. 33, p. 1065.

45. European Court of Justice, ref. 33, p. 1065.

46. Court of the First Instance, ref. 31, pp. 74-75.


49. As told to the author by the PA Chief Executive Clive Bradley, November 1994.


The cases of book clubs, Dillons and supermarkets

I have seldom met a business where the units seem to be smaller and where the gossip and the politics appear to be greater than in the publishing business. Openness doesn't seem to be a characteristic of your business\(^1\). Sir John Harvey Jones, 1991.

5.1 Introduction.

The legal background against which the NBA was exempted in 1962 and 1968 changed both for ‘political’ reasons and accession to the European Community in 1973. The book trade also changed dramatically between 1962 and 1997. Following NBA suspension the OFT successfully proved material change had occurred in the trade between 1962 and 1995, the NBA being declared illegal in 1997.

Two sectors within the retail sector were either directly or indirectly responsible for NBA suspension. These were:

- **Book clubs.** Books clubs have enjoyed a steady growth in terms of market share since 1962, and have generally been very effective in promoting and advertising books. The expansion of one firm, BCA has been particularly high-profile; in 1987 a planned merger between BCA and Leisure Circle was overruled by the MMC; the MMC report was used by one book retailer, Dillons, as ammunition against the NBA in 1989, and in 1993 BCA opened three retail outlets. This sector is particularly important not only for the indirect effect it has had on NBA suspension, but also for the fact that book clubs stand to lose most from free pricing in the retail sector.

- **Book retailers.** At the preliminary hearing for referral of the NBA back to the RTPC in December 1995 the Court accepted the OFT’s charge that ‘material change in relevant circumstances’ had occurred in the retail sector:

  The growth of multiple, chain bookshops has increased the number of well stocked bookshops in the UK\(^2\).

Growth of chain bookshops has changed the face of British book retailing since 1982. Chains such as Waterstones and Dillons in the 1980s and 1990s had a direct effect on
the NBA, not least from the campaign waged against the agreement by Pentos (who owned Dillons). Chapter 5.2 examines the case of Dillons, whose campaign against the NBA had direct and far reaching effects on NBA suspension.

- **Supermarkets.** Along with book clubs, other non-traditional booksellers grew in market share and extended their influence within the trade between 1962 and 1997. Supermarkets entered the book trade on a serious basis in the late 1980s in conjunction with book wholesalers. In 1993 Tesco was the first supermarket chain to join the BA. A serious attack on the NBA prior to suspension in 1995 came from the Asda chain; after an oral submission to the House of Commons Select Committee in February 1995 the chain attacked the NBA with unauthorised discounting of net books in May 1995. Following NBA suspension Asda turned its attentions to the RPM agreement on ‘OTC’ pharmaceutical goods.³

5.1.1 **Book Clubs - a catalyst for NBA suspension.**

When will publishers grasp that advertising sells goods? BCA proves it, week in, week out.⁴

BCA clubs have become fat cuckoos, fed and favoured by publishers such as Dorling Kindersley, with an incredibly rich diet.⁵

At the RTPC enquiry into the NBA in 1962 Book Clubs accounted for an estimated 0.6% of UK publishers' home turnover, or £284,000 of sales⁶. Evidence given to the RTPC attested to the decline in market share of book clubs in the 1950s. This can be explained by the rise of other entertainment forms - television in particular, the rise of paperbacks and, as surmised by Norrie, the declining number of expatriates⁷. Book clubs first sprang to prominence in the UK during the 1930s. Of the 1930s book club pioneers only one remains in business in 1997 - Readers Union, which now encompasses 18 specialist clubs under one umbrella.

At the 1962 enquiry book clubs were not seen as not competing for the same market or encroaching on the booksellers' trade. Presumably this is why the issue of book clubs only arose five times during the 1962 RTPC⁸.

The entry of Book Club Associates (BCA) to the trade in 1966, owned jointly by W.H. Smith and Doubleday (New York) changed the face of book club operations in the UK. It was this firm's entry to the market and its method of selling which led to the
introduction of the basic set of Book Club Regulations in 1966. It was the need to bring in ground rules for book club operators that apparently:

\[\text{tied the PA in knots to approve regulations for the introduction of new American-style book clubs}\]

BCA changed ownership in 1986 when the German publishing giant Bertelsmann bought Doubleday, in 1988 Bertelsmann was stopped by Lord Young, then Secretary of Trade and Industry from acquiring Leisure Circle to combine with BCA. In 1991 Reed Elsevier bought out W.H. Smith's share, leaving BCA in 1994 run jointly by Bertelsmann and Reed Elsevier. During the 1970s the rise of book clubs, run on the 'American' book club model (monthly choices compared to the 'European' quarterly choice) became evident with the opening of Books For Children (1977) and Red House (1979). In 1990 the UK's two largest book clubs in terms of membership, BCA and Time-Life opened the first paperback book clubs, respectively QPD (Quality Paperbacks Direct) and TSP (The Softback Preview). They were well advertised and successful. In 1993 BCA opened three retail outlets, and contemplated opening up to fifty outlets in the UK by the end of the century.

The upheavals in this sector that led to the formation of the BCR in 1966 could have greatly affected the RTPC's positive decision on the NBA had they been introduced before 1962.

5.1.2 The book club sector in the 1990s.

Exact statistics on the UK book club trade are difficult to obtain apart from the approximate 10% of the market that they hold. The apparent reserve of this part of the trade is evident beyond pure statistics. Articles in the Bookseller and other journals are rare, and those that do exist are generally ripostes to accusations made by booksellers. The statistics presented in this section were obtained from Target Group Index (TGI) survey of 25,000 adults in the UK; this compares to Book Marketing Ltd's ongoing research Books and the Consumer, which draws from a sample of 1,800 adults. The study was the only detailed presentation of statistics on the book club trade in the 1990s. The findings of the survey were disturbing to the bookshop trade. This study was commissioned by the BA, who were not great supporters of book clubs; the company who undertook the research handled Dillons press advertising.
There are around 4.5 million members of book clubs in the UK. What is immediately apparent is the high percentage of book club customers who are also buyers of books in the retail sector. Around 70% used both methods of buying, in other words the retail sector and book clubs were fighting for the same customers. 46% of Book club customers come from London, the South-East and East Anglia, this compared with a mere 16% of customers living in Scotland, Wales and the North of England. Customers were mainly A, B, C1, between 25-44 years old and had a high terminal age of education. Book clubs appeared better able to attract women customers than the retail sector. 1.8 million adults also bought books from paperback book clubs. There was overlap between buyers using book clubs and retail outlets. Core customers came from urban, affluent areas rather than the stereotypical image of them being from remote, rural areas.

BCA's response to the TGI survey was fast and scathing:

misinterpretations at this level have undermined what may be interesting market research information for anyone trying to sell more books in a very difficult market.

Two criticisms came from BCA, the market leaders. If BCA had 1.8 million members out of a total of 4.5 million book club members who had the other 2.7 million members? The two paperback clubs, QPD and TSP had around 100,000 members each, of which a small percentage were members of both. As these were the only two clubs offering paperbacks where were the other 1.6 million members?

Difficulties in interpreting these figures show the extent of secrecy and perhaps disinformation in this sector. There are exceptions, such as Red House, who make membership and profit figures available, but overall this sector is extremely secretive.

5.1.3 Book Club Regulations [BCR]

BCR date from 1966 with the BCA's arrival in the UK book club trade. The Regulations were amended in 1985 when separate Regulations for 'simultaneous' and 'reprint' clubs were merged. The regulations were applied and policed by the PA on behalf of those publishers who were signatories of the NBA. They were designed to:

maintain a fair relationship between book clubs and booksellers, in particular by ensuring that the club's members are regular members and take on ongoing
membership obligations . . . so important methods of reaching markets are maintained"\textsuperscript{16}.

Drafting and policing of the Regulations was left to the PA. The BA had no part in this. There were several requirements on book clubs where dealing with books protected by the NBA and where a publisher licensed non-net books. The three basic requirements of clubs, or `positive options' were: -

• Book clubs could only supply to registered members. Premiums (cheap inducements to join) could only be sold to those wishing to join the club. This rule also applied to the three bookshops opened by BCA, members were required to produce a BCA `credit card' when purchasing from them.

• The minimum membership was not less than six months.

• Members were obliged to buy a minimum of three book club choices within their first year of membership. These three purchases had to be made on separate occasions (i.e. three books from different monthly catalogues).

The last requirement was subject to an exemption. Regulations applicable to reprint clubs before 1985 imposed different purchase requirements. The PA Council allowed exceptions when book clubs offered book club editions in different formats from those available in the trade. These could not be offered to members until six months after the trade format edition. In addition, clubs could use a `negative option' under which a member could refuse to accept the recommended choice of the month (this would be sent automatically unless the member indicated otherwise) for a minimum six month period. This system was only used in the UK by one club, TSP.

Apart from the three `positive options' and the exemption clause, clubs were also required to follow strict rules on the licensing of books from publishers. These were:

• Book clubs had to notify the PA on their forthcoming titles four months before the book was offered to members. These intended titles were then published in the \textit{Bookseller}. This meant that Booksellers could make adjustments to stock of the titles concerned as necessary.

• Book clubs were not allowed to announce their forthcoming choices more than three months before their intended publication.

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Book club editions had to carry their club's imprint on the binding, jacket cover and title page. There were exceptions to this rule in extreme cases, notably mistakes in binding by publishers.

5.1.4 Premium offers.

The use of premiums by book clubs caused widespread disquiet in the book trade. Titles could not be offered as premiums until six months after the book had been released in the retail trade. However, the two paperback book clubs were allowed (having first obtained a license to sell the book from the publisher) to being out reformatted paperback editions at the same time as general release to the trade. This loophole was allowed under the Regulations - the PA only suggested in the regulations that paperback editions should not be offered until "at least six months after the issue of a comparable paperback trade edition". The PA claimed that the "NBA and the BCR are designed to ensure underlying equity in the role of book clubs and booksellers".

5.1.5 Individual contracts & simultaneous publication.

Although the BCR were mandatory on book club editions of titles published net in the trade, the rules incorporated no structure of release dates for club editions. Lack of any structure for book club releases was a major Achilles heel in the BCR. Publishers were able to license books as and when they wished. It was therefore perfectly legal for book clubs to offer simultaneous editions of newly released books since they were in a different format, and specifically advertised as such.

5.1.6 The Book Club Concordat

The PA also oversaw the 'Book Club Concordat', which was designed to assist in fair trading between book clubs, to ensure:

that one or more clubs do not take advantage of a dominant position to acquire exclusive rights in a large number of titles, or in all the important titles of a particular category, and so prevent the other clubs from competing effectively.

As with the NBA and publishers, book clubs were expected to agree the terms of the Concordat and publishers were warned not to deal with those that did not sign. Clubs could not gain the exclusive rights to sell a book for more than three years at a time, after this period they were not allowed to renew exclusive rights. A single club could not
gain exclusive rights to cover all titles in a specific category to the exclusion of other clubs. Specialist clubs could require general book clubs to release exclusive rights if the title was deemed to be indispensable to its list. In some cases, book club editions were obtained on nonexclusive rights. Clubs shared rights to a book - this did not preclude them from competing with each other on price or as a premium offer. After three years, as with exclusive rights, nonexclusive rights had to be renegotiated with publishers.

The exclusivity agreements outlined above could be viewed as both 'fair' and restrictive. It was argued that without exclusivity it was almost impossible for publishers to schedule publication of different editions for their own and authors benefit. The Concordat laid down ground rules for an effective supply system to the retail trade and book clubs. Exclusivity agreements were made more complex from the role played by the two paperback book clubs - it would be possible for a club to buy the rights for both hardback and paperback editions. This could restrict competition. It would then be a matter of the book club holding publishing rights selling the rights to competitors after marketing its own edition. As the paperback clubs could not claim that individual titles were vital for their lists (as specialist clubs could) this practice could be restrictive. This could be a reason why clubs were so reluctant to release membership figures - two clubs claiming 1.8 million combined membership will have much greater potential effects on rivals than those with 200,000 members between them.

5.1.7 The thin end of an alarming wedge? The arguments for and against book clubs.

There are several reasons why book clubs came under fire during the 1990s. The book trade was grappling with recession. Graham Williams (managing director of BCA) commented at the 1994 BA Conference:

it is more than just coincidence that a criticism of book clubs always seems to take place in periods of recession. We are tired of being scapegoats.

This attitude was countered by Tim Godfray, chief executive of the BA:

the better the argument, the quicker the response by those on the receiving end that booksellers are merely whinging.
He continued:

there is probably a place for book clubs in a fixed price environment, but for the
NBA itself to operate effectively a fairer relationship has to exist between
booksellers, book clubs and publishers.

This argument showed the dividing line between the two sectors. Who is stealing whose
customers? Can the bookshop chains built up in the 1980s and 1990s blame book clubs
for aggressive marketing and expanding their markets? The following two subsections
will examine and comment on the arguments for and against book clubs.

5.1.8 Arguments in favour of book clubs

BCA's John Roberts attacked the UK book trade in 1991 as being:

inward-looking, undercapitalised, complacent and producer-led. It has failed to
take the opportunities that a changing consumer base has offered.

The early 1990s recession hit book clubs as hard as the retail sector. Book clubs
depended on attracting and keeping members. They did not have the same capacity to
diversify their product (i.e. bookshops selling videos, setting up cafés etc.). Their answer
to this was developing a higher profile via substantial advertising campaigns. Most
publisher advertising was directed at the book trade (and free advertising via book
reviews), and not at the public. Comparisons with other retail trades show how limited
publishers advertising was. In 1993 UK publishers spent £2 million on advertising.
Book clubs spent £14 million. The similar sized UK record industry spent £60 million
on advertising. Record clubs spent £10 million.

Did book clubs reduce buying in retail outlets, or, through their advertising add to the
total book-buying market? Considering the TPI research it seemed that 70% of book
club members also buy from book outlets, but this total could be misleading - the
'narrower' the club the more likely its members will purchase other more general books
from the shops. Peter Mann's seminal *Books, Buyers and Borrowers* (1969) took the
attitude that:

it seems most sensible to take the view that any contact with books, from no
matter what source they may be obtained, helps to increase people's interest in
books and their desire to own books for themselves.
This explanation was advanced by book clubs. When defending opening retail outlets, BCA's Graham Williams told the BA conference:

all we are doing is exactly the same as we do in our newspaper advertisements, which are addressed to everyone - from Sun readers to the Sunday Times\(^28\).

BCA commented on the success of Robert Harris's *Fatherland*, which won the W.H. Smith "Thumping Good Read" Award in 1993 after selling well as a book club edition and subsequently in the trade. There was no evidence that the club edition damaged trade sales, but in fact may have raised awareness of the title to the public.

Criticism of book clubs from the trade was greatest when the question of discounts arose - BCA received up to 70% discount from publishers, but these figures cannot be considered independently without taking into account the costs of postage, packing and advertising. All books were bought on 'firm' sale and could not be returned or remaindered. While the clubs discounted in depth on some titles the actual margins were, according to BCA, not significantly greater than those given to Booksellers. The lower discounts reflected the booksellers' ability to buy books on a sale or return basis.

5.1.9 Arguments against book clubs.

A serious development in the growing tension between book clubs and the bookshop sector was the opening of three book club shops in 1993 \(^29\). W.H. Smith's Bing Taylor commented:

the raison d' être for supporting book clubs was that they extended the market. If they are now opening retail outlets in direct competition with the trade, that rationale clearly disappears\(^30\).

BCA's three shops opened in Birmingham, Bristol and Bromley in July 1993, complementing a shop opened at BCA's head office in London in 1982. The methods of promoting these shops, and the people who are allowed to buy from them (existing members only) were the subject of much debate in the trade\(^31\). One point that particularly riled the bookshop trade was the display of bestsellers. Offers to members included McCarthy and Morell's *Some Other Rainbow* and Delia Smith's *Summer Collection* at discounts of between 25 and 50% off trade prices. Those offers, plus a
comprehensive advertising campaign in the three locations and television adverts were successful, if only in antagonising the bookshops directly involved.

Simultaneous publication of books for the trade and clubs was the decision of publishers, not book clubs. Graham Williams noted at the BA conference that "we can't insist on anything, we don't set the terms on which books are supplied to us". Attacks on book clubs by booksellers tended to overlook the fact that the PA policed the BCR but allowed quite significant leeway for publishers to get round them.

There were four main criticisms of book clubs:

• Introductory premium offers and simultaneous publication of some titles took custom away from bookshops. This overlooks the TGI research suggesting that 70% of book club members used retail outlets as well.

• BCA’s club shops and aggressive marketing eroded customer perceptions of the value of books in bookshops. According to BCA the book club market remained steady during the 1990s at around 10%.

• Authors received lower royalties from book club editions. Simultaneous publications of trade and club editions were argued to lower royalty payments to authors. An outspoken critic of the lack of enforcing the six-month rule was the author Jeffrey Archer. He commented in April 1994:

  I think that for authors, book club editions are not really worth the bother because the sum they receive in royalties is so small they're better off selling their books in bookshops.

• The marketing advantage given to book clubs in terms of discounts from publishers. This reflected the producer-led rather than customer-led philosophy that permeated the publishing trade. Braithwaite, whose advertising company compiled the TGI statistics commented:

  publishers have allowed book clubs to operate as they do, and have handed over on a plate the marketing prerogative to third party outsiders - to my mind this is folly.
Arguments against book clubs come back to the publishers, who ultimately had allowed the book clubs to make gains in market share. Publishers stretched print runs (and so reduced unit costs) to produce book club editions. Virago was successful in licensing editions such as Virginia Woolf reprints to BCA, being sometimes able to allow a 150% increase on paperback reprint runs.


Book clubs became serious players in the UK book trade between 1962 and 1997, and commanded around 10% of the total book market. The sector became less separate from the mainstream retail trade. The method by which BCA advertised its expansion plans did more harm than good in a sector traditionally supportive of the NBA. There was an element of both irritation and panic in BCA's plans from the traditional bookselling trade:

- The 1987 BCA - Leisure Circle merger was endorsed by the MMC but rejected by the then Minister for Trade and Industry, Lord Young. Conclusions stated in this report led directly to a full-scale investigation of the NBA by the OFT in 1989 following criticism of the BCR.

- As a result of the 1989 OFT investigation and the announcement of a new enquiry in 1993 BCA planned to open retail outlets to counter erosion in their market which could happen after NBA abrogation. BCA attracted widespread criticism (mainly from the bookshop sector) for 'attacking' the retail market. In so doing, BCA and the firms which attacked their proposals drew attention to the morass which the BCR had become, giving ammunition to critics of the NBA.

Therefore, the actions of BCA in retrospect were hedging bets against NBA abrogation. Despite criticism from the retail trade over BCA's actions, and increasing pressure on BCR the book clubs remained strong supporters of the NBA. In a written submission to the 1995 National Heritage Committee's proceedings on the NBA, BCA reaffirmed its support for the Agreement:

We have seen a copy of the PA's submission to the National Heritage Committee and would like to express our wholehearted support for the PA's views on the NBA35.
Despite the importance of book clubs in terms of both market share neither BCA, nor any other book club group were called to make oral submissions. Asda was called before the Committee to justify its anti-NBA stance. In its written submission BCA argued that the NBA and BCR offered a wide choice of book titles through varying distribution channels, and balanced the competing interests of sections within the trade. In the Committee’s conclusions no weight was attached to the BCA submission.

NBA suspension in September 1995 ended the BCR. The Concordat also ended, and in the post-NBA market the question of whether so-called ‘boilerplate’ agreements such as the Concordat should remain were discussed.

Initial reaction to NBA collapse from book clubs was marked by the element of panic seen throughout the trade - BCA offered a range of titles in October 1995 as premiums before the agreed contractual date. These premiums had been bought on the basis of being published ‘net’ in the trade, and in the price cutting ‘war’ following suspension had been discounted in the retail sector. This practice, perhaps understandable in the period of uncertainty following suspension did not last. BCA’s John Roberts noted:

We’ve had conversations with the publishers concerned, and we are now have a much clearer understanding about the pattern for the future ... we’ll know when to expect deep discounts, and we’ll cut our coat accordingly.

The immediate effects of NBA suspension on book clubs were negative - BCA reported a ‘decided downturn in expectations’ in October 1995. The reasons for this downturn were clear - wide publicity given to discounting in the retail trade in the run-up to Christmas did not reach the levels which had been commonly predicted. By February 1996 BCA reported that sales had returned ‘much more to their normal pattern’. Hostility toward book clubs from the retail sector has centred, perhaps unfairly, on the high discounts given to book clubs from publishers. The most serious issue facing the trade was the perceived threat of direct sales outfits extending into catalogue based businesses. Without a set of regulations a rise in ‘no-commitment’ book clubs seemed a possibility. Another perceived problem was the potential for book clubs to sell premiums earlier than the six month threshold agreed under the Concordat.

Various (anonymous) publishers suggested that the Concordat could be replaced by trade guidelines, these being designed to keep the book club market in a healthy state and monitor the threat of direct sales and premium offers. A revision of the BCR and Concordat for the trade posed obvious problems. Against the arguments for new rules or
‘boilerplate’ agreements it was argued that multilateral agreements had no place in the new order - publishers had to make unilateral commercial decisions. BCA’s John Roberts suggested:

It would be good if the trade would settle down and come up with some sensible working practices in these matters39.

Another (anonymous) publisher took a different stance:

I think it would be helpful if the PA, which as far as I can tell seem to have backed out of any central role, could reassert themselves in terms of giving guidelines to the trade40.

It is unlikely that the BCR and the Concordat, lost with the NBA will be replaced with strict guidelines regarding the activities of book clubs. Since suspension book clubs have lost their exclusive right to price promote on titles.

As was hypothesised, the rise in influence of book clubs since the 1962 RTPC judgement from a peripheral sector to one enjoying up to 20% of the market was met with trepidation by parts of the retailing sector, in particular the independent Booksellers. The clubs’ ability to market books with little perceived restraint damaged the NBA, forcing the PA to change BCR in 199441. The rise of book clubs and marketing opportunities which were not available to the trade and an MMC enquiry into the BCA - Leisure Circle merger had the combined effect of raising the public profile of the NBA. The book club sector and its growth can be viewed as the catalyst in the downfall of the NBA.

5.2 The cause and effect of the Dillons campaign to break the NBA, 1988 - 1994.

5.2.1 Introduction.

The Pentos-owned bookshop chain Dillons mounted a campaign against the NBA in 1989 which mixed a potent cocktail of full-out attacks on the NBA, the PA and W.H.Smith. This campaign, which was carefully planned and well advertised grew steadily from a submission in February 1989 to the OFT urging it to re-refer the NBA back to the RTPC. It continued later in the same year with an abortive discounting campaign on the Booker Prize nominees in October, and reached its high point in the first so-called NBA discounting ‘war’ in October 1991. The assault on the NBA from
Dillons was an important contributing factor to the NBA's downfall in September 1995. Although Dillons was the protagonist, the architect of the campaign, Pentos chairman Terry Maher, and the Dillons bookshop chain which was built up under his leadership, did not survive to see suspension. Maher was removed as chairman in October 1993. Pentos, under new leadership was a high-profile victim of the 1990s recession, and was put into receivership in March 1995. Its interests were bought out by Thorn-EMI, with forty of the Dillons bookshops closed and others, generally University bookshops, sold to Blackwells.42

Dillons, in its original form, did not survive to see the new order, but this should not detract from the importance of its campaign against the NBA. Without Dillons the NBA might have survived in the trade to the 1997 RTPC hearing. Before going on to examine the cause and effect of the Dillons campaign, it is worth providing an insight into Dillons, and its parent company Pentos. The company's background and tactics gave it an impetus to challenge the NBA which few, if any, firms in the book trade could rival.

5.2.2 Dillons - the company, and its history.

Pentos, soon after its formation by Terry Maher in 1972 made its first foray into the book trade. In 1972, Pentos acquired the Hudsons bookshops in Birmingham and Nottingham. This complemented the firm's acquisition of the religious publishing company Marshall Morgan and Scott, in which Maher had a financial interest in before forming Pentos43. The Pentos publishing and bookselling enterprises were handled through Marshall Morgan and Scott, and Maher had no direct involvement in their running, or knowledge of the NBA at this stage44.

Pentos' book interests gave it an opportunity in 1977 to expand its bookselling activities. The Dillons' University bookshop in Gower Street was bought by Dillons for £650,000 in August 197745. The decision to buy the shop (including two campus bookshops) in light of its trade union activity was not taken lightly:

As they have since told me, Ian Chapman (then managing director of Collins) would like to have bought Dillons's for Collins, but was fearful that the union would then establish a stranglehold on Hatchards (owned by Collins at this time)46.
The apparent union ‘stranglehold’ on the shop also put off other potential buyers, including Blackwells, who were keen to get a prestigious London bookshop but were wary of trade union activity spreading to their shops in Oxford. Maher commented:

Pentos, although not quite the last resort, was pretty close to it

Acquisition of Dillon’s University Bookshop in 1977 was to be an important milestone in Dillon’s rise in the book trade throughout the 1980s and early 1990s. Battles with the trade union are documented with exasperation in Maher’s autobiography, and it is perhaps the case that if the shop had been non-union Dillon’s crusade against the NBA might have come significantly earlier than 1988. The turning point in Dillon’s history came with the refit of Dillon’s University Bookshop in 1985-86. This £1 million development saw the entire building being converted into the second largest bookshop in London after Foyles. The interior design for the totally re-designed shop, with blue carpets, an open central staircase and the characteristic ‘ds’ logo set the standard for the other Pentos owned bookshops from 1986 onwards. Dillons, along with the Waterstone’s chain (which had opened its first branch in 1983) were the pioneers of attractive, well laid out bookshops. Pentos made its third major bookshop chain acquisition in 1986, buying the Claude Gill bookshop chain.

In 1987 Dillons began six years of rapid growth, investing a capital cost of over £50 million on new shops. All existing and new shops (excluding Athena bookshops and the Pentos-owned Hodges Figgis bookshop in Dublin) were refitted and redesigned along the lines of Gower Street. The following two years, buoyed by a booming economy saw further expansion throughout the country; shops were opened in Leicester, Newcastle and Southampton.

By 1989 Pentos, through its Dillons, Athena and Hodges Figgis outlets had grown to 61 shops with a turnover of £59.6 million, this compared to 1987 turnover of £33.1 million. 1989 was to prove a watershed year for the UK economy, as the consumer boom which had followed the 1985 budget, deregulation of consumer credit and low interest rates slowly ground to a halt. The impending storm claimed its first victim in August 1989 with the Waterstone’s chain being bought by W.H.Smith for £43 million. Although seemingly overpriced (Maher had offered to buy the business in May 1989 for £15 million, and Waterstone’s had yet to make any profits), the move by Smith’s was to be vitally important in the campaign against the NBA. The acquisition allowed Smith’s to expand its bookselling activities (Smith’s is not classed as a Bookseller under Business Monitor, but sells the most books in the UK through its own shops and
Waterstone’s), replace its tired looking Sheratt and Hughes chain and become the largest bookselling retailer in the UK. W.H.Smith’s control of over 25% of the book market finally resulted in an MMC enquiry in March 199653.

Pentos, by now the second largest bookseller in the UK continued to grow steadily in the early 1990s54. In 1990 Pentos bought the Hatchards bookshop chain from the publisher Collins for £10.5 million and opened new Dillons outlets in High Street Kensington and Belfast55. The following year saw acquisition of the Economist Bookshops and further shops in Manchester and Trafalgar Square. In a coincidence which was to have a bearing on the 1994 NBA enquiry, Sir Bryan Carsberg, DGFT from 1991 to 1995 had been a director of the Economist Bookshops. According to Maher, Carsberg’s experience in the trade had left him “cynical about the NBA”, and “I think I knew where his sympathies lay”56. By the end of 1991 Dillons traded from 105 shops and had sales of £114 million, thus having doubled turnover in two years57.

Pentos made efforts in 1991 to sell its office furniture business for £45 million, but a buyer was not found. In December 1991, to expand its stationary business (it had bought the Ryman chain in August 1987 via a £12 million share issue58), Pentos acquired the Wildings chain and its sister furniture making company Open Plan. This acquisition of a loss making company, coupled with Pentos’ office furniture business showing a sharp downturn in profits from its 1990 high (profits of £3.7 million, down to a loss of £300,000 in 199259) marked the beginning of the end for Maher’s Pentos. Dillons continued to grow in size throughout 1992 and 1993, shops were opened in Birmingham, Darlington and Plymouth. It was in 1993, with the economy still battling with recession that Pentos reached its first crisis. Maher’s plan to divest Pentos of all its non-bookselling activities was too late, and although Pentos reported profits of £4 million for 1992 the end was nigh60.

In October 1993 Maher was removed as chairman of Pentos following a coup by three non-executive directors (including the ex-Midland band chairman Sir Kit McMahon). He was replaced by a Chief Executive, Bill McGrath, and a Managing Director, Joe Sinyor. Maher comments in his book that Pentos, following its 1991 acquisition of Wildings, had became a “dog”61 in the eyes of the City of London, and the legacy of his acquisitions was to return to haunt the new management of Pentos62. The publishing of Pentos interim results for January to June 1994 caused shockwaves in the book trade - a loss of £36 million was announced, with Dillons accounting for £13 million of this total63. It got worse. The first hints of financial capitulation came in January 1995, when Athena was put into administrative receivership by McGrath, Pentos writing off £10
million in debts. Athena was a victim of both recession, neglect, a shifting demographic change and an image which owed much to famous posters sold in the 1970s. After a series of meetings with creditors Pentos was put into receivership in March 1995. McGrath, in a weary statement shortly before resigning his post commented:

The good news for our suppliers is that there is a far more assured future for them than they have had in the past.

The Dillons arm of Pentos was bought by the Thorn EMI group within days of the receivership for £36 million. A year earlier Maher had valued the Dillons business at £135 million. The full scale of Pentos' financial disaster became clear over the month - stated bank debts of £55 million in February 1995 were in fact nearer £72 million, and had been set to rise to £92 million in March 1995 to cover shop rental costs. On 31 March 1995 Dillons announced 300 redundancies, closed 40 shops which were then returned to the receiver and moved stock worth £2.5 million to a warehouse in Birmingham. 100 stores remained in Dillons' hands.

Dillons, under new management consolidated its position, and there have been no further job cuts or shop closures. Additionally, the firms anti-NBA stance was reversed following the takeover by Thorn-EMI. Sir Colin Southgate, chairman, announced soon after acquisition that:

We are not opposed to the agreement provided that there is sufficient flexibility within it to enable occasional price promotion ... I am certainly not going to rush in and fight the NBA.

The Pentos story seems on the surface a classic example of boom to bust. Dillons' huge growth from 1986-1993 was built on the last years of economic boom, and continued apace through the worst UK recession for fifty years. Maher did not realise the full depth of the recession until it was too late - a spate of shop openings were flawed, notably the High Street Kensington shop in 1991. Athena was run down in Maher's race to open new Dillons stores. After his humiliating departure from Dillons, Maher's vilification in the media, his own firm and the City continued, notably from The Bookseller.

Maher's legacy was more than his single-minded determination to make Dillons the premier UK bookselling chain. The campaign instigated by Dillons in 1989 against the NBA was ultimately to prove successful; in doing so, as we will see in the next section,
Dillons was ultimately to reap the whirlwind of its own campaign and methods of attack. Dillons expansion, coupled with the growth of Waterstones in the 1980s changed the face of UK bookselling, expanded the market and injected new blood into a stagnant trade.

5.2.3 Dillons’ campaign against the NBA - the causes.

The seeds of the Dillons campaign against the NBA first came to light in a speech given by Terry Maher to the BA annual conference in 1988\(^7\). In his speech Maher, with a broad ranging attack on publishers' delivery times, inefficient booksellers and the NBA stated:

> until very recently, bookselling in the UK was the poor relation of retailing. The trade is certainly entering a brave new world, it will be inhabited by the efficient and the innovative\(^7\).  

The speech attracted widespread coverage in the book media, but while Maher commented on a range of issues over which he was concerned (delivery times, printing technology and the NBA), his stance over the NBA attracted the most comment. As Maher stated at interview that this speech did not set out to fire the opening shots of a campaign:

> although the NBA issue was only a small part of what I had to say at that time other things were more important then and are more important now, especially distribution of books, which is still dreadful\(^7\).  

The speech was of significance for three reasons:

- First, it marks the start of the campaign, or at least the first time in which Dillons publicly stated its position on the NBA.

- Second, the reaction of the PA’s chief executive opened the first salvo against Dillons, and gives some indication of the PA’s defence of the NBA:

  Clive Bradley promised legal action if Dillons were to break the NBA, which was a little premature given that we had at that time threatened no such thing. It was an early example of his tendency to get his retaliation in first\(^7\).
• Third, Maher’s prediction that the industry would be peopled in the future by ‘the efficient and the innovative’ contradicted Dillons method of payment to publishers, which were widely seen as being the slowest in the trade. Maher contradicts the perception that Dillons were slow payers to publishers in his autobiography. He blames this perception on Robert Maxwell’s legal proceedings over the decision to stock *Maxwell the Outsider* by Tom Bower in all Dillons shops. So, while the speech marks the start of the campaign it is evident that it was unplanned, an accident.

Media interest in the NBA was crucial to Maher’s decision to take decisive action. The extent to which sections of the media controlled the speed of Dillons campaigns or vice versa was a grey area. Media interest in the NBA had two main effects. First, and perhaps in Maher’s eyes the most important, was free publicity for Pentos. The willingness to take on the trade over the NBA gave signals of Maher’s intent on rapid expansion and innovation. Media attention also did Maher extreme damage within the book trade, with commentators such as Grindley attacking press reports on the NBA in the *Sunday Times* as “superficial and woefully inaccurate.” The extent of media pressure on Pentos to act against the NBA was a question asked when interviewing Terry Maher. He answered:

Yes, there was an element of being driven by the media, but this came about mainly as an identity of interest and the pressure on a restrictive practice. There was enormous interest within the media, and this helped.

So, having decided to “ride with the flood of the tide”, Maher and a campaign team set out a two pronged attack in late 1988 to destroy the NBA. First, Dillons compiled a submission to the OFT stating its opposition to the NBA, this submission was intended to “capture the intellectual high ground”, and bring about a referral back to the RTPC. Second, Maher started a policy, which was to be repeated annually until 1993, of trying to persuade publishers to break the NBA. This took the form of letters to all publishers setting out the Dillons campaign, and the benefits of NBA abrogation. Maher faced an uphill battle in persuading the 60% of publishers who backed (or apparently backed) the NBA.
5.2.4 Dillons’ submission to the OFT, 1989.

The submission to the OFT comprised of a fourteen-page document setting out Dillons’ case against the NBA. In the introduction, Dillons’ made use of the 1988 MMC conclusions into the BCA - Leisure Circle merger. These conclusions were not strictly part of the MMC’s remit. Maher admitted in the interview that the MMC investigation was not important to Dillons decision to proceed, but the MMC conclusions provided a stick to beat the NBA with:

As a final observation, we hope the Director General will keep developments in the book market under review. In the course of our enquiry we have noted that some of the conditions which prevailed when that Agreement was tested before the RTPC in 1962 no longer apply. The Director General might, in the exercise of his duties, consider whether there were grounds to review the Agreement of 25 years of operation.84

The Dillons submission provided a well argued case against the NBA. Dillons stressed the transformation of the publishing industry from a cottage industry to one dominated by conglomerates, development in the 1980s of bookshop chains, growth of book clubs and new technology with the NBA “operating against the best interests of the Dillons customer and book buyers in general”85. The most portentous claim in the submission, and a strand of the argument which Maher was to repeat throughout the campaign, was that under the NBA book prices had increased at twice the rate of inflation in the 1980s86. In claiming the evidence that book prices had risen sharply was “irrefutable”, Dillons’ found itself up against the might of the PA:

Dr Fishwick, employed by the PA to submit evidence on its behalf to the OFT produced figures which, from its standpoint were more reassuring. The statisticians got involved. If ever there was a case to show that figures could be used to prove almost anything this seemed to be it.87

A comparison of price indices from 1985 to 1994 show that compared to the CSO Index, the Index of Titles Prices (Bookseller) did indeed double over the period. In comparison to the RPI Index, the PASCS data looked distinctly more favourable if defending price rises on books. Book prices increased above inflation during this period.
The Oillons submission pre-empted an OFT announcement in May 1989 that an official enquiry was to be undertaken. An equally detailed submission came from the PA in June 1989. These two submissions, and other evidence were considered over the summer of 1989 by the OFT. The PA were able to get the upper hand in their submission by being able to refute Pentos' earlier evidence. In August 1989 the Director General, Sir Gordon Borrie announced "on a matter of fact, partly of analysis and partly of judgement" not to refer the NBA back to the RTPC. Maher criticised Borrie's decision:

The government's inaction has been in stark contrast to Ted Heath's stubborn, determined and brave single-mindedness in 1964 (the Resale Prices Act). It enabled Sir Gordon Borrie to procrastinate until the end of his time in office.

5.2.5 Dillons' price promotion experiments 1989-1993.

The OFT decision was a blow to Maher's campaign, but it was quickly followed in November 1989 by the first Dillons experiment in reduced prices. As was to become standard in all Dillons' promotions (apart from the 1990 Booker prize promotion), the books which were discounted were not published net. The Christmas 1989 campaign was a tie-in with Octopus, who under Paul Harnlyn had never published their books net, but also had never had their cover prices reduced by retailers. Reductions on a range of Octopus non-fiction (including Hugh Johnson's Pocket Wine Book) were a success. The promotion lacked high-profile upmarket fiction, with which Maher was eager to associate Dillons. Maher, eager to court the media had promised action against the NBA in 1989, and his Christmas campaign, though an apparent success (Maher reported sales up by 50% on discounted titles) was met with scepticism.

• 1990

In 1990 the Dillons campaign moved up a gear. After meetings with various publishers in the summer of 1990 (including Reed, Bloomsbury and Collins) Maher decided, after canvassing views, to unilaterally discount all five titles nominated for the 1990 Booker Prize. This promotion had its advantages - the main one in Maher's eyes was that as there were five publishers involved W.H.Smith would be unable to "pick off" individual publishers, or in other words threaten them. Maher made repeated references to the threat which W.H.Smith posed in tackling the NBA both in his book and interview. Smith's backing for the NBA was crucial, and its leverage over publishers in terms of trade discounts and stocking books was enormous.
the phoney war was over; this was a direct breach of the NBA and the PA must respond, otherwise the Agreement was dead. The Booker Prize campaign was a failure both for Dillons and the five publishers involved. It marked the first and last time in which Maher was to blatantly discount net books.

Dillons approached the promotion from two angles. It justified the discounting by claiming that the 1989 EC decision on interstate application of the NBA caused the NBA to be void and unenforceable within the UK. This was a mistake - as the judgement made clear the NBA decision was concerned primarily between the UK - Ireland trade, and not application of the NBA in the UK itself. At interview this question of why Dillons used the EC Judgement was raised. Maher replied:

Our legal representation were clear on this issue. There was not the slightest doubt in our mind that the NBA had been invalid from the EC original decision in 1989.

The discounting campaign on the Booker list was announced at a morning press conference on 12 October 1990. By the afternoon of 12 October the PA made an application for an Injunction. Although Dillons appear to have been confident that the EC decision gave them carte blanche to discount the Booker nominees, the PA was granted an Injunction to stop Dillons' promotion on Saturday October 13 1990. Dillons subsequently appealed against this injunction to the High Court on 22 November 1990. In a last minute change of mind, which Judge Sir Peter Pain noted "bore the marks of midnight oil", Dillons applied for questions on the injunction and provisional validity of the NBA to be referred to the ECJ. This was rejected, the Judge stressing this was "very new territory".

The PA’s role in the Injunction was critical, but the methods in which it gained it were open to question. All five publishers involved in the promotion, and Booker itself had given (private) approval, or had indicated they would not challenge the promotion. Following the threat of an injunction all five publishers (Duckworth, Collins, Chatto, Faber and Bloomsbury) rapidly lost their nerve. The PA isolated each publisher in turn with threats of “all the other publishers are going to join in legal proceedings” against Dillons. This method of playing the publishers off against each other by the PA was a bluff - none of the publishers involved instigated proceedings. The strategy worked - Duckworth, Collins and Chatto (who were to win the Booker Prize with A.S Byatt’s
Possession) pulled out, leaving Faber and Bloomsbury. An injunction (unsupported by Faber) was granted.

Maher claimed that this promotion was a ‘watershed’ in the NBA’s history. The promotion was a failure for Dillons, but several points arising from the way in which it was handled are important:

- If all five publishers had ignored PA threats the NBA might have been abandoned five years before its eventual suspension. This opportunity by major publishers (notably HarperCollins) to break the NBA was not taken;

- Dillons’ based its promotion on the claim that the NBA was invalid within the UK. This contention was flawed;

- The PA, backed by pressure from bookshops, manipulated publishers into seeking an injunction.

1991

Dillons’ campaign against the NBA reached its zenith in 1991. The principal reason for its promotion in September 1991 was the decision by Reed International (whose imprints included Secker and Warburg, and Methuen) to de-net its entire list. The reasons for this are not clear; Reed had good reasons not to de-net, principally the fact that W.H Smith was Reed’s magazine businesses largest customer. On 27 September 1991 Dillon’s announced a major, ‘long awaited’ autumn promotion. The accompanying press release re-iterated Dillons’ attack on the book trade as a whole:

> This promotion has three main aims: to lower book prices, to widen the market for books of every kind; and to break through, once and for all, the log jam of regulatory inertia and book trade self interest that props up the Net Book Agreement. 99

The promotion covered twenty titles reduced by 25%, including David Lodge’s *Paradise News* and Roddy Doyle’s *The Van*. In a move designed to sting the PA into further action, Dillons’ added four net titles to the promotion, including Robertson Davies’ *Murther and walking spirits*. The four net titles included in the promotion were not high profile books by particularly famous authors, and apart perhaps from an act of defiance Dillons and the three publishers concerned (Faber, Sinclair-Stevenson and Jonathan
Cape) it served no real purpose. Maher, justifying breaking the NBA, again repeated his argument of 1990, in that "Dillons are advised that the Net Book Agreement no longer has any legal force in the United Kingdom". On 28 September 1991, another injunction (this time uncontested) was granted to the PA in respect of the four net books. The matter of the injunctioned titles was not to end there.

The Dillons campaign brought three other firms into the fray - Waterstones, Books etc and Volume One entered the 'war' within a week of Dillons. The experience of these firms in discounting was not positive - Books etc's Richard Joseph called the price cutting war a "charade". This 'war' did not last long, and within a week the firms who had joined the battle promising up to 75% discounts quietly discontinued their campaigns. In all Dillons' price campaigns, the preparation and advertising (along with invaluable free advertising via the media) gave the firm a huge advantage over other booksellers. Dillons' results good, but followed a similar pattern to previous promotions.

In all of Dillons' campaigns it is not clear (and this was to be seen in the wake of NBA suspension) to what degree price promotion actually benefited the firm. Maher, eager to justify his campaigns employed Coopers and Lybrand to analyse its trading results. On 30 September 1991 a Dillons press release claimed that sales on discounted titles were five to seven times higher than before the promotion, and that total book sales were 13% higher.

The last major skirmish in 1991 between Dillons and the PA caused embarrassment to the PA and infuriated Maher. In conjunction with its 1991 promotion Dillons launched a voucher scheme for £1 off all books. The vouchers, which were given upon purchase of a discounted Reed book, were then redeemable on all books, including those published net. Not included in the voucher scheme were the four books covered by the injunction, and it was this loophole which the PA set about challenging. Dillons claimed that this voucher scheme did not contravene the NBA, but "to avoid further and unnecessary legal confrontation" it was withdrawn in December. This action was taken after Clive Bradley, seemingly acting as an agent provocateur had deliberately purchased an injunctioned title in October using a voucher. On 22 October 1991 the PA claimed a breach of the injunction, and started proceedings against Dillons via a motion of committal and sequestration of assets.

However, the three publishers involved were unwilling to start proceedings for contempt of court. As Faber's Matthew Evans stated:
We have made it clear that we will take civil action against Pentos if they breach our conditions of sale, but we are not prepared to take criminal proceedings against them. It is wrong for a publisher to try and put a bookseller in gaol.\textsuperscript{106}

Subsequently, the PA withdrew its action and allegations, accepted Dillons’ compliance system and paid Dillons’ costs.

The 1991 promotion was the first and last campaign to draw other firms into a full-out discounting war before NBA suspension, and the element of surprise which Dillons gained from this promotion was lost in annual promotions through to 1993. This campaign marked the highpoint of Dillons’ aggressive marketing and the peak of its retail success. 1991 was a pivotal year for the NBA. As the next section will examine, the Dillons campaign can be viewed as the first major step towards suspension of the NBA from within the trade. Other sectors of the book trade were to build on Maher’s campaign in a second wave of attack.

5.2.6 Dillons - conclusions

The Dillons campaign against the NBA was well organised, attractively advertised and overtly confrontational. It was characterised by Maher’s attacks on the trade itself - on publishers and the “disgrace of slow deliveries”\textsuperscript{107}, on the OFT and competition law “regulatory inertia”, on the bookselling trade “self interest that props up the NBA”\textsuperscript{108}. In the eyes of some analysts, notably Whyte, Maher was a ‘bad’ competitor, in that his actions destabilised the book trade and encouraged protracted price wars within the trade\textsuperscript{109}. This compares to the ‘good’ competitor (for which Whyte singled out Tim Waterstone), who developed ideas of quality, differentiation and concern in books.

Pentos’ background in financial management and retail in other sectors made the difference. Embarking on a rapid expansion in the late 1980s Dillons’ soon came up against an Agreement which did not permit marketing on price. A speech delivered by the chairman of the fastest growing bookshop chain in 1988 germinated, almost by accident into a campaign which in its first two years put the future of the NBA under increasing doubt. Financial pressures on Pentos, and an effective two year impasse from 1991 - 1993 from publishers unwilling to join Reed killed off Dillons’ attack. Had in 1990 or 1991 the publishers involved in the Dillons promotions stood firm against pressure from W.H.Smith’s and the PA, Maher could have claimed fully to have single-handedly brought down the NBA. Maher used the media to great effect, and the fact that
nearly all the quality dailies, accurately or not, sided with Maher was a measure of how well his campaign caught the climate against so-called restrictive practices. Throughout his campaign Maher was dogged by the pro-NBA *Bookseller*:

Whitaker (owner of the *Bookseller*) caused through that journal of his, which I haven’t read for five years a lot of aggravation. Material was picked up from the *Bookseller* and used more widely. People don’t change in the media, they are often wildly inaccurate and yet, when you read what they say you take it as gospel.\(^{110}\)

Maher shook up a bookselling trade between 1988 and 1991 which had few doubts over the NBA, its place or its future. Other more powerful outsiders cultivating an interest in the book trade were to help finish off the Agreement which Maher undermined.

### 5.3 The rise of supermarkets in the book trade 1962 - 1996

In 1992 supermarkets made up 2% of the sources of book purchases in the UK; this represented a 1% loss over the four year period 1988-1992.\(^{111}\) By 1996 supermarkets enjoyed an estimated 4% of the book retail trade. The move by three supermarket chains (Asda, Tesco and Sainsburys) into bookselling caused widespread disquiet in the book trade. All three companies applied for BA membership (Tesco successfully in November 1993), and all employed sophisticated methods of ordering and displaying books.

#### 5.3.1 Supermarkets and the RTPC, 1962.

In the early 1960s supermarkets began to command a greater influence in the UK retail trade. In 1958 there were 175 outlets, by 1964, two years after the NBA case there were 1,500\(^{112}\). In 1991 the SDA 25 survey of retail businesses reported that 74 large grocery retailers operated 8,309 outlets, total turnover for these retailers was just less than £40 bn, compared to £339 m in 1964\(^{113}\).

Sections of the book trade regarded supermarkets selling books with suspicion. At the 1962 RTPC investigation experiences of price cutting by department stores and supermarkets in Canada was considered\(^{114}\). The trade's suspicion of supermarkets has changed little during the intervening period. Irene Babbidge, owner of a bookshop and library supplier in Hampshire in evidence to the RTPC stated:
Opposite my shop in Havant there is a supermarket, and my ordinary retail trade in regular selling books would be susceptible to price competition from this direction ... I should expect this store to start selling cut-price books with considerable publicity.\textsuperscript{115}

She continued ... 

I do not think that my regular customers would remain faithful to me in the face of price-cutting elsewhere, even a small reduction in my turnover and gross profit would make it impossible for me to carry on. Efficiency as a bookseller cannot be attained without high costs.\textsuperscript{116}

Babbidge's views reflected trepidation from the retail trade and the public towards supermarkets in the early 1960s - a 1964 survey for the J.Walter Thompson Company revealed that although more 'housewives' shopped at supermarkets (37\% in 1964 compared to 34\% in 1961) they suspected supermarket owners of being "vigorous, progressive and efficient . . . but also of being impersonal, excessively concerned with profits and out to exploit the weakness of human nature."\textsuperscript{117} Although the survey pointed out the perceived drawbacks of supermarkets (impersonal, crowded and long queues), supermarkets were elbowing independent traders out of business and were here to stay.

Supermarket chains were not considered in depth at the RTPC, probably because supermarkets in the UK were just beginning to become popular. However, Buckley's summing up did refer to Canadian price-cutting wars between supermarkets and bookshops as detailed by John Hoare.\textsuperscript{118} Hoare, owner of a bookshop in Montreal during the 1950s documented the struggle faced by independent bookshops from supermarkets and department stores discounting books. Sporadic discounting coupled with low discounts to Booksellers apparently caused a depressed and unprofitable book trade. In Mr Justice Buckley's summing up the following view was taken:

We do not ignore the fact that social and economic conditions in this country and Canada may differ in some relevant respects, but we are satisfied that the cessation of resale price maintenance for net books would be likely to produce results in this country broadly similar to those experienced in Canada\textsuperscript{119}.

Three changes must be considered when looking at the 1990s trade. First, supermarket chains have greatly affected independent grocery stores and the structure of that trade. Independent booksellers feel, perhaps unjustifiably, that if supermarkets make more
serious efforts to sell books this will change (to their disadvantage) the structure of the book trade. Secondly, three major supermarket chains applied for BA membership. Tesco was admitted in 1993; Sainsbury's, for unspecified reasons did not join the BA. Others, notably Safeway and Asda undertook major promotions for children's books. Thirdly, supermarkets abandoned the traditional role of publishers representatives being in sole charge of book stocking in their stores in favour of computerised stock control.

5.3.2 Supermarket retailing methods.

Supermarkets have not sold books in any quantity or range in the UK since 1962, the primary reason being while supermarkets get almost four times the margin on books in 1997 compared to food, stocktum of books is slower. Consequently, supermarkets selling books concentrated on fastsellers, own-brand titles (mainly recipe and children's books) and magazines. A reason why supermarkets did not sell books in quantity was due to publishers' representatives stocking and reordering books without any participation from the stores. With the entry of two supermarket merchandisers to the book market in 1992 all this changed.

Gasson, writing in the Bookseller, considered that the decision by Proctor and Gamble to merchandise their Cover Girl cosmetics internally rather than by the two wholesalers Aspem and Thomas Cork "could turn out to be one of the most significant events in the book trade this decade." In the light of Proctor and Gamble's decision both companies decided to add books to their stock range and sell to supermarkets.

since then the selling of books to supermarkets has never been the same. The implications for mass market publishers and for booksellers are enormous. The introduction of 'planogrames' to bookselling in supermarkets changed the traditional method of selling books - after buying books from the publisher the merchandisers decided how much space should be given to each title, which shelf it should be displayed on and how many books should be stacked face-out. The planograme cycle ran for two weeks, after which the publisher's representative, now relegated to stocktaking, correlated total sales of each book, these figures are then used to construct the next two-week cycle. Using this method, the merchandisers could determine customer profiles and put books into supermarkets according to known preferences.
There are two serious problems faced by publishers with this method of retailing. First, the two-week cycle caused returns to be higher. Secondly, the book trade relies heavily on Christmas sales for its profits, this seasonality (not seen to the same extent in supermarkets) means that publishers produce more books in November/December. Consequently, the planogramme cycle does not suit publishers, who might have five heavily promoted books in December compared to one or two in May (generally the low point in publishers output). With space limited and tightly controlled in supermarkets publishers could potentially lose sales in the run up to Christmas.

The different orientation of the two trades poses problems for publishers, who according to both Aspern and Thomas Cork did not seem concerned with understanding or embracing the supermarket book market; Thomas Cork's Bob Wilmot explained: -

> What we would like to see is all publishers working closely with us, asking us where product is going and wanting to know what other product they produce can find a market.\(^ {123} \)

The merchandiser's margins on selling books to supermarkets were small (12-14%), which could explain why they are so eager to gain a closer working relationship with publishers.

> In every marketplace and in every product where there has been growth of supermarkets, we have seen the demise of the independent, and I am convinced this will happen with books.\(^ {124} \)

**5.3.3 Tesco, the BA and book trade debate.**

On the 11th November 1993 the first major supermarket chain was admitted to BA membership. Tesco's application was supported by the BA's Finance and General Purposes Committee in October 1993. In a decision that has caused serious concern to booksellers, and serious embarrassment to the BA, it was decided not to inform members that Tesco had gained membership; eventually the Association admitted allowing membership to Tesco when members reported seeing BA Christmas catalogues in its supermarkets.\(^ {125} \) Subsequent arguments over whether Tesco should have been admitted raged in the *Bookseller* during 1994, the upshot being a one man enquiry by Jonathan Chowen of the BA membership criteria.\(^ {126} \)
Tesco's motivation for membership was the ability to sell book tokens (not available to non-BA members). Beyond this the supermarkets had little need for membership, offering only a limited range of books, and no ordering facilities or bibliographic help. In the face of strong criticism from members (mainly small independent booksellers), Tim Godfray, BA Chief Executive justified Tesco's membership by stating:

Tesco is a serious bookseller ... the view was taken that Tesco would continue to expand its book retail activities regardless of whether it was in BA membership or not, and that it is better to have it in membership than to have it operating outside.\(^{127}\)

Godfray's standpoint was supported by ex-BA Chairman Malcolm Gibson, who suggested that admission would increase the professionalism of bookselling in supermarkets and that "Tesco have as much right to BA membership as any other bookseller in the country."\(^{128}\)

Tesco's membership of the BA compelled it to sell books under the NBA terms and the company agreed to follow the NBA rules. This was in direct contradiction to the firm's boast that:

we have always been in the forefront of contesting resale price maintenance ... it [cut price books] is a logical extension.\(^{129}\)

The BA's decision to allow Tesco membership raised two important points. First, Tesco joined the BA because they perceived that the NBA would go and that the book trade was becoming increasingly resigned to this fact. Secondly that the BA was resigned to the fact that the NBA would go and was keen to broaden its membership to 'non-traditional' book outlets.

A major problem concerning the BA's treatment of Tesco, and Sainsburys abortive effort to join in 1994 was the question of whom the BA actually serves. It was formed in 1895 to provide a united front on the question of book pricing. In the few years before NBA suspension the Association was obviously torn between having to protect the interests of its core members, independent booksellers, and trying to broaden its membership to reflect growth in other areas of the trade. Whether the BA could effectively speak for all its members on the NBA while supermarkets were seeking and gaining membership is open to question.
Casting aside the arguments for and against supermarkets joining the BA, the Association behaved naively on an issue that was bound to cause controversy within sections of the membership. Peter Bell adequately summed up the doubts felt by independent booksellers:

For the sake of membership revenue, how long before it dawns on us that we no longer speak with a united voice for policies which allow businesses of all sizes and specialities a chance to survive?130

5.3.4 Asda’s role in NBA suspension, 1995.

Controversy in the book trade over Tesco’s admission to BA membership, and Sainsbury’s unsuccessful attempt to join were to be overshadowed in 1995 by the actions of Asda. The supermarket chain’s successful promotion of children’s books in 1993 apparently raised the profits of the promotional publisher Parragon from £11m to £18m.131 The supermarket, having limited its promotions to non-net books directly challenged the NBA in February 1995. In a promotion designed to test the PA’s resolve Asda announced its intention to discount ten net books; the PA responded with a High Court Injunction preventing discounting of these titles132. This Injunction spurred Asda into action against the NBA, although the supermarket agreed to comply with it. Asda’s spokesman Alan Preece commented on the abortive promotion:

We are delighted with the response from the public to the price-cutting campaign. Our book sales doubled last week. In the last two years our book sales have increased by 20%, which shows that people can get the bookbuying habit from supermarkets.133

While the BA dismissed the promotion as ‘a calculated publicity stunt’, Asda were quickly to turn their fire on the NBA from another angle. In March 1995 the supermarket announced a promotion on John Le Carré’s new hardback Our Game, discounting the title by 50%.134 Our Game, published by HodderHeadline - the publisher which had broken from the NBA in December 1994, was to provide a ‘war’ to parallel Dillons’ 1991 promotion. Asda’s promotion was quickly matched by other firms, including the supermarket chains Safeway and Sainsbury’s. They were to be joined by Dillons and John Menzies. Asda also signalled their intention to appeal against the PA’s Injunction to the ECJ, having stepped up their antipathy toward the NBA:
The NBA is against our interests. It stops us providing better value books, and it stops us using the kind of marketing techniques that are an essential part of the modern retail market. We want to do it in a manner that is sensible and sustainable.\textsuperscript{135}

The promotion threw the spotlight back on Hodder Headline, which was the second major publisher after Reed to withdraw as a signatory to the NBA. It is apparent that publishers wavering over the NBA paid great attention to the Asda promotion. It is a strong possibility that the Le Carré promotion signalled the end of the NBA. Hodder Headline refused to take the blame for the negative reaction amongst sections of the book trade. Tim Hely-Hutchinson stated:

> We left the NBA because we wanted to expand sales across the industry and bring a greater sense of excitement to the book trade. With some exceptions the trade has responded well and there is no doubt that this initiative will bring Le Carré to a wider audience.\textsuperscript{136}

Asda claimed their promotion of \textit{Our Game} was a resounding success, asserting:

> We conducted a survey which showed that 80\% of our customers didn’t even know that you were prevented from discounting books. We have shown that if the price is right people will buy hardbacks - even from supermarkets.\textsuperscript{137}

Asda admitted in response to a question at the National Heritage Committee in March 1995:

> I would not say we are down-market, but you are right, we do actually aim for a lower demographic sector, yes.\textsuperscript{138}

This statement correlates with work undertaken by Fishwick et al on the effects of NBA suspension in January 1997\textsuperscript{139}. Reference is drawn to the fact that those in the C2, D and E social classes \textit{buy more discounted books} than those in the A, B, C1 social classes.

The promotion was successful enough for the supermarket to embark on another promotion in July 1995. This was to be the last major offensive against the NBA before suspension in September 1995. Stephen King\'s paperback \textit{Insomniac}, also published by Hodder Headline was offered at 50\% discounts in July 1995\textsuperscript{140}. The furore surrounding the promotion of \textit{Insomniac} did not match that of \textit{Our Game}, and seems to have
provided a platform for Hodder Headline's anti-NBA stance. Tim Hely-Hutchinson, commenting to the *Bookseller* on the promotion, claimed that the firm was profiting from leaving the NBA:

> We are talking to a range of customers, discussing a range of deals from straight discounts to two-for-the-price-of-one packages. We really want to bring the independents in this time, and they are showing every sign of wanting to get involved.\(^{141}\)

Both Asda and Hodder Headline did well out of discounting campaigns against the NBA. Asda used the NBA to demonstrate their antipathy towards RPM, and were subsequently to undermine the RPM agreement operating on branded pharmaceuticals later in 1995\(^{142}\). The ammunition for Asda's promotion was supplied by Hodder Headline, and the publisher were able to use the exercise to advertise their own intentions. Asda cannot claim to have brought the NBA down single-handedly, in a trade getting increasingly split over the NBA they can be considered to have hammered the final nail in the NBA's coffin.

### 5.3.5 Conclusions

Tesco's membership of the BA in 1993, Sainsbury's experiment with a stockholding section at one of its SavaCentres in London and Asda's success with a children's classic promotion in 1993 attest to the interest shown by supermarkets selling books in the 1990s.

Although sections of the book trade strongly opposed supermarkets becoming members of the BA there were reasons why pessimism seen both in 1962 and following NBA suspension might not be objective.

*Supermarkets may be more successful at promoting books at a mainstream public and as a mainstream product* rather than an elitist product - hence the success of Julia MacRae's children's book promotion at Safeway in 1992, and the *Guinness Book of Records* promotion offered by Safeway at Christmas 1995 and 1996.\(^{143}\)

Supermarkets offer publishers great opportunities for generic promotions. The introduction of planogrammes allowed a more effective method of selling books. If supermarkets are more successful at promoting books to the mainstream public then there is the potential for a knock-on effect to stockholding bookshops - it is likely that
once people start to acquire books they will continue to buy them, and not necessarily at supermarkets.

The BA's treatment of Tesco's membership raised fears expressed at the 1962 RTPC. The BA acted strangely, but the doomsday scenario predicted by some in the trade immediately after suspension has not happened. Supermarkets, from the evidence presented in Chapter Seven have expanded the market. They have not caused the independent bookselling sector to shrink.

It is not possible to predict how much expansion the trade can take before the market reaches saturation. Supermarkets have tapped a new market, but this does not appear from the evidence so far to have had major impact on the mainstream bookselling trade.


3 See Chapter 1.5


5 Ibid., p. 22.

6 Barker, R. & G. Davies, Books are different, 1966, p.908.


8 Barker & Davies, ref. 6, p. 928.

9 Norrie, ref. 7, p. 169.

10 Statistic provided to the author by Graham Williams at the 1994 BA Conference.

11 Braithwaite, P. At any price? The Bookseller, 4 June 1993, pp. 22 - 25.

12 Ibid., p. 22.

13 Ibid., p.23.

14 Ibid., p.23.


17 Malcolm Gibson to Editor of The Bookseller, 2 July 1993, p. 16.
18 Clark, ref. 16, p.68.
19 Clark, ref. 16, p.68.
20 Clark, ref. 16, p.69.
21 Williams, ref. 15, p.22.
22 Tim Godfray to Editor of the Bookseller, 25 June 1993, p.22.
23 Ibid., p.22.
25 Braithwaite, ref. 11, p.25.
26 Braithwaite, ref. 11, p.25.
29 Booksellers alarmed as BCA opens more shops. [Editorial], The Bookseller, 25 June 1993, p. 8.
30 BBC parries BCA retail thrust with exclusivity deal. [Editorial], The Bookseller, 22 April 1994, p. 5.
31 Booksellers alarmed as BCA opens more shops [Editorial], ref. 29, p. 8.
33 Braithwaite, ref. 11, p.25.
34 Clark, ref. 16, p.68.


44 This was made clear in the interview. Maher stated: “I wasn’t aware of the agreement to begin with as I did not get involved in the trade”.

45 The apostrophe in Dillon’s was dropped after the refit of the University bookshop in Gower Street, 1986. Una Dillon, the founder, commented to Princess Anne (opening the refitted shop in 1986) that Dillon (without the apostrophe) “is too American”.

46 Maher, ref. 43, p. 56.

47 Maher, ref. 43, p. 57.

48 Maher, ref. 43, pp. 56-58.

49 Maher, ref. 43, p. 94.

Maher, ref. 43, p. 76.

Maher, ref. 43, p. 77.


Maher, ref. 43, p. 82.

Stated in interview with Terry Maher, April 1996.

Pentos, ref. 50, p. 13.

Maher, ref. 43, p. 99.

Maher, ref. 43, p. 178.

Maher, ref. 43, p. 178.

'Dog' is City parlance for a company in financial difficulties which has at some time in its life been a City 'Star'.

Maher, ref. 43, p. 175.


Two famous examples of posters exemplifying both Athena and 1970s tastes were the (female) 'tennis player' and Ché Guevara.

Maher, ref. 43, p. 96.

Dillons collapse special, re. 42, p. 6.


Built on the 'wrong side' of the High Street, with a small shop front and a pedestrian barrier opposite the entrance, Maher admitted this was Dillons first major error in judgement.

Dillons redundancies, ref. 69, p. 8.


Maher, ref. 73, p. 1997.

Stated in interview with Terry Maher, April 1996.

Maher, ref. 43, p. 115.

Maxwell brings Dillons payment policy to book. [Editorial], *The Financial Times*, August 26 1989, p. 27e.

Maher, ref. 43, pp. 79-81.


Stated in interview with Terry Maher, April 1996.

Maher, ref. 43, p. 117.

Poll finds 60% of publishers support the NBA. [Editorial], The Bookseller, 1 July 1988, p. 8.


Pentos, ref. 43, p.123.

Pentos, ref. 43, p. 124.

Dillons, ref. 43, p. 124.


Maher, ref. 43, p. 127.

Maher, ref. 43, p. 129.

Maher, ref. 43, p. 132.

See Chapter 4.2.1 for this judgement and its effects.

If the Commission had felt it necessary it could have implemented Article 87e, which gives it the power to ban restrictive agreements within a Member State. See Chapter 4.2 for further details.

Maher, ref. 43, p. 143.

Pentos turns to Europe for help against NBA. [Editorial], The Bookseller, 30 November 1990, p. 1609.
Ibid., p. 1609.

Maher, ref. 43, p. 143.


Ibid., p. 1.


Maher, ref. 43, p. 156.


Maher, ref. 43, p. 156.

Maher, ref. 43, p. 158.


Maher, ref. 73, p. 1995.


Stated in interview with Terry Maher, April 1996.


Tarrant, M. The changing face of supermarket shopping, 1964, p. 3.
113 Ibid., p. 3.

114 Barker, R. & G. Davies, Books are different, 1966, pp. 360-361.

115 Ibid., p. 261.

116 Ibid., p. 262.

117 Tarrant, ref. 112, p. 8.

118 Canada never had organised RPM system for books. Hoare’s evidence to the Court concerned an RRP system, which was characterised by price wars between shops in Montreal. Book imports to Canada from the UK, published net were generally sold net by booksellers. Canada banned all RPM agreements per se in 1952. See: Barker & Davies, ref. 114, pp. 344-349.

119 Barker & Davies, ref. 114, p. 28.


121 Ibid., p. 24.

122 Plannogrammes generally run on two week cycles, and consist of stock display, reordering and collation. They were introduced to give supermarkets a better idea of what sold in individual stores, and to construct customer profiles.

123 Gasson, ref. 120, p. 26.

124 Gasson, ref. 120, p. 27.

125 Some BA members were particularly irritated by Tesco recommending one of their wholesalers, Thomas Cork for ordering books from the catalogue not in stock. See: The Tesco conundrum. [Editorial], The Bookseller, 28 January 1994, p. 8.


131 Gasson, ref. 120, p. 26.


134 Phony war ends as le Carré price war breaks out. [Editorial], *The Bookseller*, 5 May 1995, p. 7.

135 Asda determined to get round NBA restrictions. [Editorial], *The Bookseller*, 3 March 1995, p. 7.

136 Phony war ends as le Carré price war breaks out, ref. 134, p. 5.

137 Phony war ends as le Carré price war breaks out, ref. 134, p. 5.


140 Asda back into action as Hodder clinches new deals. [Editorial], *The Bookseller*, 14 July 1995, p. 7.


142 See Chapter 1.5 for details.

143 Stated by *Bookseller G* in the post-NBA interviews undertaken for Chapter Seven.

6.1 Introduction

Unless discounts are offered on books by retailers, the formal abandonment of the NBA can have no effect.¹

This Chapter will document and analyse the effects of suspension on the trade from October 1995 to July 1997. Four issues are addressed:

• The extent of price discounting during the period. This chapter will make observations on the so-called 'tripod' of detrimental effects predicted by Mr Justice Buckley in the 1962 RTPC, and whether there has been substantive evidence of them since suspension.

• Pricing issues without RPM. NBA suspension raised problems apparent in other countries which abolished RPM on books² - notably the question of whether prices should be printed on books or not.

• The effects of suspension on the PA and BA. The PA was set up in 1896 to develop a coherent strategy for the introduction of RPM. Suspension threw the PA into chaos because of the BA's reluctance to help pay legal fees for the legal defence prior to suspension and the decision by some publishers (notably HodderHeadline) to leave the PA.

• Cranfield School of Management research³. Fishwick's Interim Report on research into the effects of NBA suspension is considered. Evidence presented in that report can be compared with the eleven interviews undertaken by the author, and presented in Chapter Eight.

6.2 The extent of price discounting following NBA suspension.

If the 1962 RTPC verdict is to be believed a 'tripod' of detrimental effects will occur in the trade⁴, these are:

• Fewer and less well equipped stockholding bookshops;
• More expensive books;
• Fewer published titles.
By the summer of 1997 some trends were apparent:

- higher prices for fastsellers and bestsellers to take into account discount on cover prices and other external factors, notably high paper prices;

- removal of RPM has not been disastrous for the UK book trade, but neither has it resulted in any obvious stimulus to the trade;

- a relative lack of enthusiasm from the public for discounted books.

It was not always thus. Immediately after suspension nearly all bookselling chains and supermarkets discounted books. This varied greatly from the 'non-traditional' CTN Martin’s offering 25% off all stock to bookshops offering discount only on a very limited selection of books (generally on bestsellers such as Delia Smith’s Winter Collection). The effect of the NBA suspension initially had a positive effect on the trade, the large media attention given to its downfall seemed to renew interest in books. This is backed up by figures from Bookwatch which showed that hardback sales doubled between October 1 - October 15 1995, rising from an index figure of 210 to 446 over the period. The two week period saw the highest rise in sales, by October 22 the index had dropped back to 421. HarperCollins and Random House, the two publishers who finally brought down the NBA, did not gain the benefits they might have wished; both Transworld and Little, Brown (both companies supported the NBA) gained market share in October.

By November 1995 the ‘wild’ discounts given to booksellers and sharp rise in hardback sales engendered by the NBA collapse were replaced by a mood of caution within the trade. Sales of discounted hardbacks plateaued by mid-November. The reason for caution can be explained by two phenomena which became apparent after suspension. Firstly, discounts of up to 60% were given to booksellers buying books ‘firm sale’ (as opposed to sale-or-return); as these books could not be returned and often had been bought in hundreds, booksellers were compelled to promote these titles. The effect, as explained by James Heneage of Ottakers, was that booksellers promoted these titles at the expense of a wider range - most titles discounted were found in all bookshops, therefore price competition was effectively between a small number of titles. Secondly, two books which were to become Christmas bestsellers, Delia Smith’s Winter Collection and Andy McNabb’s Immediate Action, were sold at usual discounts. Booksellers who wanted to discount these titles did so out of their own gross margin and hoped that volume of sales would make up for margin loss. Waterstone’s Managing Director Alan
Giles commented that this form of 'loss leading' was allowing more volume to be sold, but more importantly was raising sales across the whole stock range, therefore allowing gross margins to be clawed back. However, to put this into context, Giles pointed out that although sales on price promoted titles had risen by 400% with an increased profit of 30% these titles only accounted for 3% of total sales. Buying books firm sale with an increased discount is a risky business for the bookseller, who has to hope that at least the discount offered (say 25%) leads to an increase in sales of 25% or over. After Christmas 1995 these complications were aired by Austick's Managing Director John Lauder:

The emphasis on middle-of-the-range prices and the lack of seasonal full-price leaders and the effect of discounting are complications which need a lot of analysis before their final outcome is established.

1995 was not a good year for the book trade even though some commentators considered it to be one of the strongest years for the range and quality of writing. Booksellers had a slow year. W.H Smith fared badly, laying off 1,000 staff in September 1995 after profits fell by 16%. It issued a profit warning for the 1995 - 1996 financial year. Penguin had a troubled year, losing nearly 1,000 jobs and its Managing Director Trevor Glover in November. Independent bookshops also felt the pinch:

We needed a cracker of a Christmas to pull up a bad year, and we did not get it ... this has been a very disappointing Christmas (Silver Moon bookshop).

After the initial upsurge of sales following NBA suspension Christmas 1995 was not an outstanding success for the trade. Making comparisons between Christmas 1994 and 1995 in terms of volume sold and value was made difficult by the success of 60p books in the UK.

The success of the 'Penguin 60s' managed to muddy the waters at Christmas even further. The 60p books were brought out in Summer 1995 to combat the success of the Wordsworth 'Classics' (introduced in 1992 for £1 each), and to celebrate Penguin's sixtieth birthday. Penguin Classics were sold at firm sale to buyers and with a minimum 1000 order. Sales were boosted by the success of Marcus Aurelius's Reflections, which returned to the bestseller list after a 31 year gap.
The mood of caution in the trade following the chaotic end of the NBA was reflected in discounting over that Christmas. David Sweeten (Sweeten Bookshops) commented after Christmas:

We have yo-yo prices, a baffled public and a gimcrack trade ... the revolution was plotted at head office level, but such was the incompetence and indecision in those same head offices that far fewer individual price promotions occurred than I would have expected.\(^{19}\)

Discounts from bookshops over the Christmas period tended to concentrate on a few titles. Two Christmas bestsellers, Winter Collection and Immediate Action were discounted by nearly all outlets. In Delia Smith’s case booksellers faced a conundrum - as the vast majority of bookshops discounted the book, individual shops felt compelled to discount it less they suffered any damage to their reputations for not offering reductions. There were exceptions, the Glasgow based bookshop John Smith refused to discount Winter Collection although all its competitors were doing so\(^{20}\). BBC Publishing refused to give higher discounts to bookshops on this book to cover discounting, forcing bookshops to carry reductions out of their own gross margins. This led to the situation that the author and publisher (and presumably the public) benefited from higher sales at the expense of the retailers - booksellers paid for the privilege of discounting. This is made all the more serious by the fact that Winter Collection sold over a million copies between August 1995 and January 1996\(^{21}\). Public reaction to price discounting was ambiguous - all bookshops reported that volume sales were up compared to Christmas 1994. Volume One’s managing director Malcolm Gibson reflected typical opinion within the trade that discounted books were seen by the public as in some respect inferior:

After the initial surge of interest in books following the demise of the NBA, there was a distinct fall-off in response to price promotion. We have noted that consumer interest in price-promoted books tends to fall off more quickly than it did before, thus decreasing the already short life of many titles ... this cannot be good news for booksellers or publishers.\(^{22}\)

This shows the problem faced - books were bought on firm sale but with higher discounts from the publisher. Most competitors also bought the same book, and all bookshops promoted the book intensively. The time period over which the book will sell was reduced, forcing bookshops to undercut rivals. Shops not selling their quota were faced with having to discount and remainder books which they could not sell.
The initial effects of NBA suspension were:

- Booksellers took the brunt of price discounting. Publishers, bestselling authors and the public enjoyed a short-term gain;

- A full-out price war over Christmas did not happen, what discounts there were tended to be on the same titles;

- The initial high sales following NBA suspension in September did not carry through to Christmas 1995;

- Booksellers were in effect both forced to 'pay for the privilege' of selling the Christmas bestsellers from Smith and McNabb;

- Booksellers generally (and sensibly perhaps) did not discount books unless given further discount by publishers. Problems did occur with books bought before the NBA collapse which subsequently got extra discount from publishers. Some booksellers were not compensated for stock they had bought before the NBA;

- NBA collapse caused chaos in the trade. Neither publishers or booksellers successfully adjusted to the new regime in time for Christmas 1995.

6.3 Pricing issues without RPM.

This subsection examines two aspects of book pricing issues following NBA suspension. These are:

- The question of whether publishers should continue to state Recommended Retail Prices (RRP) on books, or remove all price information from covers;

- The decision on whether or not to state prices on books has important knock-on effects on the price of books in shops. As we will see, external factors unrelated to the NBA also had direct effects on book prices.
• **Price marking.**

Following suspension of the NBA, booksellers were allowed to discount all books which previously had been sold net. However, a fundamental problem which has been seen elsewhere in abolition of RPM has been the retailer’s ‘lack of freedom’ to raise prices above that stated on the book.\(^{24}\) This problem is straightforward: booksellers discounting books in the run up to Christmas 1995 did so on a price stated on the book either as a RRP or an old RPM ‘net’ price. Booksellers faced a more intractable problem of raising cover prices on some titles to make up for lost margin on discounted books. Publisher’s cover prices can be raised by the bookseller, though to judge from the views of Charles Tongue, writing in the *Bookseller*, some confusion over the issue was apparent in November 1995:

Booksellers are now free to discount books. But while publishers continue to print prices on books, the retailer does not have the freedom to raise prices.\(^{25}\)

Tongue says that booksellers are acting illegally if they raise cover prices. What in fact he presumably does mean is that booksellers’ ‘lack of freedom’ is based on the assumption that they will be reluctant *to be seen to raise prices* above that stated on the book. The answer to this problem is seen by some booksellers as removing all price information from books. This would allow booksellers to raise prices on some titles to regain lost margin on discounted books, but more importantly the buyer could not make a comparison of a books RRP price and the booksellers marked-up price. Therefore, the problem over price marking is one of margin given away versus margin to be regained by price rises on other books.

The arguments over RRP and unpriced books is an issue on which the BA and PA have trodden cautiously. A principal argument in favour of unpriced books is that they allow the bookseller flexibility to make individual decisions on what to discount and what to mark-up. Therefore, this system would be beneficial to booksellers, who could do as they wished without damaging their trade with customer perceptions of expensive books.

A major headache for bookshops buying unpriced books would be pricing them all. Tongue estimated that pricing one book would take on average 6 seconds, this adding another 33 hours work per £100,000 sales.\(^{26}\) It is not clear how practical this assertion is, or how it was calculated. If unpriced books are adopted by the trade it will take some
time for books carrying RRP's to be sold and replaced by unpriced books. The process would probably be gradual, especially over the bookseller's backlist titles.

What price would be stated in book reviews, advertising and publisher's catalogues? The booksellers' ability to price books as they see fit would allow freedom and remove power from the publisher to still control an approximate price of the title for sale. Unfortunately perhaps for those who argue for unpriced books, it seems a necessity for books to be advertised at a recommended price. An RRP-less trade could lead to a perception that booksellers were imposing prices as they saw fit, and not to an agreed formula.

Both France and Belgium adopted policies of all books being published without cover prices following RPM abrogation in 1979 and 1984 respectively with mixed results.27

- **Price marking and price increases.**

Selling unpriced books to bookshops raises issues on pricing which could substantially change the trade. With the NBA calculation of gross margin was straightforward - it being the difference between the cost price of the book to the buyer and the stated net price on the book. Buyers outside the book trade had greater control over gross margins - the reason being that margin is calculated from the cost price and not the retail price. This allowed retailers a level of freedom to raise or lower retail prices with more flexibility, albeit within the confines of any advertised RRP.

This difference between gross margin based on either cost or retail price has implications on the debate outlined in the subsection above - that is if publishers continue to state RRP on books, buyers are still forced to calculate a rough gross margin between cost price and retail price. Therefore, it can be argued that unpriced books allow retailers greater flexibility to adjust margins.

NBA suspension was followed by price increases on frontlist paperbacks of up to 20%.28 This increase had the effect of making the £4.99 paperback obsolescent. The paperback price benchmark was increased to either £5.99 or £6.99.29 Reasons for price increases correlate with NBA suspension - RRP were set to allow retailers to discount titles but retain gross margin.

In interviews given to Sarah Broadhurst, some publishers claimed that book prices would have risen with the NBA.30 Statements like this are impossible to verify. If price
rises could be blamed on NBA suspension, the PA would have had a stronger case (if it wished to pursue the matter) for arguing that RPM abrogation had directly correlated with one leg of the ‘tripod’ argument of price increases following abrogation. The main supporting argument for those (unnamed) publishers who claimed that price rises would have occurred with the NBA came from outside the trade. High paper prices over the 1993-95 period forced some publishers to switch to cheaper paper grades, reduce type size and margins. It is not clear from reports on price rises whether publishers were cutting print runs to save paper, having the knock-on effect of higher overall prices for both the publisher and product.

It cannot be argued safely that NBA suspension caused by itself the reported price rises in books. External factors and NBA suspension had between them the effect of raising prices in the three month period after suspension. To what degree the individual effects of paper prices, retailers margins and publisher’s prices had the most impact on the trade is impossible to quantify. The question of whether books should be sold unpriced to booksellers is particularly difficult to answer. Unpriced books give the retailer more freedom to control margin than under the systems of RPM or RRP. Buyers would be more ‘powerful’ in their ability to discount or raise prices. Publishers would lose their ability to set RRP’s (and tacitly control book prices). Such a system would impose financial constraints on booksellers (extra time spent pricing books). Most importantly for the book trade is how book prices would be advertised in the press and publishers catalogues under such a system.

6.4 The effects of NBA suspension on the PA and BA.

NBA collapse was precipitated by the actions of three major publishers (Random House, HarperCollins, Penguin) and one retailer (W.H.Smith). The role of the PA in the collapse, especially PA Council president Nicholas Chapman (BBC) and PA Council Member Simon Master (Random House) had severe and unpleasant effects on the PA after suspension. The anger felt by some publishers (notably Little, Brown and Transworld), PA Council members and booksellers over Chapman and Master’s tacit abandonment of the NBA in the weeks leading up suspension in September 1995 put strain on the PA.

The first indications of a crisis within the PA came with news in November 1995 that the BA was unwilling to pay its share of the legal defence mounted against the OFT proceedings before suspension. The BA, instead of paying its share of legal costs was reported to have returned the money donated by its members to the NBA defence fund.
back to members. Additionally, the BA apparently put pressure on its subsidiary firm Book Tokens Limited not to make any contribution. The private reasons why the BA were not prepared to pay their share of the legal costs are alluded to in this anonymous comment by a BA member:

It's generally felt within the Association that the PA's own members destroyed the NBA, and as a result they should be responsible for picking up the legal bill, not us. 

This attitude was also taken by some members of the PA Council, who felt that the responsibility for paying the legal fees laid with the three publishers who precipitated the NBA collapse. Dissension within the PA Council became apparent with the resignation of Macmillan's Iain Burns, apparently because "I am extremely busy and need to concentrate on matters in hand". The PA adopted a high moral standpoint, but this was perhaps to be expected when owed large amounts of money from an Association which had pledged support for the NBA defence. Clive Bradley commented:

If the BA refused to pay it would be an extraordinary breach of faith, compounding the breach of faith many think has already taken place. We all agreed to set up a defence fund and, although the PA did all the work, every decision we took was taken jointly. That is the moral position.

Threats by publishers to leave the PA forced the Association to re-think its strategy for the future. Within two months of NBA suspension the PA published a nine-point programme setting out projects for 1996, these included work on VAT, copyright, new publishing technology and export markets. The PA also made efforts to justify its efficiency - a decrease in staff by 15% was justified as making the Association 'lean'. The PA got an income of £1.2 million in 1994-95, and reported efficiency savings of 40% over the 1985-1995 period.

Despite the PA's claim of offering 'remarkable value', the Association began its centenary year in 1996 in deep trouble. In January 1996 HodderHeadline left the PA. The immediate result of Chief Executive Tim Hely-Hutchinson's decision was the resignation of HodderHeadline's Chairman Philip Attenborough. The obvious difference of opinion between the two men is apparent from statements made to the Bookseller, Hely-Hutchinson stated:
The current lack of consensus in publishing and the disagreements that have occurred among publishers over the NBA have turned the PA into a pantomime horse.\(^4\)

Attenborough, a supporter of the NBA, was unhappy with the decision to leave:

His decision to leave the PA is a step too far. Although it might be time for the PA’s role to be reviewed I can’t bear the idea of participating in such a review from the outside.\(^4\)

HodderHeadline’s decision was based on hostility toward the NBA which had been apparent in the firm’s ‘open letter’ to retailers justifying its reasons for leaving the Agreement in 1994.\(^4\) Once the NBA went, Hely-Hutchinson used the ‘lack of consensus’ over the issue to justify leaving the PA and save the £50,000 per annum subscription. This decision gave ammunition to those who thought that HodderHeadline would have the ability to ‘free-ride’ on services offered by the PA without paying a subscription (a notable example being the world trade fairs which the PA co-ordinates). More importantly HodderHeadline’s decision left the door open for other publishers to leave the PA.

To what extent can the PA directorate be blamed for the NBA’s downfall? The PA’s defence of the NBA, and the need for money from publishers and booksellers to mount that defence forced those publishers who privately wanted the NBA to the surface. Decisions made by HarperCollins, Penguin and Random House were an effective coup against the PA. Subsequently, HodderHeadline used NBA suspension, and the ensuing schisms within the trade as justification for leaving the PA. This train of events led to the following conclusions:

- The PA was unable to control the actions of the three multinational companies who challenged the NBA;

- The actions of those three publishers in league with W.H. Smith were directly responsible for the NBA suspension;

- The PA made little or no effort to canvass the opinions of smaller publishers and booksellers when the three publishers signalled their intentions in September 1995. The lack of a referendum weakened the PA, who bowed to pressure from only three of its members (albeit some of the largest);
• The PA's decision not to either expel those three publishers or hold a referendum arguably revealed the following conclusions:

  • Weakness. The PA did not make a decision based on the views of its whole membership;

  • Weakness. The PA’s membership was too wide in scope to come to a common standpoint;

  • Voluntary suspension of the NBA made defence at the RTPC virtually impossible.

6.5 Cranfield School of Management research

Fishwick undertook research into the effects of NBA suspension on the book trade. Their research started after suspension in 1995, and is set to run until December 1997. Their First Interim Report, published in January 1997 gave some indication on the state of the UK book trade without RPM.

They were careful to qualify their research:

There are risks in publishing an interim report after one year of a two year investigation. While first observations may suggest that so far the abandonment of the NBA has led neither to bonanza nor to catastrophe, these are still early days.

This is confirmed by the findings reported in Chapter Seven, where it becomes apparent that the trade has carried on much as it did before suspension, albeit with important adaptations (notably the growth of wholesalers, 'niche' marketing).

Extent of discounting

Fishwick states that discounting has proved widespread in the UK since suspension when compared with the situation in Ireland (1992) and Belgium (1984) after RPM abolition. W.H. Smith have used price promotions as a major marketing strategy, but this has not been followed to the same extent by the major bookselling chains. Bookseller K, manager of a major chain bookshop interviewed for Chapter Eight stated that price promotion was only used to a serious extent at Christmas. Indication is given
in the Report on the rise of customer loyalty rebates since suspension and ‘price promise’ promotions. Loyalty rebates (usually by means of an in-house ‘credit card’) were introduced by seven of the eleven booksellers interviewed for Chapter Eight.

**Customer surveys**

According to this research the percentage of customers comparing prices in 1996 was perhaps lower than expected. This is based on the premise that book buyers would be likely to shop around for lower prices (high cross price elasticity of demand). In surveys carried out in Milton Keynes in February and November 1996 12.8% and 8.3% of customers respectively compared prices of books before purchasing. Fishwick qualified the November total (8.3%) as perhaps being low due ‘to the rush of pre-Christmas shopping’. Fishwick comments on the correlation between social grade and buying discounted books. Of 489 book buyers in the A, B, C1 social classes, 26% bought discounted books. This compared with 302 book buyers from C2, D, E social classes of whom 38% bought discounted books. The Report states that discounting had little effect on the quantity of books bought - RRP and discounting have not increased the volume of sales.

**The effect on booksellers and publishers.**

There is as yet little factual evidence on the effects. The balance of opinion among both booksellers and publishers showed no net positive or negative overall effect on profitability.45

The Report was circumspect about making any firm conclusions on the effects of NBA suspension beyond reporting that “the feeling among both booksellers and publishers ... has been one of apprehension rather than euphoria about the future without RPM”46. It will become evident from the evidence presented in Chapter Seven that after nearly two years without the NBA the trade had by and large adjusted well. Apprehension had been replaced by realism. The Report states that “the smallest retailers were affected quite adversely by the end of fixed retail prices”.47 Chapter Seven questions this conclusion.

**Overall implications of NBA suspension.**

The most obvious phenomenon to be seen after suspension was the increase in book prices - Fishwick stated that on average book prices rose by 10% between September 1995 and September 199648, this comparing with general inflation of 2.7%. Fishwick
asserts that these price rises were due to publishers giving booksellers ‘accommodation’ for margin lost in discounting books. No indication is given in the Report on outside influences such as the rise in paper prices.

The Cranfield Report was, as qualified, cautious in drawing any firm conclusions on the suspension of the NBA. The final report, to be published in 1998, should be better able to qualify observations made in the Interim Report. It concluded:

Neither has the removal of RPM so far led to any obvious stimulus to the market. Initial figures suggest that total spending on books in the first few months after the appearance of price competition may have been lower than if change had not occurred.49

If we accept Fishwick’s Report, the end of the NBA has proved neither to be a disaster or a success. The trade has carried on as before. If the findings of Chapter Eight are accepted, the trade in 1997 had settled down. The end of the NBA was not a disaster for any part of the trade, and in cases there were efficiency gains (i.e. wholesalers and 24 hour delivery).

6.6 Conclusions

What of Buckley’s ‘tripod’ of detrimental effects which would follow abrogation?

• Fewer and less well equipped stockholding bookshops. There has not been mass closure of bookshops. As we will see in Chapter Eight, most bookshops have been forced to adapt rather than cease trading. In Summer 1997 this prediction appeared null and void, though as Fishwick asserted “these are still early days”.50

• More expensive books. It was held in 1962 that book prices would increase as a result of publishers taking fewer risks on new titles and using short print runs. Book prices increased by an average of 10% between September 1995 and September 1996 on both hardback and paperback fastsellers and bestsellers. This to take into account discounts from booksellers.

• Fewer published titles. Title output cannot be ascertained with any degree of certainty until 1997 totals are published in 1998. This is due to the fact that a percentage of books published in 1996 were commissioned before the NBA ended in September 1995. Cranfield research concurs with this view.51
The NBA ended suddenly and with no 'orderly withdrawal'. Price discounting in the run-up to Christmas 1995 was not as drastic and widespread as some in the trade predicted. As we will see in Chapter Seven, the three month period after suspension remains the most intense period of price competition since suspension. Since Christmas 1995 the trade has settled. If we accept this evidence and Fishwick's Interim Report, suspension of the NBA did not have severe effects on any part of the book trade.

NBA collapse was an effective coup by three major publishers and a retailer. Other factors, such as the OFT enquiry and the prospect of a new case against the NBA by the EC undoubtedly had an influence on the collapse. Who have been the winners and losers of NBA suspension? The 'losers' are more obvious - the PA for its capitulation and brittleness; authors face a tougher battle to get published in the present climate; book clubs in their present form face an uncertain future. The 'winners' so far have been the publishers and the public. NBA collapse, and the perception that books were expensive under the NBA raised public consciousness of book prices. Whether over the long-term these 'winners' will retain their initial gains is open to question.

In the next Chapter we move on to consider in detail the effects of suspension on eleven bookshops. What have been the effects on their trade?

See Chapter Eight for other European countries experience of RPM abrogation.

Fishwick et al, ref. 1.

See Chapter 3.4: The NBA at the RTPC 1962.


‘Usual’ discounts range widely between bookshops. The basic discount given by all publishers on books is 33%. In correspondence to the Bookseller in 1996 one independent bookseller claimed to get a ‘maximum’ discount of 36.63% (Bookseller, 5 January 1995, p. 17). Bookshop chains receive larger discount on published price, in James Thin’s case the firm received discount of around 41% (see Appendix ?). At the top end of the trade discounts are, understandably, a closely guarded secret - W.H.Smith is rumoured to have asked and received discounts of 60% or over prior to the NBA’s suspension.

Post NBA sales level off, ref. 8, p. 5.

Post NBA sales level off, ref. 8, p. 6.


17 Glover resigns as Penguin’s troubles grow. [Editorial], The Bookseller, 10 November 1995, p. 5.

18 Reflections was a Penguin bestseller in 1964 following a new translation from Latin.

19 Price promotion - a time for caution, ref. 16, p. 22.

20 Price promotion - a time for caution, ref. 16, p. 22.

21 Booksellers stay cool as supermarket sales grow. [Editorial], The Bookseller, 5 January 1996, p. 5.

22 Price promotion - a time for caution, ref. 16, p. 22.

23 Price promotion - a time for caution, ref. 16, p. 22.

24 See the case-study on Belgium (Chapter 8.3) for some comparison on what can happen to book pricing following RPM abrogation.


26 Ibid., p. 8.

27 See Chapter 8.1 (case-study on France’s experience of RRP abolition and RPM imposition, 1979-1981), and Chapter 8.3 (case-study on Belgium, RPM abolished following an EC ruling under Article 85).


29 Ibid., p. 5.
30 Ibid., p. 5.


32 Ibid., p. 5.

33 Ibid., p. 5.

34 Ibid., p. 7.


36 PA - nine steps to heaven. [Editorial], The Bookseller, 1 December 1995, p. 7.

37 Ibid., p. 7.

38 Hodder and Stoughton was a founder member of the PA in 1896.

39 Attenborough was Chairman of Hodder and Stoughton between 1975 and 1993, and kept this position following the merger of Hodder with Headline in 1993. Headline’s chief executive Tim Hely-Hutchinson became chief executive of the new company.


41 Ibid., p. 6.


44 Fishwick, ref. 1, p. 1.

45 Fishwick, ref. 1, p. 17.
Fishwick, ref. 1, p. 16.

Fishwick, ref. 1, p. 17.

Fishwick, ref. 1, p. 18.

Fishwick, ref. 1, p. 20.

Fishwick, ref. 1, p. 1.

Fishwick, ref. 1, p. 18.

Sharing out the pain. [Editorial], The Bookseller, 12 January 1996, p. 24-25.
Chapter Seven. The reaction of eleven booksellers to the NBA suspension, 1997.

7.1 Introduction.

This chapter will analyse the results of eleven interviews carried out with booksellers. Managers of ten independent bookshops were interviewed, and one manager of a chain bookshop.

The interviews were carried out to:

- collect primary evidence on the effects of NBA suspension, and to use this evidence to qualify argument in the thesis, and in particular Chapter Seven.

- To collect evidence on the experience of RPM suspension in the UK, and to compare, where relevant, the banning of RRP pricing in France, 1979-1981.

- test the hypothesis that suspension of the NBA has not had the detrimental effects on the trade that were predicted in the judgement of 1962 RPC:

These consequences, which we think would flow from condemnation of the Net Book Agreement, can summarily be stated as (1) fewer and less-well-equipped stockholding bookshops; (2) more expensive books; (3) fewer published titles ... We are satisfied, moreover, that each of these consequences would arise in a sufficiently serious degree to make its avoidance a substantial advantage.¹ [emphasis added]

In addition, these interviews were designed to probe the views of booksellers on the main cause of suspension, and the direct effects of suspension on their businesses. The chapter provides a linear analysis of the seven questions asked, and it will aim to use this
evidence to back up the central hypothesis of this thesis, that the book trade has changed, that it is different.

The Interviews.

In April 1997 eleven booksellers were approached to take part in structured interviews on the demise of the NBA and the effects of suspension on their businesses. All bookshops will remain anonymous, and be referred to as Bookshops A to K, as some interviewees made comments in confidence. In this chapter the letters 'X' and 'Y' refer respectively to publishers and booksellers whom the interviewees preferred to remain anonymous.

A range of booksellers was interviewed, ranging from inner-city bookshops with considerable local competition (J, K) to those in towns close to cities (A, B, D, E, G, H, I) and those catering to a localised, rural market (C, F). Geographically, the bookshops in this chapter are found in London (J), the Midlands (B, C, D), the north of England (I) and the north-east of England (A, E, F, G, H, K). Table 7.0 below provides a summary of this information:

Table 7.1 Summary of interviewees.

<table>
<thead>
<tr>
<th>Bookshop</th>
<th>Location</th>
<th>Size (square feet)</th>
<th>Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Small market town</td>
<td>500</td>
<td>2 FT, 3 PT</td>
</tr>
<tr>
<td>B</td>
<td>Medium market town</td>
<td>700</td>
<td>2 FT</td>
</tr>
<tr>
<td>C</td>
<td>Small town</td>
<td>200</td>
<td>1 FT, 3 PT</td>
</tr>
<tr>
<td>D</td>
<td>Medium market town</td>
<td>700</td>
<td>2 FT, 3 PT</td>
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<td>E</td>
<td>Seaside resort</td>
<td>150</td>
<td>1 FT, 2 PT</td>
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<tr>
<td>F</td>
<td>Small market town</td>
<td>600</td>
<td>2 FT, 3 PT</td>
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<td>G</td>
<td>City suburb</td>
<td>150</td>
<td>1 FT, 3 PT</td>
</tr>
<tr>
<td>H</td>
<td>Medium market town</td>
<td>2500</td>
<td>3 FT, 4 PT</td>
</tr>
<tr>
<td>I</td>
<td>Small town</td>
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<td>3 FT, 22 PT (two shops - see Appendix ..)</td>
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<tr>
<td>J</td>
<td>City Centre</td>
<td>10000</td>
<td>37 FT, 5 PT</td>
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<tr>
<td>K</td>
<td>City Centre</td>
<td>5500</td>
<td>16 FT, 32 PT</td>
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</tbody>
</table>
In all cases, booksellers were asked seven questions about the NBA and their businesses. The questions covered two areas. Questions 1-3 (below) are causal, and were designed to draw out individual strength of support for the NBA, who or what was the prime cause of suspension and opinion on the BA and PA’s role in the NBA’s collapse. Question two provided the greatest variety of answers. As will be seen from analysis, booksellers blamed a range of causal factors for suspension. Pentos, W.H. Smith and HodderHeadline were equally identified as the chief primary causes of suspension by the booksellers interviewed. A number of booksellers identified both underlying causes, and the protagonists who brought the NBA down.

1. Were you in favour of the NBA?
2. Who or what in your opinion was the prime cause of the NBA’s downfall?
3. Do you blame the BA or PA for what happened to the NBA?

Questions 4-7 (below) are concerned with the effects of NBA suspension, and aimed to gauge the extent of discounting since suspension, the relationship with publishers and wholesalers since suspension, discount schemes (customer loyalty cards) and finally whether the effects of suspension have been as bad as feared.

These questions were easier for booksellers to answer, as in all cases (except perhaps Bookshop J) widespread change has occurred - only four bookshops out of the eleven have not introduced customer discount schemes (A, C, H, J); wholesalers have strengthened their share of the distribution trade; supermarket promotions have forced booksellers to change their stock - but finally, it is evident that change has not been wholly negative - all booksellers agreed that NBA suspension apart from the first six months, the trade had settled down by June 1997.
4. Have you introduced discount schemes or customer loyalty schemes since September 1995?
5. How has your relationship with publishers and distributors changed (if at all)?
6. What have you discounted? Has your stock selection changed?
7. In retrospect, has the NBA’s collapse had the detrimental effects on your business you expected?

In addition to these questions, information was gathered on the history of the bookshops, their customer profile, stock profile and other useful facts (number of employees, local competition, the importance of customer orders).

Three central points emerging from these interviews were:

- Increased competition from new participants; Bookshop F, in the most rural of the towns studied coped with direct competition from a John Menzies book department opened within a month of the NBA collapse. Bookshop H faces the opening of an out-of-town retail development sponsored by a national supermarket chain.

- In nearly all cases, booksellers have moved towards ‘niche’ bookselling since NBA suspension. Examples include Bookshop K’s move toward cementing its place as a prime academic bookshop at the expense of selling MMPB’s. Bookshop E has concentrated primarily on ordering and receiving books within 24 hours. Bookshop D has concentrated on stocking remainders.

- The bookselling trade for these eleven booksellers has changed, but importantly and crucially this change has not been all negative. For example, the owner of Bookshop I stated “I enjoy it sometimes now, we can beat competitors by getting other stuff in to discount”, and Bookshop D’s owner said “we’ve become more flexible, and have changed our stock and selection methods ... after the initial chaos we’ve reached equilibrium of a kind”.

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Structure of the chapter

The chapter is split into three sections:

- Section one (7.2 to 7.4) examines and analyses the first three causal questions. Conclusions are offered at the end of this section, and map the booksellers' opinions to evidence collected in the rest of the thesis.

- Likewise, section two (7.5 to 7.8) examines and analyses the four questions devoted to the effects of NBA suspension. Conclusions are offered at the end of this section.

- The third section (7.9) offers a conclusion to the whole chapter, and compares material from the interviews against other evidence on NBA suspension.
Section One - response.

7.2 Were you in favour of the NBA?

Table 7.2 Summary of answers to Question One.

<table>
<thead>
<tr>
<th>Bookshop</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Yes, generally. We had mixed feelings over it, mainly as we sell other items as well as books.</td>
</tr>
<tr>
<td>B</td>
<td>Yes - well, 50/50 really.</td>
</tr>
<tr>
<td>C</td>
<td>Yes, I can't imagine many independents that weren't.</td>
</tr>
<tr>
<td>D</td>
<td>Yes - generally, mainly as avoiding a direct threat to independent retailers.</td>
</tr>
<tr>
<td>E</td>
<td>Yes, we could compete with the big boys on the same footing.</td>
</tr>
<tr>
<td>F</td>
<td>Yes, totally. It protected all of us, and it protected the customer.</td>
</tr>
<tr>
<td>G</td>
<td>Yes, and totally. It enabled small independent bookshops to compete on service, shop atmosphere and ambience.</td>
</tr>
<tr>
<td>H</td>
<td>Yes, totally.</td>
</tr>
<tr>
<td>I</td>
<td>Yes, but primarily because it gave us an easy life.</td>
</tr>
<tr>
<td>J</td>
<td>Yes, I believed all the things that were said in the book media.</td>
</tr>
<tr>
<td>K</td>
<td>Yes, though it didn't effect us too badly.</td>
</tr>
</tbody>
</table>

All the booksellers interviewed were in favour of the NBA, though as Table 7.1 above shows, the degree to which they supported the Agreement varied. Four bookshops (F, G, H, J) were "totally" in favour of the NBA, and all three indicated that their reasons were universal - that the NBA supported the trade as a whole rather than just supporting their own businesses. To illustrate this, Bookseller F replied:

It protected all of us and the customer. Books are not all about prices.

This was the clearest reference to the traditional argument favoured by some quarters of the book trade that 'books are different' from other products. Of all the interviews,
Bookshop F presented the most traditional pro-NBA stance. This shop was unique amongst these interviewees in experiencing price competition within a month of suspension from a new John Menzies branch 15 yards away. The two other shops which were totally in favour of the NBA also favoured the Agreement for its ability to provide a “level playing field” (G), competition on service and shop atmosphere (G) and “clear definition of profit margins” (H). Bookseller J, manager of the one chain bookshop to be interviewed also supported the NBA for its ability to support the trade as a whole:

It protected small bookshops and protected depth of stock. It was also a service to the public.

Booksellers C and E were broadly positive though not effusive in their support. Bookshop C’s owner replied that “I can’t imagine many (bookshops) that were not” in favour of the NBA. And while she commented that with the NBA shops could compete on service, it was evident that post-NBA all the bookshops had made efforts to improve their service - notably by making use of 24 hour delivery from wholesalers. Six bookshops on this evidence can be classed as having positively supported the NBA - three of these cited broad trade interests as important in their support for it, the other two were more circumspect.

Booksellers A and B admitted to mixed feelings about the NBA. Bookseller A stated categorically that he would only continue to sell books if he remained competitive, and that the NBA had protected him. As books account for 1/3 of his stock (the other 2/3 being gifts, toys, stationary), and the shop is located at a tourist attraction he can perhaps afford to narrow his stock if necessary.

Bookseller B also admitted to having mixed feelings (“50/50”) about the Agreement. Her reasons for supporting it were that “it stopped supermarkets from discounting, and protected independents such as ourselves”. However, it was difficult in this case to judge from the interview what their reasons for opposing the NBA were - certainly they have faced stiff local competition from Sainsbury’s, Tesco, Woolworth and Ottakers since suspension. Their reasons for “50/50” must remain a mystery.
Bookshops D and I were in favour of the NBA, and this must be stressed. However, whilst both booksellers admitted that it caused a “stable trade” (I) and “avoided a threat to independents” (D), each admitted to an element of self-interest in supporting it. Bookseller D commented:

my reasons for backing it were probably purely selfish with W.H. Smith so close to us.

Bookseller I replied:

yes, but primarily because it gave us an easy life.

All eleven booksellers can be judged from answers to question one to have supported the NBA, with six booksellers bracketed as supporting the Agreement for its beneficial effects on the trade as a whole. It is notable that booksellers J and K, both of whom primarily sell academic books were supportive of the NBA. Bookseller K justified his support thus:

We supported the NBA from the middle strata of bookshops, and thought that without it small outlets would go to the wall. Supermarkets started putting their fingers in the pie, and the Irish and French experiences with them didn’t auger well. I just thought it would be detrimental to the trade without the NBA.

At the other end of the scale, booksellers D and I both offered the opinion that the NBA had protected their businesses from price competition, and that this had been a good thing (or as bookseller I states above, “it gave us an easy life”). It is not clear how far this attitude was shared by other booksellers, and the degree to which booksellers sheltered behind the general “books are different” arguments in reply to this question (stable trade, level playing field, encouraging new authors). Certainly, if we are to believe Allan and Curwen, the NBA protected inefficient booksellers, and restricted innovation in the book market. Notably, Booksellers D and I have embraced innovation
(notably on-line ordering to wholesalers) since the end of the NBA. The mixed feelings admitted by bookseller A with regard to the NBA is perhaps explained by the range of other products sold in the shop, and the owners statement that “we will only sell books if we can be competitive”. Bookseller B’s mixed feelings over the Agreement lacked conviction, at least with regard to what the negative aspects of it actually were.
7.3 Who or what was the prime reason for the NBA's downfall?

Table 7.3.1 Summary of answers to Question Two.

<table>
<thead>
<tr>
<th>Bookshop</th>
<th>Prime reason for the NBA’s downfall</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Pentos and Terry Maher, aided and abetted by some of the big publishers.</td>
</tr>
<tr>
<td>B</td>
<td>W.H. Smith, HarperCollins and HodderHeadline were very sceptical, and finished it off between them.</td>
</tr>
<tr>
<td>C</td>
<td>Greed on the part of HodderHeadline.</td>
</tr>
<tr>
<td>D</td>
<td>It had been fraying around the edges for a while - book clubs were getting stronger, direct selling was increasing.</td>
</tr>
<tr>
<td>E</td>
<td>Dillons. I just feel it was him (Maher).</td>
</tr>
<tr>
<td>F</td>
<td>Tim Hely-Hutchinson (HodderHeadline) was totally aggressive toward the NBA and effectively bulldozed it.</td>
</tr>
<tr>
<td>G</td>
<td>W.H Smith were having a very bad time, and were under City pressure to improve their financial status.</td>
</tr>
<tr>
<td>H</td>
<td>Terry Maher of Dillons.</td>
</tr>
<tr>
<td>I</td>
<td>Asda. It fell down because of W.H. Smith and HodderHeadline.</td>
</tr>
<tr>
<td>J</td>
<td>Lack of support from the major publishers and booksellers. Support for the NBA eroded over a number of years, and W.H. Smith’s actions were the final straw.</td>
</tr>
<tr>
<td>K</td>
<td>Pentos. It goes without saying. Definitely.</td>
</tr>
</tbody>
</table>
Where booksellers were unanimous in their support for the NBA (albeit with differing enthusiasm and motives), their thoughts on the prime reason for suspension show a range of opinion. The question was designed to probe the booksellers’ thoughts on the underlying reasons for suspension, and not necessarily a listing of the protagonists who actually brought the Agreement to an end. For example, Bookshop D identified book clubs and direct selling operations as ‘fraying the edges’, with W.H Smith’s a protagonist for suspension:

\[
\text{It had been fraying around the edges for a while - book clubs were getting stronger and direct selling was increasing ... I’ve always wondered why Smith’s did the dirty work.}
\]

This compares with Bookseller B’s attitude that:

\[
\text{Smiths, HarperCollins and HodderHeadline were very sceptical about it, and finished it off between them.}
\]

While this is basically correct, the answer does not address the underlying reasons for NBA suspension. As can be gauged from Table 7.3.2 above, answers to this question either address underlying reasons for suspension (the Pentos campaign, HodderHeadline leaving the NBA in December 1994, book clubs, Asda), or are concerned with the actual companies which brought pressure to bear successfully on the NBA in 1995 (W.H.

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**Table 7.3.2 Summary of prime causes for the NBA’s downfall.**

<table>
<thead>
<tr>
<th>BOOKSHOP</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>I</th>
<th>J</th>
<th>K</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>Dillons</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>W.H. Smiths</td>
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<td></td>
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<td></td>
<td>4</td>
</tr>
<tr>
<td>HodderHeadline</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>HarperCollins</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
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<td>1</td>
</tr>
<tr>
<td>Book Clubs</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Asda</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Unspecified publishers</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Unspecified booksellers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

Where booksellers were unanimous in their support for the NBA (albeit with differing enthusiasm and motives), their thoughts on the prime reason for suspension show a range of opinion. The question was designed to probe the booksellers’ thoughts on the underlying reasons for suspension, and not necessarily a listing of the protagonists who actually brought the Agreement to an end. For example, Bookshop D identified book clubs and direct selling operations as ‘fraying the edges’, with W.H Smith’s a protagonist for suspension:

\[
\text{It had been fraying around the edges for a while - book clubs were getting stronger and direct selling was increasing ... I’ve always wondered why Smith’s did the dirty work.}
\]

This compares with Bookseller B’s attitude that:

\[
\text{Smiths, HarperCollins and HodderHeadline were very sceptical about it, and finished it off between them.}
\]

While this is basically correct, the answer does not address the underlying reasons for NBA suspension. As can be gauged from Table 7.3.2 above, answers to this question either address underlying reasons for suspension (the Pentos campaign, HodderHeadline leaving the NBA in December 1994, book clubs, Asda), or are concerned with the actual companies which brought pressure to bear successfully on the NBA in 1995 (W.H.
Smith, HodderHeadline, HarperCollins, Asda). There are obvious overlaps in terms of companies who offer underlying, catalytic reasons for suspension and those whose pressure finally broke the NBA (e.g. HodderHeadline, Asda). Two Booksellers, D and J commented on both the underlying flow against the Agreement, and the prime reason for its end - in both cases W.H. Smith.

Of the eleven booksellers, four thought that the prime reason for NBA suspension was Pentos - it is notable when considering the answers of Booksellers A, E, H and K that each were so vehement. Dillons played a vital role in the collapse of the NBA, and undermined it with a combination of good marketing, lobbying the OFT and attacking the PA. The four booksellers who identified Pentos as the prime reason for suspension all answered the question in the same manner - that Maher was an outsider; “in bookselling for different reasons” (E). This view reflects the vilification which Maher faced from the Bookseller when Pentos went into receivership.

**Bookseller A:** Pentos and Terry Maher were the main reason, aided and abetted by some of the main publishers. It did them no good, nor to some the firms they courted.

**Bookseller E:** Dillons. I just feel it was him (Maher). Obviously he was in bookselling for different reasons, we however live in a different world.

**Bookseller H:** Terry Maher built that chain of his up on credit. It was the publishers’ fault for dealing with him in the first place, and their lemming like mentality when the going got tough.

Booksellers A and H give reference to a wider truth, and one that can be overlooked easily when considering the NBA - Pentos had to have agreement from publishers (notably Reed International) to undertake promotions. The NBA was an agreement between publishers, not booksellers. Of the four booksellers who identified Pentos as the prime cause the most considered reply came from Bookseller K - the only bookseller to blame Pentos who faced direct competition from a Dillons branch:
Bookseller K: Pentos. It goes without saying. It's ironic that they nearly killed themselves by overreaching, and it's lucky that EMI went in to save them ...

Pentos made the first chink in the wall, and then it started to crumble.

HodderHeadline was blamed as the prime reason for NBA suspension by two booksellers:

Bookseller C: Greed on the part of HodderHeadline. Their share prices had been falling, and they dropped out of the NBA as a result.

Bookseller F: Tim Hely-Hutchinson was totally aggressive towards the NBA and effectively bulldozed it. He seemed to work on the principle that when he left the NBA everybody else should do so ... We operated on a principled view rather than a pragmatic view. He didn’t.

HodderHeadline played a major part in both the underlying reason for NBA suspension (leaving the NBA in December 1994) and with discounting campaigns throughout 1995 (some in conjunction with Asda) which exerted pressure on an ailing Agreement. Apart from Booksellers C and F, two others (B and F) blamed HodderHeadline amongst others for finishing the NBA off, but did not view its actions as the prime cause of suspension.

Two Booksellers, D and I, viewed the prime cause for NBA suspension as coming from new participants in the trade - the only two interviewees who alluded to reasons wider than bookshops or publishers. As discussed in Chapter Six, book clubs began to impinge on the traditional trade in the late 1980s, and a MMC investigation into the BCA-Leisure Circle merger had brought both the clubs and NBA back into the public eye:

Bookseller D: It had been fraying around the edges for a while - book clubs were getting stronger, direct selling was increasing - notably the Book People and their activities. It was inevitable, publishers were getting desperate at the state of the business was in and pushed the button.
**Bookseller I:** Asda. (comment removed from transcription) It fell down because of Smith's and HodderHeadline. Asda did it for themselves as they brought down the Agreement on pharmaceuticals, that Christmas (1995) was pretty bad as a result.

Bookseller I, who admitted later in the interview that he 'enjoys the trade now' (Question 7), has remained antagonistic towards Asda and HodderHeadline since suspension:

I try not to buy any of their books, but if we have to have them I buy them - I will not cut off my nose to spite my face. I don't shop at Asda either.

Bookseller G was alone in considering that W.H. Smith were the prime cause for NBA suspension:

Smith's were having a very bad time, and were under City pressure to improve their financial status. Dillons had effectively folded, and Smith's refurbishment scheme just didn't work. They (Smith's) were unfocussed, they had too many other outlets.

Two booksellers offered no concrete reasons for NBA suspension, beyond alluding to the companies who finished off the Agreement. As already mentioned, Bookseller B offered this explanation:

Restrictions concerning discounts were too inflexible. W.H. Smith, HarperCollins and HodderHeadline were very sceptical about it and finished it off between them.

Bookseller K also offered no specific explanation beyond citing W.H. Smith's activities in 1995:
Lack of support from the major publishers and booksellers. Support for the NBA eroded over a number of years, and W.H. Smith's actions were the final straw.

Three booksellers (C, D, K) identified one prime cause for NBA suspension, the remaining eight identifying one or more causes for suspension. As can be seen from Figure 7.3.3 below, Pentos, W.H. Smith and HodderHeadline were all cited four times, though while Pentos were cited three times as the only prime reason for NBA suspension, HodderHeadline were only cited as the prime cause twice and W.H. Smith once.

Figure 7.3.3 Summary of prime causes for the NBA's downfall.

Who or what was the prime cause of the NBA's downfall? (TOTAL)

7.4 Do you blame the BA or PA for what happened?

The PA argued up until the end that they had majority support, but piety and posturing from some publishers flew in the face of what really went on. Several major publishers were breaking the spirit (if not the letter) of the NBA, and were busting a gut to get around it.

A publisher, July 1997.
Table 7.4 Summary of answers to Question Three.

<table>
<thead>
<tr>
<th>Bookshop</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Not really, there was nothing they could do - the NBA collapse was inevitable.</td>
</tr>
<tr>
<td>B</td>
<td>No, some of their members were to blame, but not the Associations themselves.</td>
</tr>
<tr>
<td>C</td>
<td>No, the aggressive stance was nothing to do with them collectively. There was nothing more they could have done. Blame the publishers.</td>
</tr>
<tr>
<td>D</td>
<td>No - the NBA going was inevitable for the whole of that year.</td>
</tr>
<tr>
<td>E</td>
<td>On the whole the BA kept us well informed over developments.</td>
</tr>
<tr>
<td>F</td>
<td>The BA did what they could, and I have admiration for Tim Godfrey ... I detest the PA, and I detest what various members of their body did.</td>
</tr>
<tr>
<td>G</td>
<td>They were powerless, the BA had no muscle ... The PA were stronger but had no united attitude.</td>
</tr>
<tr>
<td>H</td>
<td>The BA were never a very strong organisation, and never stood a chance when it all went wrong.</td>
</tr>
<tr>
<td>I</td>
<td>No, I think the BA were ineffectual, though they worked to the best of their abilities.</td>
</tr>
<tr>
<td>J</td>
<td>No, they both tried to fight their corners, but with a major lack of support. They were flogging a dead horse, I think they realised that.</td>
</tr>
<tr>
<td>K</td>
<td>The BA never had any power, and they ended up being a social club in the end. I blame the PA to some degree, and they were never a great help to us.</td>
</tr>
</tbody>
</table>

This question aimed to quantify whether the BA or PA were culpable with regard to NBA suspension - whether they were seen by the eleven Booksellers to have shared the blame for suspension with those protagonists who brought the Agreement to an end. As with question-two, it was designed to test whether the Booksellers might view the Associations as being an underlying cause for suspension. Arguably the two Associations failed to adapt the NBA, and that in particular the PA wasted an opportunity to discuss and implement the Graham plan (three categories of books - Net, Non-Net and a separate RRP on bestsellers)⁴.

Answers to the questions did not in any way blame the BA for suspension, and this is not surprising as the NBA was the remit of the PA. The BA were regarded by a number of Booksellers (G, I, K) as ineffectual - Bookseller G accusing the Association as "ending up being a social club in the end". Answers point to the seemingly inevitable fall of the NBA, with Booksellers A and C stating "there was nothing more they could have done", Other Booksellers considered them to be "powerless" (G), and "flogging a dead horse" (J). The BA's part in suspension was viewed by those Booksellers with resignation.
The PA's role in suspension did not generally excite stronger emotions. Bookseller F was the most outspoken on their role; "I detest the PA, and I detest what various members of their body did" (F), and Bookseller K - "I blame the PA to some degree, and they were never a great help to us". But, even though the PA (perhaps inevitably) attracted greater blame, the same sense of resignation to the NBA's fate was also found - "Some of their members were to blame - W.H. Smith, HarperCollins, HodderHeadline, but not the Associations themselves" (B); "the aggressive stance was nothing to do with them collectively ... there was nothing more they could have done" (C). None of the interviewees reflected the measures suggested by Gordon Graham in interview for dealing with PA members who broke the NBA:

The PA has to take responsibility for the NBA's collapse, they had endless hours of discussion about it to no avail. The PA was undermined by its own members, and any publisher who reneged from the NBA should have resigned from the PA. The PA were weak and undisciplined.

A publisher, July 1997.

Comparing the thoughts of the eleven booksellers and the two quotes from publishers reveal a different stance - only two of the booksellers were critical of the PA, though Bookseller F was vehement in his criticism. Both publishers took different views on the PA's role - "The PA argued up until the end that they had majority support", and that the PA did bear "responsibility for the NBA's collapse". In general, the Booksellers blamed individual members of the Associations, and the Publishers blamed the Associations themselves. The mood of resignation and false hopes in the year before the NBA went are echoed by a publisher:

Booksellers seem to have been encouraged by the PA and the vigorous campaign from the BA. They tried to stop the tide coming in until the year before it went.

Section One - conclusions.

Questions 1 to 3 aimed to gauge booksellers' opinions on the NBA, and the causes of NBA suspension. It was stated on page 3 that booksellers found these questions harder to answer than the last four questions. The reasons can be best noted from Bookseller B's answers. She admitted to mixed feelings ("50/50") on the NBA, though full explanation of her stance was unforthcoming. Additionally, she saw the prime reason for suspension as:

Smiths, HarperCollins and HodderHeadline were very sceptical about it, and finished it off between them.

W.H. Smith were not a prime underlying cause for NBA suspension, even though they were instrumental in bringing the beleaguered Agreement to an end in 1995. Nor on the evidence collected in Chapters Five and Six can HarperCollins be accused of being a prime underlying cause of suspension.

Therefore, the validity of some of the bookseller's opinions must be called into question - in some cases (though not all), opinion revealed a poor understanding of the NBA and the reasons for its suspension.

It is not clear from question one how much booksellers 'hid' behind the traditional 'books are different' arguments - only Bookseller's D and I stated that the NBA gave them "an easy life". How many of the other booksellers thought this but were unprepared to admit it? These two booksellers stand out as having a good grasp of why the NBA was suspended, and the causal effects of suspension. Bookseller D was the only bookseller to mention book clubs as a prime cause for NBA suspension.

In contrast to the following four questions, which were primarily concerned with the practical effects of suspension, the opening three questions reveal that booksellers largely supported the NBA for traditional 'universal good' reasons. They reveal that Pentos, W.H. Smith and HodderHeadline were most commonly blamed for suspension.
They reveal that none of the booksellers blamed the trade associations for suspension, this being in marked contrast to the opinions of the two publishers in this chapter.
Section Two - response.

7.5 Have you introduced any discount schemes or customer loyalty schemes?

Table 7.5 Summary of answers to Question Four.

<table>
<thead>
<tr>
<th>Bookshop</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>No, but I should have done, it would have been quite a good idea.</td>
</tr>
<tr>
<td>B</td>
<td>Customer loyalty card (Bertrams).</td>
</tr>
<tr>
<td>C</td>
<td>No, I did look at the cards that Bertrams offered, but decided not to. The loyal customers are loyal anyway, and I reckoned it was a bit gimmicky.</td>
</tr>
<tr>
<td>D</td>
<td>Customer loyalty card (Bertrams). Stopped advertising it after six months.</td>
</tr>
<tr>
<td>E</td>
<td>Customer loyalty card (Bertrams).</td>
</tr>
<tr>
<td>F</td>
<td>We introduced a (unique) loyalty card within a month of it going.</td>
</tr>
<tr>
<td>G</td>
<td>Customer loyalty card (Bertrams). Gave it up in July 1996.</td>
</tr>
<tr>
<td>H</td>
<td>No - we thought about a loyalty scheme, but never got anywhere with it.</td>
</tr>
<tr>
<td>I</td>
<td>Customer loyalty card (Gardners).</td>
</tr>
<tr>
<td>J</td>
<td>None.</td>
</tr>
<tr>
<td>K</td>
<td>'Discount card' worth 14% to staff of universities only.</td>
</tr>
</tbody>
</table>

Suspension of the NBA allowed booksellers to both discount books and introduce discount schemes for their customers. The latter was the subject of the first question on the effects of NBA suspension, and was designed to lead into question five, on the relationship between publishers and wholesalers. The reason for this is perhaps evident from Table 7.5 above, which shows that six booksellers took advantage of two wholesalers, Bertrams and Gardners, introducing loyalty schemes within a month of NBA suspension. Both cards provided by wholesalers work on the same principle:

- Purchasing £10 of books earns the customer one point. Ten points (or £100) is rewarded with a £5 voucher, redeemable on books ordered from the wholesaler. Thus,
there is a 5% discount if the ten points (£100) are reached. Points are recorded on a ‘credit card’ supplied by the wholesalers.

Bookseller F operates a similar, though more generous scheme:

- Purchasing ten books earns the customer a free book (in effect a 10% discount). This scheme is also linked to the *average value* of books bought - so, to use the example offered by Bookseller F, purchasing ten £30 Thames and Hudson art books would earn the customer a free £30 book.

Bookseller K also has a discount scheme unique to its shop:

- Academic staff at the city’s two institutions are eligible for a 14% discount on all books and stationary. The scheme is restricted to lecturers, and the Bookseller winced when asked if he planned to expand it - “You can’t be too generous with these things ... imagine what would happen if students got hold of them”. Of the interviewees this is the most generous discount scheme, but of course it is only eligible to a small percentage of its clientele.

Bertrams and Gardners introduced discount cards within a month of NBA suspension, and five of the interviewees took advantage of the scheme. Of these five, two bookshops had stopped advertising the card within a year of suspension. Booksellers D and G continue to use the system only for those “stalwarts” who used the scheme before the booksellers stopped advertising it.

Bookseller D admitted:

> in the original panic we did introduce a loyalty scheme via the Bertrams card. Stopped advertising it after six months ... we certainly don’t encourage it, it’s giving away margin.

Bookseller G also stopped advertising the card for same reason:
I was effectively giving 5% away, and this was too much. Several hundred customers took it up, and some of these still use it, but it was time consuming and a bother.

In the post-NBA booktrade, and as a method of avoiding Bookseller G’s “bother” of a Bertrams card, Bookseller G gives cash discounts to his regular customers - usually by rounding down bills. Three Bookshops (B, E, I) continue to use the cards. The reasons given by Bookshops B and E are apparently laudable:

**Bookshop B:** We introduced it to make customers feel special, and to give them some privileges.

**Bookshop E:** It did give our regular customers some benefit, and I view it as a thanks for sticking with us kind of thing ... but it’s only for regulars.

Bookseller I's discount scheme has been extremely successful, with 2,000 of his customers using a Gardner’s card for 5% discounts - the wholesalers most well used scheme. Bookseller F admitted that his own self-produced scheme was a curate's egg:

We obviously lose several hundred pounds a year on it. I've never calculated it exactly. We valued the loyalty of our customers, it got them on our side.

Seven booksellers of the eleven have introduced discount or customer loyalty schemes since NBA suspension, with two originally on the Bertrams card pulling out within a year because of the loss of margin. Three booksellers have continued to use customer loyalty schemes 'to thank' their regular customers. The question as to why regular, loyal customers need 5% discounts was answered in part by three of the booksellers who have not introduced such schemes (Bookshop J is a chain bookshop, and does not operate - unsurprisingly - a national discounting scheme). Bookshop A admitted to mixed feelings about loyalty cards:
I should have done, it would have been quite a good idea. On the other hand, most of my customers are loyal, so it might not have made such a difference.

Bookseller C concurred:

> I did look at the cards that Bertrams offered, but decided not to. The loyal customers are loyal anyway ... I don't want to rely on discounting, I can't afford to.

Seven of the eleven booksellers interviewed have been prepared to give away 5% or more on books since the NBA was suspended, and in two cases 10 and 14%. As answers to question seven will indicate, none of these booksellers have experienced severe problems since suspension. In Bookshop F's case the owner has not even calculated how much his 10% loyalty scheme has effected his overall profits. Two of the seven booksellers who originally participated have withdrawn from the Bertrams scheme. Bookseller D was prepared to admit that the he had introduced the scheme “in the original panic”, and had stopped advertising it within six months. At least three booksellers (B, D, G) were unwilling to give away any margin. Wholesalers, on the evidence collected from these interviews, have had a significant impact on the post-NBA trade, and not only for having been quick to introduce customer loyalty schemes. Answers to question five reveal that the wholesalers' introduction of discount schemes reflects their growing influence on the independent book sector.
7.6 How has your relationship with publishers and wholesalers changed?

Table 7.6 Summary of answers to Question Five.

<table>
<thead>
<tr>
<th>Bookshop</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Not a great deal, we still deal with publishers, though not HodderHeadline. We use the main three wholesalers, as before the NBA went.</td>
</tr>
<tr>
<td>B</td>
<td>It's wholesaler first, then publisher - this has changed.</td>
</tr>
<tr>
<td>C</td>
<td>Certainly the market has become more flexible since the NBA went, before we got maximum publisher discounts of 35% and smaller discounts from wholesalers - they're much the same now.</td>
</tr>
<tr>
<td>D</td>
<td>We've concentrated more than ever before on our margins, and since the NBA used wholesalers more often. Publishers have adapted, and we now receive better discounts from them.</td>
</tr>
<tr>
<td>E</td>
<td>I stopped dealing with publisher's reps in December 1996, and make what I do buy from publishers work more for me. I do use wholesalers rather than publishers - this has always been my policy.</td>
</tr>
<tr>
<td>F</td>
<td>Since the NBA went we have conducted 90% of our trade with wholesalers. What we want from publishers is better service rather than larger discounts.</td>
</tr>
<tr>
<td>G</td>
<td>It hasn't changed much - I deal with both publishers and wholesalers.</td>
</tr>
<tr>
<td>H</td>
<td>Publishers were never very interested in small booksellers like us, and the wholesalers have made inroads into our sector.</td>
</tr>
<tr>
<td>I</td>
<td>Only in as much as we've got a bit tougher ... It hasn't changed that much really, we still deal with publishers for about 2/3 of stock, and wholesalers the other 1/3. I've moved more towards publishers since the NBA went.</td>
</tr>
<tr>
<td>J</td>
<td>Our relationship with publishers hasn't changed, mainly because the academic publishers we deal with haven't changed that much.</td>
</tr>
<tr>
<td>K</td>
<td>The publishers have obviously faced severe financial problems since the NBA went, and are much more strict on credit and finances.</td>
</tr>
</tbody>
</table>
Wholesalers traditionally gave smaller discounts to booksellers plus non-returnable stock. Their advantage was and is delivery time - wholesalers generally work on a 24 to 48 hour delivery schedule. Four Bookshops (A, D, F, I) have taken advantage of on-line ordering to the wholesalers. Booksellers are able to check availability of books on-line and place orders. If orders are placed before 5 p.m. books are guaranteed for delivery the next day. Bookshop K has an on-line link to HMSO in London, the only interviewee to have an on-line connection to a publisher. The potential for overcapacity in the wholesaling sector was mentioned by a publisher:

Another factor which has effected the British book trade has been the growth of wholesalers. Britain now resembles the United States with a few powerful wholesalers in competition. In Europe there's generally only one or two wholesalers per country - two in Germany and one in the Netherlands.

A publisher, July 1997.

Replies to question five indicate that the majority of booksellers have carried on much as before, be this using publishers first, wholesalers first or a combination of both. In these cases it is apparent that while the mode of ordering is still the same, there have been changes - examples include:

- the decline of publishers' representatives (Bookshops A and I).

- discounts becoming more flexible - in Bookshop D's case new titles were bought from publishers at 40% discount, compared to 36% prior to NBA suspension.

- discounts have in some cases changed pole - Bookshop F receives 38% discounts from wholesalers on average, compared to 35% from publishers.
Seven booksellers (A, C, E, G, H, J, K) replied that there had been no significant change in their dealings with publishers and wholesalers, beyond changes with regard to discounts noted above. Bookseller I has moved toward dealing with publishers since NBA suspension, primarily because discount has improved (up from an average 38% to 42.5%, with 50% for promotional stock, comparing to 39.5% for wholesalers). It should be remembered that Bookseller I does not deal with HodderHeadline unless necessary ("I try not to buy any of their books"), after blaming them amongst others (Asda, W.H. Smith) for NBA suspension. As question six reveals, Bookseller I has made good use of price promotions since suspension.

However, judging from these interviews the importance of wholesalers in the post-NBA trade must not be underestimated - from the evidence provided by the booksellers, wholesalers have made inroads into some of these businesses. The reasons for this are:

- Wholesalers have offered higher discounts, in some cases on a par with publishers.

- 24 hour delivery for books have allowed some booksellers to increase customer orders, and to provide more efficient stock management - publishers still, from evidence presented here are taking 5-8 days to deliver books. Bookseller E is able to order books on a 'just in time' basis rather than 'just in case'.

- Wholesalers have increased their range of stock - notably school and university textbooks and local history books. Bookseller E comments:

  Both wholesalers I use (THE and Bertrams) are getting much better at providing obscure books ... Bertrams are now distributing them and I can order without having to wait seven weeks.
A central problem of dealing with wholesalers is firm-sale. Booksellers cannot return books which have not sold. However, as Bookseller K stated, the traditional advantages of using publishers with sale-or-return provision is, in his opinion, on the wane:

They (publishers) used to be a lot more flexible on returns, but it's a pain now. We can't afford the risk of subbing 100 new titles when they're not prepared to accept returns. They can't afford large print runs anymore, and we can't afford to take risks - it's a vicious circle really.

Bookseller K was the only interviewee to shed light on his experience of sale-or-return and publishers. Although wholesalers, on this evidence have made inroads they still face the problem of returns. So - while Bookseller B has used wholesalers in preference to publishers since suspension, she qualified their service with these remarks:

We used to get in some cases 10% discount from publishers on education titles, it's much better from wholesalers - up to 30% - they bulk buy. Having said all this, the wholesaler’s policy on sale-or-return is absolutely disgusting, and they need to improve on this.

Bookseller C highlighted the problems of sale-or-return:

Heathcotes were the best, we could return books easily to them and they gave us reasonable terms. More recently, I've done more ordering through publishers simply because they offer better sale-or-return. The wholesalers are still a bit of a risk.

Of all the booksellers interviewed, Bookseller F was the only shop which had actively made the switch from publishers to wholesalers. The reasons were explained thus:

Since the NBA went we have conducted 90% of our trade with wholesalers. What we want from the publishers is better service rather than larger discounts ...
They (wholesalers) give us 38% discounts compared to an average of 35% from publishers. They all offer a wonderful service with next day delivery.

Bookseller F is able to get better discounts, plus quick delivery from wholesalers. Delivery times for bookshops like this which have come to rely on fast delivery for customer orders (where the wholesaler has stock) are obviously crucial - more crucial than larger discounts. Other booksellers noted that delivery from publishers had not improved greatly since the NBA collapsed:

**Bookseller G:** Publishers still take 5-8 working days to get stock up here, but it was 3 - 4 weeks when we opened back in 1980.

**Bookseller K:** Delivery from publishers is still extremely slow, and takes up to 7 days. It should be 48 hours like the wholesalers ... overseas customers from the USA can’t believe on an island this small we need a week to get books in.

Wholesalers appear to have adapted well to the post-NBA climate. All three wholesalers offer as standard 24 hour delivery. In this respect they lead publishers who have not, from this evidence, become more efficient in terms of delivery since suspension. Wholesalers have increased the range of stock they carry, and have allowed two booksellers (B, E) to make more use of their service. Efficiency, and the introduction of on-line ordering have allowed at least one bookshop, E, to increase its customer order service. Bookshop F has gone over to ordering 90% of its stock from wholesalers.

The sticking-point for the wholesalers are levels of discount - only Bookshop F on this evidence gets larger discounts from wholesalers than publishers. However, as this bookshop does not deal with publishers if possible, and takes no part in publishers promotions it is impossible in this case to say what would happen if they dealt with publishers. Secondly, wholesalers still face the problems of sale-or-return - the risk of firm sale was highlighted by Booksellers B and C.
Wholesalers will continue to grow when operating efficient, competitive services. Whether the UK will be able over the longer term to support three wholesalers is open to question.

7.7. What have you discounted? Has stock selection changed?

Table 7.7.1 Summary of answers to Question Six.

<table>
<thead>
<tr>
<th>Bookshop</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>We discounted books when the NBA went, but it made no difference to sales.</td>
</tr>
<tr>
<td>B</td>
<td>We discount everything and anything as you can see. We mainly use discounting campaigns on general fiction.</td>
</tr>
<tr>
<td>C</td>
<td>I discount as little as I can, generally only when a publisher is offering a promotion.</td>
</tr>
<tr>
<td>D</td>
<td>We're much more relaxed about discounting than we were when the NBA went.</td>
</tr>
<tr>
<td>E</td>
<td>I occasionally discount promotional books from Bertrams.</td>
</tr>
<tr>
<td>F</td>
<td>We rarely have price promotions as Menzies and ourselves do not compete for the same market.</td>
</tr>
<tr>
<td>G</td>
<td>I am very careful on stock ordering, especially with supermarkets loss-leading on a fair amount of titles.</td>
</tr>
<tr>
<td>H</td>
<td>We rarely discount new books unless we agree a specific promotion with a publisher. We do discount the stuff we're stuck with and downmarket stuff.</td>
</tr>
<tr>
<td>I</td>
<td>I certainly have discounted ... we do promotions all the time.</td>
</tr>
<tr>
<td>J</td>
<td>Price promotions here are rare, the ones we do have are usually at Christmas and at points throughout the year.</td>
</tr>
<tr>
<td>K</td>
<td>We did a lot of discounting in the six months after it went.</td>
</tr>
</tbody>
</table>

This question was designed to gauge the extent of price promotions since NBA suspension, and in tandem how booksellers had adapted their stock selection to the post-NBA book trade. Analysis and evidence are split into the two constituent parts - price promotions and stock selection.
Price Promotion.

All the booksellers interviewed have engaged in some form of price promotion since the NBA was suspended. These vary from Bookseller I, who admits to doing “price promotions all the time”, to Bookshop K, who while admitting that his shop had discounted books in the first six months after suspension has since “discounted occasionally, and mainly with stuff we’ve been lumbered with”.

Promotions at Bookshop I on the interview day were limited to popular hardback and paperback books in the bestselling list, and were tie-ins with the publisher. Joanna Trollope’s Next of Kin, John Grisham’s The Partners and Bernard Cornwell’s Hornet’s Nest were all reduced from publisher’s RRP of £14.99 to £12.99, this comparing to the local Waterstone’s only promoting Next of Kin at the same discount. Bookseller I’s regular observation of Waterstone’s, and the lack of price promotions to compare with his independent shop are perhaps explained by Bookshop J (chain bookshop):

Price promotions here are rare, the ones we do have are usually at Christmas ... at the moment we’ve got a ‘Have you read?’ promotion on backlist (notably Irving Welsh’s books Trainspotting and Ecstasy), and an Indigo two for £10 on the go. Price promotions are a tiny part of our business, and don’t really matter to us.

Bookshop B also claimed to be a keen discounter, but with an intriguing twist. From this evidence regular price promotions are a very serious business:

We mainly use discounting campaigns on general fiction, notably Terry Pratchett’s Discworld series as well as price promotions on gardening and cookery books. We’ve avoided going along with any publisher promotions and tend to discount certain books ourselves - this has baffled our competitors, and frustrates them.

This method of promotion is in sharp contrast to Bookshop I’s publisher tie-in promotion. Bookshop B, by discounting popular backlist titles must be getting close to
loss-leading - it will get ‘normal’ (c. 33%) discounts for the Discworld series, and not the 50% which Bookshop I gets for its promotions.

However, Bookseller B is the only shop interviewed to have very local competition from a bookshop, two supermarkets, a bargain bookshop, a branch of W.H. Smith and Woolworth’s. Discounting Pratchett’s books is obviously an attempt to carve out a niche for the bookshop - and shows clearly how the pressures of price competition have effected this shop. Effectively, this bookshop has removed itself from price competition with its competitors. It will be remembered from question five that Bookshop B has also moved toward using wholesalers, and extended its customer order facility.

Supermarkets, important players in NBA suspension have, on the basis of these interviews, had a significant effect on booksellers. Various booksellers (notably Bookshop G) have been forced to adapt to competition from supermarkets with caution, sometimes to the extent of discontinuing specific genres:

**Bookshop G:** I am very careful on stock ordering, especially with the supermarkets loss-leading on a fair amount of titles. MMPB’s don’t really effect me directly as the ones which supermarkets sell aren’t asked for here ... I am careful on ordering children’s books, especially around Christmas.

The one book which will become forever linked with the new dawn of free pricing was a cookery book - Delia Smith’s *Winter Collection*. On the market for Christmas 1995 this book seems to burnt the fingers of several interviewees:

**Bookshop C:** What was ludicrous was the discounting war over Delia Smith’s *Winter Collection* - we sold them at full price but Tesco knocked them down to £9.99 (from £16.99). It killed our Christmas trade totally.

**Bookshop D:** Smiths lost a million on Delia Smith, and provoked Tesco and Woolworth’s into the fray, but unfortunately it is the sort of book people judge
you by. We sold around 120 copies of it at £9.95, and were making about 50p a copy profit. Smith's discounted it right down to £7.99 at the end of the season.

Bookshop D was the only shop who mentioned Delia Smith to go head-to-head with competitors, and discount the book. Other booksellers also had opinion on the episode:

**Bookshop E:** I have found some of the choices of books upsetting - I did not discount Delia Smith's book, though I still sold a few at full price. I got a lot of support from my regular customers ...

**Bookseller G:** Shops discounting prime product are really stupid - for example with Delia Smith I couldn't imagine any other retailers discounting such an important product - imagine Comet doing it with their electrical goods. Discounting *Winter Collection* was a blatant example of barmy discounts, and people did shop around for better deals on it.

W.H. Smith, and the various supermarket chains who discounted *Winter Collection* heavily seem to have been the protagonists in a bitter, but brief, war. After Christmas 1995 on the evidence of these interviews, discounting became less of an issue. There was however a realisation that the trade had changed. Bookseller K explains:

We did a lot of discounting in the first six months after it went. Shortly after that period it all died down, and people did not ask for discounts. The supermarkets started offering a limited amount of stock at big discounts, and we simply couldn't compete with them.

Another example of a changing trade was a promotion held at Christmas 1996 on the *Guinness Book of Records*. The book, published by Guinness Publishing was given away free with £20 of Bell's spirits at Asda. Bookseller G, whose shop is a mile from the local Asda commented:
What am I supposed to do? Guinness refused to give me any further discount on the book, so I refused to sell it or any other Guinness Publications. So, when customers came in and asked for it I told them to stock up on Christmas booze and get a free copy up at Asda.

Booksellers A, C, E, F, G, J and K admitted to occasional discounting, these generally tying in with publishers and wholesalers promotions. Bookseller C took the view that discounting “doesn’t really matter in small shops like this, and I think people come here because they like the shop rather than because we discount.”

The introduction of customer loyalty cards, and the subsequent loss of margin has made Bookseller F cautious on ordering and discounting:

We rarely have price promotions as Menzies and ourselves do not compete for the same market. We discount some remainders and books we can’t return, but most of our stock is backlist, and we order carefully. We also have a loyalty card, which is bad enough without losing more margin.

Booksellers H and K use discounting primarily to get rid of surplus stock. Bookseller H commented:

We rarely discount new books unless we agree a specific promotion with a publisher. We do discount the stuff we’re stuck with and downmarket stuff.

Bookseller K: We have discounted occasionally, and mainly stuff we’ve been lumbered with - but it hasn’t been much different to before, where we discounted old stock when necessary.

It is evident from these replies that price promotion in the majority of cases are used only in conjunction with publisher / wholesaler promotions or to dispense of old stock. After an initial flurry of discounting in the six month period after suspension the booksellers here have discounted only with caution. Two booksellers (B and I) have
embraced regular promotions on stock. In Bookseller I’s case the initiative has been taken against Waterstone’s with a vengeance, in B’s case promotion has been used to avoid price promotion with nearby competitors. Bookseller D’s comment with regard to Winter Collection - that “unfortunately it is the sort of book people judge you by” hints perhaps at a basic truth in the post-NBA trade - that people will shop around for the best price on books which are intensively promoted. Using Bookshop G’s example of The Guinness Book of Records, it is evident that Guinness Publishing could afford to lose his trade; Bookseller H’s comment that “publishers were never very interested in small booksellers like us” hint at a new order.
Stock selection.

Table 7.7.2 Summary of booksellers changes in stock selection.

<table>
<thead>
<tr>
<th>Bookshop</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Moved away from stocking &quot;Top 10&quot; MMPB's.</td>
</tr>
<tr>
<td>D</td>
<td>Bargain books offer us the best margins, notably on cookery and railway books. We've also taken to discounting most books before we return them, we can claw back a little margin from them. We're more flexible. We did try selling computer games and CD-ROM software ... We've also had to sub in with less depth - with W.H. Smith nearby there's no point in getting large quantities of best-selling paperbacks.</td>
</tr>
<tr>
<td>G</td>
<td>I am very careful on stock ordering, especially with the supermarkets loss-leading on a fair amount of titles.</td>
</tr>
<tr>
<td>H</td>
<td>We've branched off into remainders since it went, and try to sell stuff which no-one else has got. I rake all the available places for it - it's not easy now. We've become a niche bookseller since 1995 - and I've concentrated on getting the children's section up to scratch.</td>
</tr>
<tr>
<td>I</td>
<td>I've extended stock lines into other areas, notably videos and CD's, but you have to pay 26.5% VAT on these goods, which takes some of the shine off them. I still have the same stock selection, but I buy less initially and see how they go.</td>
</tr>
</tbody>
</table>

At the 1962 RTPC Buckley stated that in the event of NBA abrogation the following results could be expected to happen:

The stocks held by surviving stockholding booksellers would be less extensive and less varied than at present. Although in rare cases retail purchasers might be able to buy particular titles more cheaply than if the Agreement remained in force, the retail price of most books would be higher.⁵

From the evidence of the previous section, all booksellers have engaged in some form of discounting, this generally as part of publisher or wholesaler promotions. Of the interviewees, only five booksellers made specific reference to stock holding. Some of these, notably Bookseller G, related changes in stock-holding to loss-leading at his local
Asda (the Guinness discounting). As will become clear in this section, the above quote from the RPC does not accurately sum up the experience of all the booksellers. Bookseller A admitted that since NBA suspension he had:

moved away from stocking Top 10 MMPB’s, I allow W.H. Smith to cater for that type of market.

Notably, by directing customers to the local branch of W.H. Smith to buy MMPB’s, Bookseller A had received in return custom from W.H. Smith customers requiring special orders on their recommendation. Bookseller D also commented on his local branch of W.H. Smith’s doing the same:

We’ve increased the amount of customer orders taken since it went, mainly because Smith’s are so bad at it - but there are indications that they’re getting their act together over them ... I get the perception that the major chains have taken their eye off the ball in relation to customer orders.

This begs the question as to whether W.H. Smith have been reluctant to take customer orders because they are “bad at it” or because the process is too expensive in terms of manpower. Booksellers A and D both have on-line connections to wholesalers, and are able to get books within 24 hours - wholesalers have become efficient since NBA suspension in ordering and distribution seemingly at the expense of publishers. If this is the case, there is no reason to suppose that W.H Smith will not take advantage of this service - this perhaps accounting for the “indications that they’re getting their act together over them”. Indications on the discounts available from wholesalers (Bookseller F for example) point to the fact that booksellers who have increased their trade in customer orders have not experienced “negligible profits” since suspension.
"We're more flexible"

Bookseller D's above quote points to the experience of three booksellers in regard to stock selection. In this case the bookseller has discontinued stocking any hardback fiction, leaving this to the local W.H. Smith. In addition he has subbed new titles with extra caution:

We've also had to sub in with less depth - with Smith's nearby there's no point in me getting large quantities of best-selling paperbacks - I only bought two copies of Patricia Cornwell's latest book.

However, while the bookseller has narrowed his range with these books, he has expanded his stock selection in other areas, notably bargain books, computer games and CD-ROM software. While the latter two products have not been a success, bargain books certainly have:

Bargain books offer us the best margins, notably on railway and cookery books ... We're more flexible. Some of the bargain books we can sell happily at full (pre-promotional) price. We've done well from the Rondo classical music CD's.

A movement towards 'niche' bookselling was evident from two other booksellers. Bookseller H commented:

We've branched off into remainders since it went, and try to sell stuff which no-one else has got. I rake all the available places for it - it's not easy now. We've become a niche bookseller since 1995 - and I've concentrated on getting the children's section up to scratch.

The difficulty in obtaining remainders, also commented on by booksellers G and I points perhaps toward a changing publishing industry - lower print runs (and hence less chance of getting remainders), higher costs for the publishers and hence higher prices for books. The question of higher book prices were raised by various booksellers, these
being based on complaints by customers to booksellers. Bookseller D took a pragmatic view on these complaints:

With W.H. Smith over the street, people assumed that we were more expensive than them (though I reckon people thought we were more expensive than them before the NBA went) ... People do compare prices, and some of them think they’re doing us a favour buying books here.

Complaints on book prices since suspension by customers were noted by several booksellers, and throughout the interviews the perception was that after NBA suspension customers expected all books to be discounted. For example:

Bookshop C: Customers do complain about how expensive books are now, though I reckon some of it is naïveté on their part.

Bookshop E: Some of them (regular customers) have complained recently about book prices going up. Some people misunderstood the problem that not all books would be discounted.

These matters aside, it is clear that three of the booksellers have moved towards being more flexible in their stock selection, and have been prepared to take risks. In A and D’s case flexibility has been a direct result of price competition - both these booksellers leaving W.H. Smith to deal with bestselling hardback and paperback titles. The exception is Bookseller I, who has expanded stock while keeping a full range of hardback and paperback books, some of these discounted - though with caution:

We’ve kept it broad, and I reckon we specialise in service and a good reputation for getting books in ... I still have the same stock selection, but I buy less and see how they go ... I’ve extended stock lines into other areas, notably videos and CD’s, but you have to pay 26.5% VAT on these goods, which takes some of the shine off them.
In all these cases (except Bookshop I) stock selection has changed to accommodate free pricing - Booksellers A and D have discontinued stocking bestselling hardback and paperbacks because of W.H. Smith’s nearby. All these booksellers (apart from G, who made no comment) have responded to this by broadening stock range or facilities - Bookshop A has concentrated on customer orders, D has concentrated on bargain books and H has expanded his remainder section. To take Bookseller D’s quote, these booksellers have become more flexible, they have adapted.
7.8 Has NBA suspension been as bad as you anticipated?

Table 7.8 Summary of answers to Question Seven.

<table>
<thead>
<tr>
<th>Bookshop</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>I don’t think it’s been as bad as we thought it was going to be, things have settled down and we’ve carried on much as before.</td>
</tr>
<tr>
<td>B</td>
<td>No - not really (no further answer).</td>
</tr>
<tr>
<td>C</td>
<td>I think the end of the NBA was largely irrelevant to a shop in our situation.</td>
</tr>
<tr>
<td>D</td>
<td>We’ve become more flexible, and have changed our stock and selection methods ... I think after the initial chaos we’ve reached equilibrium of a kind.</td>
</tr>
<tr>
<td>E</td>
<td>No, I have basically had to be more selective in my stock.</td>
</tr>
<tr>
<td>F</td>
<td>Yes and no ... It’s got better slowly, and as I said earlier we have been more careful with stock selection, avoided price promotions and concentrated on certain areas.</td>
</tr>
<tr>
<td>G</td>
<td>I think we’ve done more or less OK since it went after a period of confusion and panic.</td>
</tr>
<tr>
<td>H</td>
<td>We’ve muddled through, and I don’t think it’s been as bad as we thought it was going to be. We’ve carried on much as before ...</td>
</tr>
<tr>
<td>I</td>
<td>No ... apart from that Christmas period we’ve grown every month since. I enjoy it sometimes now, we can beat competitors by getting other stuff in to discount.</td>
</tr>
<tr>
<td>J</td>
<td>Nowhere near ... It followed a predictable pattern, reducing bestsellers by 25-30% and reducing the amount of new titles.</td>
</tr>
<tr>
<td>K</td>
<td>No, but I don’t think we’ve seen the end of it.</td>
</tr>
</tbody>
</table>

The final question asked for a brief overview of the booksellers’ experience since NBA suspension, and whether suspension had been as bad as they had anticipated. As the previous questions have indicated, the extent of change since NBA suspension has been
evident on a range of fronts. This question was designed to wrap the interviews up rather than introducing new information.

Oddly, this question proved for most booksellers the hardest to answer (Bookseller B in particular). The reasons why are difficult to fathom, seeing as all gave detailed answers to questions 4-6. What becomes immediately noticeable is that all the booksellers (apart from F) agreed that suspension had not been as bad as anticipated.

Bookseller F was the only bookseller to have mixed feelings, and this primarily due to the local (15 yards away) John Menzies opening a book section within a month of collapse. It is notable from the interview transcriptions that Bookseller F was the most outspoken in regard to suspension, the alleged culprits and negative effects. As with Bookseller B’s experience of price competition, Bookseller F has effectively removed himself from competing with the nearby John Menzies:

It’s got better slowly, and as I said earlier we have been more careful with stock selection, avoided price promotions and concentrated on certain areas. We don’t really compete with Menzies, though I wouldn’t trust them at all to do anything in our broad interests after what they did when it went.

Two other booksellers, D and E, also made reference to the changes to their stock as the prime change since NBA suspension:

Bookseller D: Really all we’ve done is keep an eye on Smith’s - I wander over there every so often to see what they’re up to.

What also becomes evident is the extent of panic experienced by some of these booksellers in the initial six month period after NBA suspension, and the return to normality since:

Bookseller A: I think we all got caught up in the media frenzy on the issue, and jumped straight in.
Bookseller G: I think we've done more or less OK since it went after a period of confusion and panic.

Bookseller I: In September 1995 when the bypass opened and the NBA went I got worried. But, apart from that Christmas period we've grown every month since.

From the evidence of the eleven booksellers, suspension of the NBA has not had the detrimental effect (1) noted at the RPC judgement (though as Bookseller K sagely commented, "it's early days, and things might change"):

These consequences, which we think would flow from condemnation of the Net Book Agreement, can summarily be stated as (1) fewer and less-well-equipped stockholding bookshops; (2) more expensive books; (3) fewer published titles ... We are satisfied, moreover, that each of these consequences would arise in a sufficiently serious degree to make its avoidance a substantial advantage.6

It is clear that while each of these booksellers has changed in their approach to stocking books and promotions none have endured severe pressure beyond the initial six month period.

Section Two. Conclusions.

Themes cropped up throughout the interviews in answering these questions:

- Wholesalers have, by introducing customer loyalty cards and on-line ordering built up an efficient system since NBA suspension. It appears from the speed at which customer loyalty schemes were introduced by wholesalers that these proved an effective marketing method for their services. Did wholesalers introduce these schemes as a 'Trojan Horse' to expand their market? From the evidence here, this is very likely.
• Booksellers have changed their stock profile to avoid competing directly with supermarkets or W.H. Smiths. Notably, shops have stopped stocking MMPB’s (Bookshops A and D). Others have stopped selling perennial titles which supermarkets have used in promotions (Bookshop G). Several booksellers have moved into selling bargain books or remainders to compensate for the loss.

• The discounting of Delia Smith’s Winter Collection caused widespread disquiet, and only one of the booksellers (D) discounted it.

• Discounting is sporadic, and has been sporadic since Christmas 1995. Only one bookseller (I) has persisted with regular discounting since suspension.

• The interviewees have acted with greater caution in their ordering of books since suspension, this being due to tightening of sale-or-return policies from publishers, and the inability to return books to wholesalers.

Section Three.

7.9 Conclusions.

To sum up this chapter:

• All booksellers supported the NBA, though the degree to which they supported it varied. Notably, Booksellers D and I were prepared to admit that the NBA had given them an “easy life”. Four booksellers (F, G, H, J) indicated that their support for the NBA was that it benefited the trade as a whole. All the booksellers agreed (except F) that suspension of the NBA had not been as bad as anticipated, beyond the initial six month period including Christmas 1995 and Winter Collection. From the evidence gathered here, it appears that this book represents (in 1997) the high-tide mark of loss-leading, or perhaps in the words of Bookseller G “barmy discounts”. It seems that this book epitomises the suspension of the NBA.
Eight of the eleven booksellers introduced customer loyalty cards in the aftermath of NBA suspension, five of these taking advantage of 5% wholesaler 'credit card' style promotions. In 1997 all five continue to use these schemes, though two have stopped advertising the cards due to losing 5% on each purchase. Two booksellers introduced generic loyalty cards, both more generous than the Bertrams / Gardners schemes - in Bookshop F's case a 10% discount, and Bookshop K a 14% discount (albeit for a very small clique). Customer loyalty cards, on the evidence here, have been the most direct means of price promotion since NBA suspension.

Since suspension three booksellers in particular (B, H, F) have faced increased competition from non-traditional competitors; Bookshop F, in the most rural of the towns studied, coped with direct price-cutting competition from a John Menzies book department opened within a month of the NBA collapse. In its case the shop has opted out of direct price competition with Menzies. Bookshop B has also avoided direct price competition with local supermarkets (and a W.H. Smith branch) by running generic price promotions (e.g. the Discworld novels), whereas Bookshop F does not indulge in any price promotions beyond discounting old or unreturnable stock. Bookshop H faces the opening of an out-of-town retail development sponsored by a national supermarket chain.

In nearly all cases, booksellers have moved towards 'niche' bookselling since NBA suspension. Examples include Bookshop K's move toward cementing its place as a prime academic bookshop at the expense of selling MMPB's. Others, notably Bookshop D has concentrated on building up a bargain / remainder section to compensate for de-stocking MMPB's. Several bookshops (A, B, C, E, F) have concentrated primarily building up on customer order business - they have been helped in this by an extremely effective wholesaling business, offering 24 hour delivery service. This wholesaling service has been built up since suspension, and offers in tandem with customer loyalty cards, and in some cases on-line ordering, an efficient, modern service. In the
1962 Judgement, with reference to the Library Licence, Mr Justice Buckley commented on the customer order business. Although those points should be viewed in the correct context, he did draw attention to this:

Special order business, which is already a problem in the book trade (and in the case of the cheaper books is unprofitable to booksellers), would increase.7

It is evident that customer ordering has increased across the board (only Bookshops J and K are involved with library supply), but it is also apparent - and this is a crucial distinction - that customer ordering has increased because the wholesaling sector is fast and efficient. This is a prime example of an efficiency gain since NBA suspension, and is all the more notable for the fact that wholesalers are offering discounts which are not sharply different from publishers. Customer orders are not unprofitable for these booksellers.

- The bookselling trade for these eleven booksellers has changed, but importantly and crucially this change has not been negative. For example, the owner of Bookshop I stated "I enjoy it sometimes now, we can beat competitors by getting other stuff in to discount", and Bookshop D's owner said "we've become more flexible, and have changed our stock and selection methods ... after the initial chaos we've reached equilibrium of a kind". From the evidence of these interviews, it can safely be argued that suspension has not had one effect which the RPC held would occur: "fewer and less-well-equipped stockholding bookshops". Beyond the initial six months, the bookselling trade on this evidence has adjusted well.
1 Barker, R. & Davies, G. *Books are different*, 1966, p. 35.


5 Barker & Davies, ref. 1, p. 35.

6 Barker & Davies, ref. 1, p. 35.

7 Barker & Davies, ref. 1, p. 30.
Chapter Eight. Does evidence collected since NBA suspension parallel experience in other countries which have either removed or introduced RPM?

8.1 Introduction

We have considered the UK's NBA in depth during the last seven chapters. However, the UK was not alone in having RPM on books - other European book trades have RPM in place, and other countries in Europe have also abolished RPM. Can the experience of these countries tell us anything on how to deal without RPM in the book trade? How has RPM abolition effected these countries' book trades? Can useful parallels be drawn?

This chapter consists of three case studies. It considers book RPM in three EU Member States - France, Netherlands and Belgium. These studies provide an insight into how RPM Agreements in other EU countries coped with trade and competition authority pressures.

The three countries examined in this chapter present differing applications of RPM on books and differing perceptions about the importance of such systems on individual trades. Of the three France presents the most intriguing case - an RRP system was banned in 1979 resulting in a period of total price freedom. The fallout from this decision was felt by the French government to be so severe that RPM on books was imposed by law two years later in 1981. Ultimately, the decision to make RPM on books statutory was to pose problems both within the trade and for the EC. Traders (notably the Édouard Leclerc supermarket chain) were able to use EU law regarding competition as a stick to beat the French government with. On the other side of the fence, the EC faced the dual problem of having to deal with transgressions of EU law while not wishing to interfere with a Member State's law. The cases of Belgium and the Netherlands have more parallels with the UK situation - a 'private' RPM Agreement on books published in the same language (Dutch) and enforced by two trade associations was banned under Article 85 in 1981. As sections 8.2 and 8.3 of this chapter will examine, the Agreement used was far more restrictive than the NBA. However, a result of the EC's decision to ban interstate RPM between these two countries was to have profound negative effects on the Belgian book trade.
8.1.1 France - Introduction.

France represents one of the most interesting cases involving RPM on books in the EU. The other countries studied in detail for this thesis all have (or have had) ‘private’ RPM Agreements on books. France differs in one crucial respect. Book RPM is enforced by law through the 1981 Loi Lang. This law was passed following a two year period between 1979-1981 in which publishers were banned from stating prices on book covers. Prior to 1979 a system of RRP had been in operation since 1953 following legislation banning vertical RPM. The negative impact of price freedom on the structure of the book trade between 1979 - 1981 led the Minister of Culture, Jacques Lang, to propose law on book RPM. This was duly enacted by the National Assembly in August 1981, introduced on 1 January 1982, and remains in force.

A retrospective examination of the French book trade must take into account the fact that three different pricing systems have been used in the last twenty years; in the period up to 1979, RRP on books; 1979-1981 price freedom, all books being priced individually by booksellers; and from 1982 onwards, RPM on books. The fact that three pricing systems operated within a three year period caused understandable confusion in the trade, and makes analysis of the trade in that period difficult to quantify.

It is contestable whether changes occurring in the two year price freedom period (‘prix liberté’) between 1979 and 1981 can safely be argued to prove the merits or not of RPM on books. For example, it is held that introduction of RPM in 1982 caused book prices to rise sharply. What is not clear is whether this was due entirely to RPM being introduced or the fact that the French publishing industry was in a state of some confusion and uncertainty following abolition of RRP in 19791.

Thirdly, the introduction of RPM was legislated for by the French government, and was not introduced by trade associations (the idea had been discussed in the book trade in 1978). This shows a difference between France and the UK in respect of RPM, and RPM on books. France specifically introduced law to protect a ‘cultural’ industry. The NBA did not benefit from governmental assistance - UK competition law was angled at
questioning the validity of all RPM agreements unless the defendants could prove public interest clauses in the Acts.

This case study is split into three main sections:

- The RRP period up to 1979, and the two year *prix liberté* between 1979-1981
- The application and problems of the Loi Lang.
- The state of the French book trade up to 1993

### 8.1.2 The *prix conseillé* and *prix liberté* systems 1953-1981

In the period up to 1979 publishers sold books on a RRP basis (*'prix conseillé'*). Books were generally sold at the recommended price except by booksellers in remote areas, who (in some cases) increased their margins by raising cover prices. In effect the RRP system acted as a maximum price agreement. The eroding of this practice was due to the entry of non-traditional retailers, notably supermarkets. These supermarkets, notably the Édouard Leclerc chain and the La FNAC chain (first opened in 1974) began to offer large discounts on bestsellers and comic-strip books. The practice of supermarkets and so-called ‘category killers’ offering large discounts on the RRP based on bulk buying and, in some cases, loss leading effectively finished off the RRP system in France.

The alarm caused in the book trade by the increasing power wielded by supermarkets and ‘category killers’ led to a campaign by French booksellers to introduce RPM in 1978². These proposals were unsuccessful, publishers gave only half-hearted support so as not to lose the new trade from supermarkets and category killers. After failure to impose RPM the book trade proposed a system of complete freedom to determine prices, this being intended to “obtain the freedom to determine their [booksellers] own
profit margins instead of having them fixed by the publisher\textsuperscript{3}. These proposals were accompanied by a desire from bookshops to see various commercial rules relaxed “in order to take into account the special nature of the relationship between suppliers and retailers in the book trade\textsuperscript{4}”. Once again this scheme was rejected by the publishers.

In a move apparently welcomed by the majority of French booksellers abolition of the \textit{prix conseillé} was imposed by decree on 23 February 1979, and came into force on 1 July 1979. The Monory Decree banned all publishers from marking RRP on books, but, importantly it allowed concessions to stockholding bookshops. The French government had taken no stance on the arguments for and against RPM or free pricing with concessions. However, the Monory Decree stated that in order to take into account the specific nature of books, demands of booksellers and fears expressed by publishers at seeing a drop in the number of qualified booksellers concessions would be allowed. The three main concessions to booksellers were:

- Booksellers were to be allowed concessions as compensation for discounts given to supermarkets and category killers;

- Booksellers could get financial reward from publishers for keeping that publisher’s books in stock;

- Tax benefits could be gained for holding in stock books with a slow turnover.

Writing about the situation in June 1981, shortly before the \textit{prix liberté} was overturned, Jacques Plaine, President of the French Federation of Booksellers Unions wrote:

These measures have enabled an improvement to be made in the situation of many booksellers, thanks to greater freedom in management, some use by publishers of the system of concessions whom the publishers wanted to protect\textsuperscript{5}.

He continued:
Naturally, those who have benefited most from these measures have been the qualified professional booksellers whom the administration and publishers wanted to protect.

Plaine commented on the problems faced by the *prix libéré*:

On the other hand, it is true that we are far from having settled all the problems of the book trade. It is also true that a rapid glance at the situation in countries such as Germany, United Kingdom and United States shows that the same phenomena are found there.

These ‘phenomena’ included increase in book prices, reduction in quality of books and the growth of paperbacks. This observation is flawed. Plaine compared the French situation with two countries which had RPM agreements in place at that time (UK, Germany), and one which had always operated an RRP system (USA). None of these countries had recent experience of abrogation of a pricing system. Even if evidence of large price rises was available in these countries it is not clear why this was relevant to the French situation. Plaine was not comparing like with like, that ‘rapid glance’ at the situation beyond France was ill-considered. Additionally, Plaine’s report on a basically healthy situation with some problems is not borne out by other evidence.

Others in the trade, including those who Plaine was apparently speaking for were largely opposed to the system. In a survey conducted by the French bookselling magazine *Les nouvelles littéraires* 91.5% of booksellers were strongly critical of the *prix libéré*, with some protesting of ‘fatal consequences’ to their trade. A problem for booksellers was their apparent obligation to continually make price cuts to keep up with discounts offered at discount stores (Leclerc and la FNAC). Concessions included in the Monory Decree did not compensate for loss of trade to discounters. The negative effects on booksellers as a whole can be correlated with proximity to discounters, and this much was known by the latter - a FNAC manager commented that “small booksellers will very soon begin to feel the pinch ... some bookshops will die, but that is concentration
capitaliste n’est-ce pas?” The two year prix liberté claimed its victims, notably the 150 year old Lafitte bookshop in Marseilles. Its owner stated:

“our idea of bookselling is a financial impossibility today. We are closing at the end of the year (1980)”

So, while the French Federation of Booksellers Unions gave limited support to the prix liberté and urged booksellers not to forget that “before the reform in 1979 everybody wanted to abandon that system”, the prix liberté was unpopular and divisive. The two year period caused the following structural changes to the French book trade:

- The number of outlets selling books (where books were not the predominant merchandise before 1979) increased. The beneficiaries were supermarkets and ‘category killers’.

- Because of the larger number of outlets, average turnover per outlet decreased.

- With price freedom, retailers were free to raise prices (and increase margins). This made it easier for booksellers to be flexible in their pricing strategy, and make their own decisions on raising prices or discounting titles. On the other hand, booksellers in close proximity to supermarkets and category killers were more likely to be sucked into price wars to defend their position.

- The period of price freedom allowed the FNAC chain to gain a large sector of the book market, generally by offering discounts of up to 20% on all books. In the period since 1981 FNAC has maintained its market share in the book retail sector.

It appears from the evidence above that in the two year prix liberté that the balance of the book trade began to shift toward non-traditional retailers and new entrants. Parallels can be drawn with the situation in the UK in the 1990s - supermarkets selling and marketing books while attacking the NBA and being in a strong position to adapt to an
RRP situation. The interviews reported in Chapter Seven make it evident that independent booksellers were fully aware of the effects of supermarkets on their businesses.

Uncertainty in the book trade both before and after the Monory Decree brought book pricing issues to the fore between 1979-1981. The exact reasons why price freedom on books was abandoned after two years remain unclear, but the following are probable:

- The *prix liberte* was unpopular within the French book trade, and was having a detrimental effect on traditional booksellers.

- The banning of the *prix conseillé* system in 1979 was seen as encouraging lower prices in the trade and freedom. There is no conclusive evidence to prove whether prices did rise during this period (no records were kept), but what is clear is that prices did rise in the two years following introduction of RPM in 1982\(^1\). Whether this was due to confusion in the trade or the fact that RPM by itself caused higher prices is unclear.

- France saw a radical political change in May 1981, with the election of a Socialist government. It is apparent from the Loi Lang and measures taken in other cultural fields that the regime placed a strong emphasis on centralised action to preserve culture.

8.1.3 The Loi Lang and *la prix unique*.

The justification of the Loi Lang was based on two cultural arguments which are used most often to justify RPM on books:

- Books are not an ordinary commercial product;
- The cultural nature of books must be taken into account.

Jacques Lang's justification for RPM in 1981 was:
This change to the present pricing regime is based on our refusal to consider the book as an ordinary commercial product, and our will to curb market mechanisms in order to ensure that its nature as a cultural product will be taken into account. It shall not be left to the sole requirement of immediate profitability.\textsuperscript{12}

The equal right for all citizens to buy books and to allow the same price for the whole country;

The maintenance of a centralised, dense, distribution system, especially in the 'unfavoured zones' (remote areas, and perhaps bookshops facing price competition from supermarkets);

To support the author in writing and publishing 'difficult' works\textsuperscript{13}

The Ministère de la Culture continues to back RPM on books:

The practice of discounting causes, in the long term, a reduction in the availability of titles, less variety of titles - especially 'difficult' titles. It is important bookshops survive. Abolition of RPM in Belgium in 1984 reduced the number of books published and caused general (non-specialist) bookshops to gain at the expense of specialist bookshops. A single price is indispensable, it improves access to books, especially in the educational sector\textsuperscript{14}.

\textbf{Loi Lang, Main points of interest}

- Article 1 makes it compulsory for all publishers or importers of books to fix a resale price for a book. The fixed price must be specified to the customer;

- Retailers must not give discount on a fixed price above 5\% of the resale price;
• Special provisions for discounts to libraries, schools, government institutions above 5% are allowed;

• If a book is at least two years old, and has been held in stock for over six months, the retailer can offer a resale price lower than the fixed price;

• Imported books are subject to the Law. As will become apparent, this provision was to bring the law into direct conflict with EU law, and result in changes to the 1981 law after an ECJ hearing in 1985;

• Application and problems of the Loi Lang.

The French Publisher’s Association (Syndicat National de l’Édition) reported to the FEP’s 1994 General Assembly that the system continued to operate ‘satisfactorily’, and had the “wide support of French professionals”15. Although on the surface the law appears to work ‘satisfactorily’, problems have occurred with the structure of the law in France and its application in the EU.

A major problem was circumvention of the law by the practice of giving ‘fraternal’ discounts to institutional buyers. Discounts to certain people involved in the so-called ‘chain of the book’ (see Figure 8.1, below) could exceed 5%. This is the Achilles Heel of the law as discounts to those institutions are not legally limited. A situation occurred in which the school textbook market was monopolised by large wholesalers to the detriment of small booksellers. At present the French Publisher’s Association is pressing for modifications to the law to enable small booksellers to tender for business in the textbook market.

Figure 8.1 shows minimum and maximum discounts allowed under the law, and to whom discounts are applicable. Discounts to institutional buyers, including libraries, government departments etc. are not constricted by the 5% rule applicable to the general trade.
**Book imports to France (from non-French publishers).**

Another major problem with the law is the fact that it extends to imported books. This means that the importer of the book to France sets the price which will then be legally binding in the State. Prior to the 1985 Édouard Leclerc and Others v Sàrl ‘Au blé vert’ case the government nominated legal depositors through which all imported books had to be priced, and adhered to, in France. Changes to the law following contravention of Article 30 caused a change in policy, with all importers able to set legal prices on imported books. There are four main consequences of this rule:

- If there are several importers of the same book, there can be several legally enforceable prices to the public.

- Following the 1985 Leclerc cases, French retailers are not allowed to discount non-French books published in the EU (after the price has been set by the importer). Retailers can only discount a book from another Member State if they can prove that they are the sole importer and distributor of that book.
• A case involving this practice resulted in La FNAC in Lille being fined for discounting Belgian strip-cartoons when it had obtained the books from a French distributor. As FNAC could not claim to be the direct importer, and thus discount the books, it was found to contravene the law.

• The law allows a retailer to fix a resale price taking into account trade discounts of that country have been obtained. The retailer is not allowed to advertise any discounts in this case, this being considered 'untrue advertisement'

8.1.4 The Leclerc cases.

This section examines proceedings brought by the Leclerc chain against the Loi Lang which were referred to the ECJ. Of these only one case, Édouard Leclerc and Others v Sàrl ‘Au blé vert’ and Others was of real significance, causing the French government to redraft the original Loi Lang.

The Leclerc cases were of interest for two main reasons. First, the EC had a stated policy toward challenging book RPM Agreements, and second that investigation of the French system involved judging a 'public' (i.e. statutory) example of RPM. The case which set the argument in a European context involved a reference for a preliminary ruling from the ECJ by the Cour d'Appel in Poitiers in October 1983. In this case S.A.Thouars Distribution, a member of the Association des Centres Édouard Leclerc faced an injunction from selling books with more rebate than that allowed under the law. Contravention of the law was reported by the local booksellers association, Des Libraries en Poitou-Charentes, more well known after as 'Au Blé vert' (the address of the Association). This case was a referred to the ECJ, and was not the subject of action by the EC. The case was heard over a two year period, with written observations and oral evidence submitted through 1984. Advocate-General Darmon's opinion of the case was heard in October 1984, judgement on the case from the ECJ was given on 10 January 1985.
The case was rather complex, as Leclerc alleged that the Loi Lang infringed Articles 3, 5, 30 and potentially restricted competition in the EU under Article 85. In its judgement the ECJ ruled that because of the lack of a common EU cultural policy, Member States were entitled to take measures for achieving their own cultural policy. However, it did state that Article 36 of the Treaty did not allow Member States imposing such policies to be exempted from the provisions of Article 30. The ECJ could only act if the law 'substantially compromised' the application of Community law. As Article 85 is addressed to undertakings' the ECJ could not prosecute the French government under this law because the Loi Lang was statutory. In its decision the ECJ dismissed the Leclerc appeal in relation to contravening Article 3(f), 5 and 85 of the EEC Treaty:

As Community law stands, the second paragraph of Article 5 of the EEC Treaty, in conjunction with Articles 3(f) and 85, does not prohibit Member States from enacting legislation whereby the retail price of books must be fixed by the publisher or by the importer and is binding on all retailers, provided that such legislation is consonant with the other specific provisions of the Treaty, in particular those relating to the free movement of goods;²⁰

In terms of Article 30 the ECJ held that although the Loi Lang was not overtly discriminatory, the provisions relating to imported books, both those from other EU Member States and re-imported books published in France were in contravention of EU law. The ECJ held that the Loi Lang constituted an obstacle to imports (and quantitative restrictions to imports) on two counts:

• Firstly, by the provision for an importer to fix a price on all (non French) books imported to France.

• Secondly, by the provision for fixing the price of books published in France, exported to another Member State and subsequently re-imported to France. The ECJ ruled that this practice was illegal unless it could be proved that the books had been exported solely to be re-imported and circumnavigate the law
The ECJ held that the Loi Lang failed to treat exports and imports alike, and was in contravention of Article 30:

It discourages the marketing of re-imported books by preventing the importer from passing on in the retail price an advantage resulting from a lower price obtained in the exporting Member State.\(^\text{21}\)

The French government's defence of the law at the ECJ rested on the grounds that 'the provisions in the law which purportedly infringed Article 30 were absolutely necessary to ensure the efficient operation of the Loi Lang'\(^\text{22}\). In defence, the French government argued that if booksellers in France (and particularly frontier areas) were free to re-import books at prices less than those set in France this would undermine the whole system. The ECJ rejected this, stating that the ability of French booksellers to get cheaper editions from other Member States was an advantage\(^\text{23}\).

As a result the Loi Lang was altered by Decree 85-272 on 26 February 1985 to avoid conflict with the Treaty:

- All importers of books from other Member States were free to set individual prices of books, but were not allowed to sell at a price lower than that set for a French edition of the same book (where relevant);

- Where a publisher from another Member State had not fixed a retail price for the French edition, the French bookseller could not sell that book at a price below what was either fixed or recommended in the country of publication.

On 13 May 1985 French retailers and distributors were free to buy cheaper editions of books already available in France from other Member States as long as those books were not exported from France with the express intention of being re-imported.

Alterations to the Loi Lang did not stop Leclerc's drive to bring down RPM on books in France. Following changes, and the decision to impose fines on those breaking the law,
a Leclerc manager was arrested for selling books at a 20% discount. In the French court case Leclerc countered that the Loi Lang constituted an infringement of Articles 3(f) and 7 of the Treaty (discrimination on the grounds of nationality, equality of treatment). The appeal against prosecution was referred to the ECJ, and judgement delivered on 23 October 1986. This appeal was unsuccessful. The ECJ held that the Édouard Leclerc and Others v Sàrl 'Au blé vert' and Others case in 1985 had already ruled that Articles 3, 5 and 85 were not applicable to the situation in France. In relation to Article 7 the Court ruled that:

There is no discrimination on the grounds of nationality, even disguised or indirect, within the meaning of Article 7 of the EEC Treaty.

This case, and three others heard in 1986 and 1987 marked the last attempts made by Leclerc to have rulings by the French courts quashed under EU law. They did not cause any further changes to the Loi Lang or abrogation of RPM on books in France. Although Leclerc were able to claim some success in loosening the restrictions on imported books, they were unable to use EU law to help bring down a national law. The cases show the difficulties faced by the EU in applying Community law in relation to a national law, and the difficulties in promoting free trade in the EU.


This section provides an overview of the state of the French book trade in the 1980s and 1990s. Comparisons with the other case study countries can be made. Book price indices are not available. As a guide, Fishwick claims that book prices increased by 5.5% above inflation during 1982 and 1983, the first two years of RPM, levelling in the period up to 1989.

The French book market grew by 4% per annum, titles produced increased by an average of about 3% per annum. A slight glitch was due to the Bicentennial celebrations in 1989, which resulted in a sharp increase of 13.1% new publications. As with the UK, the
publishing industry is dominated by a small number of large firms - 6% of French publishers control 63% of the total market.

**Figure 8.2. Book output, copies produced (millions) 1979 - 1990**

Book output rose over the eleven years while copies produced fell. It is worth noting the drop in new titles and copies produced in 1979 and 1981 respectively and the subsequent gains in 1983 and 1985 - the book industry was in some disarray in the price freedom period. In 1990 the French retail market was worth ff 15.36 billion. Around 20% of this expenditure was from institutions.

**Figure 8.3. Imports of books by Country of Origin 1988 - 1990 (ff million)**

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The market for imports and exports depends much on common language in the country of origination and destination. Italy’s high standing on imports is due mainly to the fact that most French books are printed in Italy. Not included in Figure 8.3 are the large number of exports to France’s former colonies.

**Figure 8.4 Exports of books by country of destination 1988-1990.**

Bookshops were the largest outlet for the sale of books. Retail sales to consumers accounted for about 80%, with 20% going to institutions (libraries, schools etc.). FNAC captured around 5% of the total market in the price freedom period and held on to its dominant position. Other non-traditional retailers also consolidated their market share since 1981, notably the Leclerc chain, which along with FNAC discounted books heavily, and remains firmly opposed to the Loi Lang. Both FNAC and Leclerc have secured their position by the strong competition to get student custom, and corresponding discounts. Book clubs remain strong, with a similar market share to that enjoyed in the UK.
8.1.6 France - conclusions.

France's experience of RRP on books appears to have worked well before the arrival of supermarkets and category killers to the book market in the mid-1970s. Following the aggressive marketing techniques used by these firms the majority of French booksellers lobbied publishers for the introduction of RPM. The following conclusive points sum up the French experience from 1978-1993.

- RPM on books was rejected by publishers in 1978, ostensibly because of their reluctance to lose trade with supermarkets and 'category killers'.

- The book trade then lobbied for total price freedom, allowing them the freedom to set prices as they wished. The desire for price freedom came from the book trade, not from publishers or government, though it was government in the end which brought the *prix conseillé* to an end.
• The *prix libérté* lasted for two years, and was opposed by booksellers. The most direct effect on the trade were the gains made by supermarkets and ‘category killers’. These gains in market share were consolidated after RPM was introduced.

• The Loi Lang was introduced by the new Socialist administration in 1981 to protect the book trade, and more importantly because of the government’s reluctance to leave book publishing solely to commercial interests.

• Imposition of RPM was welcomed by those most at risk in the book trade, but not those who had made market share gains in the *prix libérté* period. The manifestation of this was the attacks made on the law by the Leclerc supermarket chain both within France and to the ECJ. Leclerc had some success in changing the position on imports to France, but not the state of the law within France.

• Following a period of instability in the trade after introduction of RPM (this replacing a two year period of extreme instability) on 1 January 1982 the book trade enjoyed a steady growth of around 4% per annum. The French book trade could not cope with an RRP system when non-traditional entrants put pressure on the traditional bookshop sector. Under RPM the trade stabilised, and there is no sign in 1997 that this system will be abolished. From early indications, France’s experience of price freedom was more detrimental than that seen in the UK.

8.2 The Netherlands. Introduction.

The Netherlands book industry, and its experience of RPM differs from both France and Belgium. France introduced RPM in 1982 following a brief, unsuccessful experiment with free pricing. Belgium abandoned RPM completely in 1983\(^3\), this following a 1981 EC ruling\(^3\) that a collective RPM Agreement between the Netherlands and the Flemish
speaking half of Belgium transgressed Article 85 of the Treaty. Following the 1981
decision, and the unsuccessful 1984 appeal to the ECJ, RPM was kept on books in the
Netherlands. RPM is retained, although its continued use depends on a Governmental
review in the year 2000.

8.2.1 RPM and free pricing issues in the Netherlands book trade

RPM on books in the Netherlands has been in place since 1904\(^{34}\), and up to 1985 no
regulations existed to assess or check its impact on the trade. In 1984, the year in which
the Netherlands - Belgium RPM Agreement appeal was heard and lost at the ECJ, the
Netherlands government initiated an investigation into RPM on the Dutch trade. The
investigation was undertaken by two bodies, the Raad voor de Kunst (Arts Council), and
the Free Trade Commission. Both advisory reports were in favour of price fixing on
books, albeit with different degrees of enthusiasm\(^{35}\). The Government decided to follow
advice given by the Free Trade Commission. This proposal entailed a fifteen year
exemption from national legislation to the year 2000 with re-evaluation every five years.
The Agreement was re-evaluated in 1995, and exempted until 2000.

- Transnational RPM between the Netherlands and Belgium.

On 21 January 1949 an agreement was signed by the Vereeniging ter Bevordering van
de Belangen des Boekhandels (Dutch Association for the promotion of the interests of
the book trade - VBBB) and its Flemish counterpart the Vereeniging ter Bevordering
van het Vlaamsche Boekwezen (Association for the promotion of Flemish books -
VBVB). This agreement put in place a system for fixing prices between the two
Associations, and to enforce it a system of collective exclusive dealing:

Books published in one country by publishers not recognised in that country may
not be sold or stocked nor may their sale be promoted in any way in the other
country. No one may be appointed as sole distributor or depository in the other
country ... without being recognised as such by the association of that country\(^{36}\).

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Under the 1956 Benelux Free Trading Agreement, RPM Agreements were declared to be non-binding, and effectively banned. Subsequently, on 31 August 1967 the Dutch book trade was exempted from the ban "on the grounds of the importance of the cultural aspects involved". In December 1977 the EC gave notification to the two Associations of its decision to investigate the Agreement. Following oral and written submissions from the various parties and attempts by the EC to broker a change to the practice to allow it to avoid infringing Article 85, the Agreement was banned on 25 November 1981. The decision to ban the Agreement set a precedent. It was the first such Agreement regarding books to contravene Article 85. The direct effects of this decision were to have a greater impact on the Belgian book trade. This case was a benchmark case both for the Leclerc cases and the subsequent case against the NBA.

- **RPM and other structural constraints in the Netherlands book trade.**

RPM remains in force in the Dutch book trade. In relation to its 'anarchie' neighbour, Belgium, and both the UK and France, the Dutch book trade is highly regulated. In addition to RPM, exclusivity Agreements ('vertical restraints') are allowed between publishers, distributors and booksellers. The Royal Dutch Association for the Dutch book trade (KVB) plays an active role in the trade, it is responsible for standardising prices for all books published in hardback in the Netherlands. It also sets prices for imports using a so-called 'scale out' system.

This system was introduced in the 1969 during a period of severe competition between UK and US publishers in the Netherlands, and a corresponding negative effect on the Dutch publishing trade. Since 1969 market research within the book trade has monitored the total quantity of foreign books sold in each shop. From these statistics the KVB produces a 'scale out' system, which oversees which bookshops should get what book and how many copies they should get. All books sold under this system are fully returnable. The KVB acts as a central buyer and marketer for all English language books by using this system; it is able to closely monitor who sells what, what sells, and where.
In respect of Articles 30 - 36 of the Treaty, namely the free movement of goods within the EU, this system appears to be open to criticism in that UK publishers are unable to gain free access to the trade. If a comparison is drawn with the Édouard Leclerc and Others v Sarl ‘Au ble vert’ case, which resulted in the Loi Lang being found to contravene Article 30 due to ‘quantitative restrictions and obstacles to trade’, there was perhaps a case to answer. There is no record of UK publishers complaining about this system.

In the 1980s US publishers began to make inroads into the Dutch book market, usually at the expense of UK publishers. Increased use of airfreight in the 1980s, as opposed to the traditional sea route narrowed the time gap between US and UK distributors exporting to the Netherlands. UK exports to the Netherlands fell: US imports to the Netherlands grew by 34% in the period between 1985 and 1991, compared to 8% for the UK.

RPM is in place until at least the year 2000. The KVB has a prime role in fixing book prices, both for Dutch hardbacks and for imports. The industry is characterised by Hughes as being a ‘finely tuned and highly controlled market’.


The VBBB/VBVB case was the first trans-national book RPM system to be investigated by the EC, and after a three year investigation was held to contravene Article 85(1) of the Treaty in November 1981. An appeal against this decision to the ECJ was rejected in 1984.

The main points of the Agreement were:

- Publishers and booksellers who were not members of an Association (VBBB or VBVB) could apply to became members of the corresponding Association in the other country. If they did this they were able to get the same rights as publishers in the other country. Membership of the corresponding Association
was only possible if the applicant was a member of his own country's Association.

- Books published in either country by publishers not members of either Association could not be sold, stocked or promoted in retail outlets in either country. Retail prices could not be changed, conversion rates between the currencies were fixed by the respective Associations. 44

The EC made efforts to reach a 'pragmatic' solution to the Agreement. Three separate attempts to redefine the Agreement between 1978-1981 were unsuccessful, after a three year investigation the Agreement was found to be contrary to Article 85(1). Exemption from Article 85(1) under the four gateways contained in Article 85(3) was unsuccessful. In its decision the EC judged the Agreement to contravene Article 85 on the following grounds:

The special features of that market do not permit the two associations to set up, in their mutual relations, a restrictive system whose effect is to deprive distributors of all freedom of action as regards the fixing of the selling price up to the level of the final price to the consumer. Such an agreement would indeed infringe Article 85(1) which expressly prohibits all agreements which 'directly, or indirectly fix purchase or selling prices' 45.

In terms of special features of the Dutch book market the two Associations argued that the Dutch language market was a single entity, and that political boundaries were irrelevant in this context. They argued that:

The Agreement in question contributes to the integration of the Flemish and Dutch linguistic communities - an object which is in conformity with both the principles of the Member States concerned and the principle of integration of Community law and which is embodied in the Treaty of the linguistic union between Belgium and the Netherlands. 46
This defence of the Agreement was rejected by the EC:

In the Commission’s view, however, the termination of resale price maintenance in trade between Belgium and the Netherlands will not endanger the cultural unity of the Dutch language area.\textsuperscript{47}

In addition, the EC also viewed the imposition of agreements on cultural sectors as a matter for government, and not the trade organisations involved:

The Commission is sure that the Member States concerned would not hesitate to take action to protect certain cultural interests should this be necessary. It would refer in this connection to the Treaty on the Dutch language Union concluded between the Kingdom of Belgium and the Kingdom of the Netherlands, which seeks to bring about integration in the field of language and literature in the widest sense and also makes provision for measures in the field of the publishing and dissemination of books.\textsuperscript{48}

This observation was to have important effects on the continued application of RPM in the Netherlands (hence the 1985 enquiry by the Dutch government) and for future proceedings against other RPM agreements. The ECJ verdict upholding the PA’s appeal against the 1988 NBA decision pointed out errors of law and application of law. To recap, these were the main grounds for upholding the NBA appeal:

- The EC decision was paradoxical in the respect that instead of supporting a single English language market the consequence would be dividing the UK and Irish book markets along national frontiers;

- EC decision gave too little weighting to the judgements of national courts;

- EC decision gave the effect of not taking into account the effects on Irish booksellers.
Comparisons between the two cases can be made to a limited extent. Both agreements were transnational in application, and both were cases of 'private' RPM. This differs to France, whose agreement is 'public' RPM and has no application in another Member State. In both cases the EC effectively split same language areas down political borders. The EC took the wording of Article 85 quite literally in that the VBBB/VBVB agreement "directly, or indirectly fixes purchase or selling prices between Member States". This decision was paradoxical. The EC made note of the Dutch language Union as a positive step to safeguard culture, but the 1981 decision contradicted positive support for its intentions. It is perhaps the case that as no legislation or exemption existed in either Belgium or the Netherlands supporting RPM on books, the EC felt able to condemn the agreement without tacitly criticising either Member States’ governments or legal systems. However, comparing the two cases has pitfalls -

- The NBA did not have 'exclusivity' agreements compelling publishers and booksellers to be party to the Agreement before being able to sell books. The VBBB/VBVB agreement acted as a closed shop. This was not the case with the NBA;

- Book RPM agreements were not banned in either country, and there was no national legislation for the EC to take into account regarding the book trade. In the NBA case the PA argued successfully that insufficient weight had been given to a decision made by a competent authority in Britain in 1962.

The ECJ held in 1984 that the Agreement affected trade between the Member States, competition was being distorted and that the Associations had not conclusively demonstrated the beneficial effects of the Agreement. The VBBB/VBVB case became a benchmark for the EC's treatment of other book RPM Agreements.

The direct effects of the Agreement's demise were felt most strongly in Belgium, which had discontinued RPM a year before the ECJ appeal in 1984. As the next study on Belgium demonstrates, abolition did not have severe detrimental effects. A desire to re-introduce RPM on books had supporters within the trade and the Belgian government⁴⁹.
Direct effects on the Dutch book trade were not severe. RPM was retained, and the trade enjoyed a modest growth in the 1980s and early 1990s. The Dutch book retail sector reached a saturation point. Whether this was due in part to the KVB's restrictive methods of pricing and marketing books (especially for imported English books) was open to question.

8.2.3 The Netherlands book trade 1964 - 1995

The Dutch book trade enjoyed a steady, if unspectacular growth from the 1960s to the present, although the book market faced saturation in the 1990s. Dutch is not a major world language, therefore the market, as opposed to the growing English language market was finite. A third of Dutch publishers output was in English (notably the educational and journal markets). A saturated market meant that expansion in the book trade was confined to increasing market share by takeovers.

In 1993 The Netherlands had 555 certified publishers, of which a quarter were based in Amsterdam. Figure 8.6 shows the amount of publishers from 1975 onward.

Figure 8.6. Leading publishers in the Netherlands 1975 - 1993

Official figures did not include small publishers, Euromonitor estimated that these add 10-15% on top of Government estimates - it was unclear what the cut-off point was for 'small' and 'large' publishers was. It was also unclear whether the statistical methods of gaining information on publishers changed over the period - for example the UK

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Business Monitor series changed its coverage from firms employing 12 employees in 1975, to firms employing over 25 employees in 1980 and finally in 1987 firms employing over 50 employees. VAT was charged at 6% on books, compared to a national rate of 17.5%. This compares to rates on books in France of 5.5%, 6% in Belgium and 0% in the UK.

The number of book outlets in the Netherlands was hard to determine. In 1993 1,600 bookshops were certified by the Royal Dutch Association for the Dutch book trade (KVB). These bookshops were all members of the Dutch Booksellers Association (NBB). All members of the NBB were certified by the KVB. The total amount of book outlets, including second hand bookshops was estimated at 4,736 in 1990. The KVB did not provide breakdowns of the exact number of book outlets, but it does provide a breakdown of the retail distribution pattern (figure 8.7):

Figure 8.7. Retail distribution patterns 1978 - 1992 (% value)\(^{51}\).

Statistical evidence presented in Figure 8.7 confirmed a stagnant trade in the 1990s. It is notable that the bookshop sector levelled in the early 1990s on 59% of the trade, confirming that the bookshop trade has reached saturation point. Growth in the early 1990s was seen in the book club sector, and this is balanced by the fact that book clubs lost market share in the 1980s to bookshops and supermarkets. As with Belgium, book
clubs were popular. This sector was dominated by the German firm Bertelsmann. It controls the three largest book clubs, ECI, NBC and NLK with a combined membership of 1.4 million. The Dutch bookshop sector was dominated by small independents, but as with other trades a small number of bookshop chains controlled a large part of the market. The two largest bookshop chains, Sarmen Sterk and the Leden van de Parnassus Group were the market leaders in terms of number of outlets, shop size and design (in the Waterstone’s mould). Breakdown statistics for the bookshop sector are not available beyond 1985. Figure 8.8 shows the correlation between retail businesses and sales in 1985.

**Figure 8.8. Basis statistics on booksellers, 1985.**

Imports and exports of books to and from the Netherlands almost cancel each other out, the vast majority of books exported go to other EU countries. In 1992 the UK became the largest importer of books to the Netherlands, replacing Belgium. The Dutch read more titles written in English per capita than the British do. Penguin books were very popular in the Netherlands, the Dutch apparently preferred the format of UK editions to US editions.

The Dutch publishing trade is receding from its 1985 peak although since the Reed-Elsevier merger in 1992 the Netherlands has hosted Europe’s largest publishing conglomerate. As well as books and journals one of the company’s subsidiaries controls two of the top five bestselling Dutch newspapers. The merger in 1992 led in part to a
voluntary restriction being adopted by the Dutch Newspapers Publishers Association and the Government. It effectively restricts any company from controlling more than 33% of total circulation\textsuperscript{55}. The bookshop sector has reached saturation point, this has caused shops to become more concerned with quality issues such as good services and product range. Other market sectors show little or no growth. Overall, the Netherlands publishing and book trade is marked by acquisition of rivals and increased concentration.

**Figure 8.9. Sales by Dutch publishers 1988 - 1993.\textsuperscript{56}**

Figure 8.9 shows a publishing industry growing steadily both in terms of sales and copies produced. These figures do not include between 10 - 15% of publishers who are too small to qualify for statistical coverage. Growth in sales in 1993 were due in part to the Reed-Elsevier merger.
Growth in copies produced has remained at 0.7% steady in the 1990s. Figure 8.11 shows the total market for books. Once again, the total market for books rose steadily through the 1990s taking into account the 1991 recession low point.

Title production is a good indicator of the health of a publishing industry, though sceptics might argue that growth in title output is a measure of desperation from publishers trying to produce a bestselling title. Book title output figures are only available for the 1970-1981 period, and 1990. It is thus impossible to see what, if any, changes happened following the 1981 and 1984 EC / ECJ cases. Statistics presented in
Figure 8.12 (below) point toward a steady rise in titles produced during this period. It is not clear what percentage are new editions, reprints or translations.

**Figure 8.12. Titles published in the Netherlands 1970 - 1990**

8.2.4 Netherlands - conclusions

RPM will remain in force until at least the year 2000. The trade is highly regulated, this being in common with the French situation but in direct contrast to Belgium. Regulation extends to direct intervention from the KVB on fixing prices for all hardback editions and a system for distributing imported books. This trade appears bureaucratic and stifling. The publishing sector has enjoyed growth with RPM following a recessional lull in the early 1990s.

The trade is well developed and efficient when looking at its distribution system and size in relation to total population. Dutch bookshops, because of fierce competition for a small consumer market are geared to providing efficient services. Any negative effects from the banning of the VBBB / VBVB Agreement in 1984 do not seem to have surfaced in the trade. As will be seen in the next case-study on Belgium, the Dutch Language Union has pressed the Belgian Government and EC to consider afresh the banning of RPM Agreements in common-language areas of the Community. The Netherlands book trade has continued to develop through the 1980s and 1990s, the real
victim of the EC’s decision was the Flemish-Belgian book trade, and in particular the Belgian trade.

8.3 Belgium. Introduction.

In 1983, two years after France introduced the Loi Lang to enforce RPM on the book trade, Belgium abolished RPM on books. The reasons for this stem entirely from the 1981 EC decision regarding the transnational RPM system between VBVB / VBBB. It might be expected that analysis of the Belgian book trade in the period since 1983 could provide useful insight into what does actually happen to a book trade following abolition of RPM. There are, however, some difficulties. To make sense of the situation in 1997 it is necessary to have an understanding of the disparate state of the Belgian book trade.


The Belgian book trade is split along the French - Flemish linguistic line. The trade is reliant on imports - Belgian publishers produce about 20% of books sold in the country, 80% of books sold are imported, these mainly come from France and the Netherlands. In the last year for which statistics are available, 1990, Belgium had 517 publishers and 2,336 booksellers registered for VAT. In 1995 VAT on books stood at 6%, this compared to the 20% levied on other goods. This compared to VAT rates on books in France and the Netherlands of 5.5% and 6% respectively. Figure 8.13, below, shows the number of publishers and booksellers by region in 1990.
What is immediately apparent from the table above is that the French sector is much bigger than the Flemish sector in terms of both publishing and bookselling. It is not possible to analyse what percentage of publishers in Brussels publish in French or Flemish, except to follow Euromonitor’s (unsubstantiated) assertion that the ‘majority’ of publishers based there publish in French. What is known is that total turnover of publishers in Belgium is split 30:50:20 between Brussels - Wallonia - Flanders. Figure 8.14 shows the amount of publishers and booksellers in relation to population in 1990. It is apparent that Wallonia is considerably better served by bookshops than Flanders, publishers being about equal.

Figure 8.14. Publishers and booksellers in relation to population, 1990.

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France was the largest market for book exports when looking at the overall trade in Belgium. In turn, Belgium represented the largest market for French exports. To recap, exports by Belgian publishers to France totalled FF 697.1 million in 1990, imports to Belgium from France totalling FF 691.6 million. The Francophone Belgian publishing industry was particularly strong in producing comic-strip and children’s books. Around 75% of the books produced in those categories were exported to France - sales of these books account for half the turnover of members of the ADEB. Exact figures for the Flemish publishing trade are harder to get. In evidence given to the EC in 1981 it was stated by VBVB that its 140 members held 15% of the total market, around 80% of books sold in Flanders coming from the Netherlands. Export figures for Flemish publishers are not available.

8.3.2 RPM and free pricing issues in the Belgian book trade.

RPM on books in Belgium started in 1929, with an Agreement between Flemish publishers. A transnational Agreement between Flanders (VBVB) and the Netherlands (VBBB) was introduced on 21 January 1949. As was explained in the previous section this Agreement obliged member publishers of both Associations to fix a retail price on all books published. These books could not be sold in Belgium or the Netherlands at a price below that set by the publisher. In addition, it set up a collective dealership system whereby books published in Belgium could not be sold either in Belgium or the Netherlands without the retailer or publisher being a member of either association. The same went for books published in the Netherlands.

Following abrogation of the Agreement in 1983, and an unsuccessful appeal to the ECJ in 1984, the Belgian publishing industry introduced a system of RRP on books. In a move which Charbit described as ‘leading to anarchy’, a reference price was not allowed to be printed on books published in the French sector. The effects were to produce results seen in the French price freedom period, notably retailers being able to offer substantial discounts on bestsellers and increase prices on other books without customers being aware.
8.3.3 The alleged effects of RPM abrogation on the Belgian book trade.

The consequences of the abrogation of RPM on books in 1983 were held by sections of the Belgian book trade to be detrimental to the trade. Marcel Mertens, President of the VBVB made observations on the trade in 1988, five years after RPM was abolished. Mertens' 1988 description of a disintegrating book trade led to efforts by the Belgian Government to both discuss book RPM with the EC and to actively seek a new Agreement with the Netherlands following the 'comfort-letter' given to the German - Austrian Agreement in 1994.

Mertens attributed five negative developments in the trade as stemming from RPM abrogation. These were:

- Fewer bookshops. The entry to the trade of hypermarkets selling books caused bookshops to close. This was due to the hypermarkets discounting bestsellers. Mertens claimed that the opening of FNAC in Ghent caused eight bookshops to close within a year. It is not clear how many bookshops existed in Ghent before FNAC arrived, nor what kind of bookshops were forced to close - for example, it might be the case that bookshops competing directly with FNAC on bestsellers were affected, but not those selling school books and other 'niche' products.

- Reduced service to customers. RPM on books solved the problem of 'free-riding' in a trade. Mertens considered that abolition of RPM directly caused bookshops to cut back on bibliographic information offered to customers. In 1988 only twelve bookshops in Flanders offered a microfiche information system to customers, compared to 450 bookshops in the Netherlands. A comparison between Flanders and the Netherlands reveals that neither trade was over-endowed with bibliographic information in 1988. Figure 8.15 highlights how small the percentage of bookshops offering a bibliographic service was in Flanders and the Netherlands in 1988, and the apparent difficulty in gaining information.
• Decrease in net returns. After RPM abolition department stores and hypermarkets offered discounts of around 10% on bestsellers, these increased quickly to 20%. Retailers were forced to cut back on discounts as space given to books did not generate enough profits. As these retailers did not want to lose their reputation as being cheaper than bookshops they made extensive use of ‘our price’ marketing - notably by offering smaller discounts on the publishers’ RRP and using some bestsellers as loss leaders.

• No lower prices. Mertens’ observation of higher overall prices for books after RPM abrogation follows other research, notably Fishwick. The Belgian trade was held to have been affected unduly by a move towards discounting bestselling titles (Mertens claims that discounts were regularly given on 2 - 3,000 titles out of 60,000 titles.
available in 1988). Discounting, and perhaps a perception that books were expensive caused backlist titles to slow down in turnover. This had two direct effects. First, bookshops passed on the costs of ordering books directly to customers by charging for the service. Second, publishers increased the price of bestsellers to counter the slow turnover of backlist titles. Discounts given on bestsellers were in effect acting as higher discounts on higher prices. No statistical evidence was given by Mertens to justify this trend.

- No market growth. The book trade in Flanders in the period after abrogation was, according to Mertens, dominated by discounting wars between new entrants to the trade (hypermarkets etc.) and established bookshops. Against this background bookshops were forced out of business, those still in business were forced to employ price-cutting promotions and the distribution structure for books was distorted. It would be perhaps unfair to castigate Mertens' analysis of the situation, but as the next section will attempt to show, negative aspects experienced in Flanders were countered by growth in consumer expenditure on books and exports of books. Doubts must be raised by the lack of statistical evidence to support alleged detrimental effects, notably higher book prices and bookshop closures.


The testing of Mertens' view on the post-RPM trade can be judged by three indicators of the state of the trade through the 1980s. Unfortunately, price indices for the trade are not available.
Consumer expenditure on books almost doubled in the fourteen year period, though in real terms (constant 1980 prices) the market remained more or less static. Consumer expenditure dipped in the 1984-1988 period, immediately after RPM was abandoned in 1983. The 1988-1993 period saw expenditure increase moderately both in current and constant terms. The 1993 constant figure approached the 1982 high point, the year before RPM was abandoned. Figure 8.16 indicates that the trade was growing, albeit slowly in the early 1990s.
Figure 8.17 indicated that by 1991 the trade had recovered from a dip in the mid-1980s. Belgium's French language publishing trade was in a strong position, especially its comic book and children's book sectors.

Figure 8.17. Foreign trade in books 1985 - 1991. (US $ m)\textsuperscript{74}

![Figure 8.17. Foreign trade in books 1985 - 1991. (US $ m)](image)

Figure 8.18 (below) shows title output in Belgium from 1978 to 1992. Normally, measuring of output by publishers is a useful method of testing the state of a trade - for example the UK publishing industry perennially produced large annual increases in new titles when the NBA was in force. 1997 totals are not available for the UK, and trends cannot yet be seen in the trade without RPM.

Figure 8.18. Belgian book production 1978 - 1992. New titles produced per annum (000's) (UNESCO figures)\textsuperscript{75}

![Figure 8.18. Belgian book production 1978 - 1992. New titles produced per annum (000's) (UNESCO figures)](image)
8.3.5 The Suykerbuyk Proposals.

In February 1992 Senator Suykerbuyk (Liberal Flemish Party) proposed a bill to reintroduce RPM on books to the whole trade. This bill was supported by the ALFB (the Association of French speaking bookshops in Belgium) and the Dutch Language Union (VBBB). It was strongly opposed by the ADEB, the Belgian Publisher's Association, the Belgian Distributor's Federation, the Consumer Council and supermarket chains.

The bill wished to protect small bookshops from the excessive discounts offered by supermarkets. The bill was not presented to the Belgian parliament, although discussions continued in the trade on re-introduction of RPM.

8.3.6 Belgium - Conclusions.

RPM was abandoned in Belgium in 1983. The limited work done by some analysts, notably Charbit and Fishwick does not seem to prove one way or the other whether abrogation of RPM has had the detrimental effects reported by Mertens. The following points can be made with some certainty:

- The Belgian publishing trade is dominated by French language publishers. Half the turnover of the ADEB members is made up from publishing comic and children's books. 75% of books published in Belgium are exported, mainly to France. The industry only provides 20% of books sold in Belgium. Flemish publishers only control 15% of the market in Flanders.

- The Belgian bookshop trade gets 80% of its books from other countries, notably France, the Netherlands and the UK. Bookshops have had increasing competition in the 1980s from non-traditional entrants such as supermarkets. Wallonia is better served by bookshops than Flanders - even though the Flemish community makes up the majority of the population.
• Abolition of RPM does not appear to have had the devastating effects on the trade which some commentators have reported. This is borne out by increases in exports by publishers and consumer expenditure on books. Other evidence, notably book output figures show a sharp decline since 1983.


8.4 Conclusions.

The three countries examined in these case studies all have different histories of RPM in their book trades. France introduced RPM in 1982 to safeguard its book trade; The Netherlands has enjoyed an RPM agreement since 1967, and will continue to do so until at least 2000. While the Dutch government sanctions the five year rule for RPM, the book trade itself has been the main arbiter on the method of RPM and other restrictions.

The Netherlands has a complex and restrictive trade. In common with France, the overwhelming issue appears to be the safeguarding of national language publishing. RPM protects the publishing trade. Belgium has been portrayed as a country whose book trade has been adversely affected by RPM abolition. There is some substance to these claims. What is however clear from reading of 8.3 is that claims of ‘anarchy’ within the book trade are sometimes with little concrete evidence.

Certain strands of opinion stand out from reading of these case studies:

• Booksellers in all three countries were in favour of RPM - in France’s case RPM was suggested by booksellers in 1978 before the prix liberte period, and then imposed by statute in 1981. The Netherlands kept RPM on books within the country following the ban on the VBBB/VBVB agreement between Belgium and the Netherlands. Belgian booksellers argued the case for re-introduction of RPM.
and had some success in putting their views across to government. This did not result in new legislation being introduced.

- The rise of non-traditional booksellers. In periods of price freedom in France and Belgium non-traditional booksellers (FNAC, Leclerc) made inroads into the bookselling market at the expense of traditional booksellers (Lafitte in Marseilles, eight bookshops in Ghent). In France’s case, the market share gained by non-traditional outlets during price freedom was increased and consolidated under RPM. Parallels can be drawn with the UK. Supermarkets were involved in the suspension of the NBA (notably Asda), and have developed in bookselling since 1995.

- The effects of EU law. The Leclerc chain was not successful in bringing about a ban on the Loi Lang’s stipulation that imported books should be subject to RPM. What it was successful in changing was that books published in France could be bought from other countries as long as they had not been deliberately re-imported. This change to the law, and regular court cases against the Leclerc chain for breaking the Loi Lang did not bring down RPM in France.


3 Ibid., p. 19.

4 Ibid., p. 19.

5 Ibid., p. 20.

6 Ibid., p. 20.

7 Ibid., p. 20.

8 Ibid., p. 17.

9 Ibid., p. 17.

10 Ibid., p. 17.

11 Fishwick, ref. 1, p. 30.


14 Ibid., p. 6.

16 Ministere de la Culture de la Francophonie, ref. 13, p. 5.

17 The law was modified in 1985 after conflict between it and Article 30 of the Treaty of Rome.

18 Vrij, ref. 15, p. 4.


20 Ibid., p. 323.

21 Charbit, ref. 12, p. 1030.


23 Ibid., p. 393.

24 Court of Justice of the European Communities. Case 355/85. Mr Driancourt, Commissioner of Police, Thouars, carrying out the duties of Public Prosecutor v Michel Cognet. Reports of cases before the Court, 1986, IX, pp. 3231-3243.

25 Ibid., p. 3241.

26 Three further cases of Leclerc chains breaking the Loi Lang were heard in 1986 and 1987. All three cases were attempts to bring down the law by claiming contravention of either Articles 3, 5, 7, 30 and 85. In each case the ECJ rejected appeals, pointing to
decisions reached in the two cases outlined in this section. For further reference they were:


27 Fishwick, ref. 1, p. 35.


29 Ibid., p. 72.

30 Ibid., p. 68.

31 Ibid., p. 74.


35 *Vrij*, ref. 15, p. 6.

36 *Charbit*, ref. 12, p. 1033.

37 *Vrij*, ref. 15, p. 5.

38 The ‘anarchic’ tag for the Belgian book trade is in wide circulation. It is not clear who coined it. *Fishwick* refers to ‘anarchy in pricing’ in 1989’s Economic Implications of the Net Book Agreement (p. 11). *Hughes* refers to ‘the Belgians driving the Dutch booksellers mad’, and ‘the anarchic Belgian market’ in 1992’s ‘European Exclusivity’ (p. 27)

39 The issue of rights has not been touched on in any detail in this thesis. I have deliberately avoided this, as it tends to add confusing, and in my opinion hypothetical arguments which cloud the central debate of RPM. Historically, UK publishers split the publishing rights market into three sections; Commonwealth, North America (including or excluding Canada) and the open market. UK publishers held the exclusive rights to publish, distribute and sell books in the UK and Commonwealth countries - the US publisher having exclusive rights in the USA and dependencies. The EU single market makes the ‘open market’ between the UK and US alarming to UK publishers. US editions imported to the Netherlands (or any other EU State) can legally exported from the Netherlands to the UK without UK publishers or authors being able to prevent it.

40 *Hughes, S.* *European exclusivity - what the Europeans think*, 1992, p. 22.


42 *Commission of the European Communities*, ref. 33, pp. No L 54/36-54/50.
43 Court of Justice of the European Communities, ref. 32.

44 The Dutch 'scale out' system, overseen by the KVB fixes prices by conversion rates for imported books written in English.

45 Charbit, ref. 12, p. 1041.

46 Commission of the European Communities, ref. 33, p. No L 54/52.

47 Commission of the European Communities, ref. 33, p. No L 54/59.

48 Commission of the European Communities, ref. 33, p. No L 54/49.

49 Charbit, ref. 12, p. 1025.

50 Euromonitor, ref. 28, p. 89.

51 Euromonitor, ref. 28, p. 90.

52 Corporate Intelligence on Retailing. Retailing in Europe: Netherlands, 1990, p. 55.

53 Ibid., p. 55.

54 Hughes, ref. 40, p. 28.


56 Euromonitor, ref. 28, p. 96.

57 Euromonitor, ref. 28, p. 96.

58 Euromonitor, ref. 28, p. 98.


Ministère de la Culture de la Francophonie, ref. 13, p. 15.

Euromonitor, ref. 28, p. 57.

Euromonitor, ref. 28, p. 57.

Euromonitor, ref. 28, p. 68.

Heker, ref. 34, p. 201.

Charbit, ref. 12, p. 1029.

Charbit, ref. 12, p. 1030.


See Chapter 1.1.4 for further explanation.

Mertens, ref. 69, p. 216.

Fishwick, ref. 1, pp. 27-36.

Euromonitor, ref. 28, p. 55.
74 Euromonitor, ref. 28, p. 58.

75 Euromonitor, ref. 28, p. 58.
Thesis Conclusions.

This thesis explored factors leading to NBA suspension, and how the trade coped in the 1995-1997 period without the Agreement. A range of contributory factors caused NBA suspension in 1995; book clubs, Dillons, Asda, HodderHeadline and W.H. Smith all played their part in abolition, though none brought the NBA down alone. UK competition law, and the vagaries surrounding new law perhaps gave the NBA a stay of execution in the 1989. An OFT investigation started in 1993 resulted in the exemption granted to the NBA in 1962 being overturned. Application of the NBA was declared illegal by the RTPC in March 1997; EC opposition to the transnational aspects of the Agreement further confused the issue. Various PA appeals against an 1988 EC decision regarding the interstate aspects of the NBA carried on until 1995. The last ten years of the NBA presented a complex set of attributing factors towards suspension.

In Chapter Two five questions were raised. It was the remit of the thesis to answer these questions:

1. Was the 1962 RTPC judgement in 1962 valid?

This thesis rests on the fact that in 1962 the RTPC held the NBA to act in the public interest. Abolition of the NBA would, in the Court's opinion:

deny the public as purchasers, consumers or users of any goods other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction or of any arrangements or operations resulting from them.¹

Books were regarded in this judgement as being unique from other products:

Books are different ... may be accepted as true in two respects: for first, no two literary works are the same or alike in the way in which two oranges or two
eggs may be said to be; and; secondly, the production and marketing of books involve problems that are different from those which arise in connexion with other commodities.  

This judgement remained in place until overturned in March 1997. In hindsight, this decision may be viewed as of its time. The hearing took place two years before law banning RPM per se was introduced (1964 Resale Prices Act); the RTPC accepted evidence which was arguably not relevant or safe (the Canadian experience of RPM abolition); the RTPC held that the NBA was the only mechanism for ensuring a healthy trade and the wider public interest, and that without it the trade would experience detrimental effects:

- fewer and less well equipped stockholding bookshops;
- more expensive books;
- fewer published titles;

Arguably, none of these detrimental effects have been realised since NBA suspension in 1995, which perhaps reaffirms the view that the 1962 verdict was of its time. It is perhaps unfair to castigate the RTPC verdict with the benefit of two years without the NBA. However, the fact that at least one of the ‘tripod’ of predicted detrimental effects has not occurred (fewer and less well equipped bookshops) points to a weakness in those who defended the NBA. As Point iii (below) concludes, the trade changed dramatically between 1962 and 1995. The NBA did not adapt with the trade, and this was unarguably its Achilles’ Heel. Doubt can be cast on the original decision, and the evidence on which it was based. Strong evidence can be produced since suspension to conclude that the RTPC’s justification was seriously flawed, and these flaws were all the more apparent with the PA’s apparent reluctance to adapt the NBA.

**ii. What were the effects of change in UK and EU competition law on the NBA in the 1980s and 1990s?**
New competition law proposed in 1987 to bring UK law into line with EU law was not introduced. White and Green Papers were published reporting the need to overhaul UK competition law. In 1993 the Government announced that new law would not be introduced. After this decision the NBA, for the second time in four years, was subject to an OFT enquiry re-assessing the exemption granted to the Agreement in 1962 and 1968. The NBA was subsequently referred back to the RTPC, and banned in March 1997. If revised competition law had been introduced by 1989 it is possible that the NBA would have been referred to the RTPC, and banned earlier in the 1990s. After suspension of the NBA in 1995 the OFT continued its case to overturn the exemption granted by the RTPC in 1962. It is indicative of the movement against RPM since 1962 that the OFT continued its case against the Agreement to the RTPC after suspension, and was not content to leave the NBA dormant, but still legal. Evidence from chapter seven and chapter eight pointed to the conclusion that the NBA will not be re-adopted by the book trade.

The PA fought its battle to save the NBA on three fronts from 1986:

• from within the trade (HodderHeadline, Pentos, Asda, HarperCollins, Reed, W.H. Smith amongst others);

• from UK competition authorities (MMC 1987, OFT 1989, OFT 1993-1997);


The EC's case against the NBA in the EU dragged on for nine years, through which the Agreement was banned in its 'interstate' capacity by the EC in 1988, suspended after an appeal to the CFI in 1989 and banned by the CFI in 1992. The PA successfully appealed against these decisions to the ECJ in 1995. Defence of the 1988 EC judgement banning the NBA's interstate application as containing errors in law was a small, but significant victory for the PA.
In Chapter Four it was clear that a framework for book RPM within the EU was impractical. Frameworks which were proposed clashed with EU competition law, and law regarding the free movement of goods. Equally, dividing single language areas in the Community along political boundaries was an issue which the EC faced difficulties with. The 1995 ECJ decision clarified this point. It was paradoxical for the EU to create a free market within the Community while partitioning the market along political boundaries. The problem was intractable without granting the book trade a block exemption from EU laws regarding competition and the free movement of goods. A block exemption was not given to the trade.

The PA convinced the OFT in 1989, and the ECJ in 1995, that the NBA was beneficial to the trade and beneficial to the public interest. These two enquiries had no bearing on the long term survival of the NBA. When it was announced that UK competition law was not being revised, the OFT took quick action to ban the NBA under existing legislation. From this evidence, UK competition authorities viewed RPM in 1962 as being undesirable except in specific cases. In 1997 UK competition authorities viewed all RPM agreements as being undesirable *per se*. Under UK law, books were different in 1962. *Books were not different in 1997.*

**iii. What factors in the UK book trade changed over the 1962-95 period to put the NBA under pressure?**

Book clubs were a catalyst for the ending of the NBA. From the MMC enquiry into the BCA - Leisure Circle proposed merger in 1987, and its published findings in 1988, the NBA started on a downward spiral. The reasons for this catalytic effect were clear. Firstly, the MMC enquiry brought the question of the NBA’s exemption from the 1976 Restrictive Trade Practices Act and 1976 Resale Prices Act back to the attention of the OFT.

Secondly, this MMC enquiry brought the NBA question to the attention of one firm in the book trade which found the NBA a hindrance to its marketing strategy. Dillons’ five year campaign against the NBA started after the 1987 MMC enquiry report.
Maher used the MMC conclusions, plus a campaign targeted at the book trade to help force an OFT enquiry into the NBA in 1989.

Book clubs started to exert strain on the BCR in the 1980s, this resulting in the 1985 Book club Concordat, which was designed to ensure fair practice in the sector. The Concordat did not work, primarily because loopholes in the BCR allowed book clubs to operate (with permission from publishers) almost on par with retailers. The actions of one book club, BCA had detrimental effects on the NBA. BCA had in common with Dillons the desire to market books more effectively. Arguments advanced by BCA were similar to Terry Maher's in attacking marketing methods in the book trade. The comparisons ended there.

BCA enjoyed its position, and the growth of its paperback book club QPD because it was exempt from the provisions of the NBA. The book clubs' ability to market books on price as well as service made them supporters of the NBA. Book clubs suffered in the short run from NBA suspension, but had recovered six months after suspension. It was evident from Chapter Seven that booksellers also suffered during the initial few months after suspension, but recovered during 1996.

BCA had a foresight that the NBA was on the wane, and opened 'book club' retail outlets in 1993. This had two effects. First, it created friction within the book retail trade, sections of which accused BCA of stealing customers. Second, this move by BCA toward opening retail outlets brought the question of the NBA back to the attention of the OFT.

Pentos chairman Terry Maher had a vital, but ultimately not crucial role in suspension of the NBA. Dillons did not have the market share to bring down the NBA by themselves. Their campaign was vital to the NBA suspension; it was well devised, well planned and well implemented. Maher was an effective spokesman for critics of the NBA, and his efforts were to help protagonists such as Asda continue his anti-NBA campaign. Maher came close to bringing down the NBA of his own accord -
threats from the PA and W.H.Smith were responsible for stopping publishers going ahead with discounting the 1990 Booker Prize nominees at Dillons.

The PA’s role in defending the NBA put great pressure on the Agreement. The UK book trade underwent a paradigm shift in the 1980s and early 1990s with the growth of chain bookshops, book clubs increasing market share, and latterly supermarkets selling books on a serious basis. The NBA sat uncomfortably with these developments. Price promotion was denied except in special circumstances (i.e. the National Book Sale). Defenders of RPM stated that retailers could promote on services, but the inability to price promote in a modernising trade was an increasing anathema.

The PA’s stance on the NBA was brittle, and no attempt was made to modify the Agreement (perhaps along the lines suggested by Gordon Graham). This reluctance to tailor the NBA to the new order in bookselling, perhaps by the introduction of RRP on bestsellers and fastsellers might ultimately have sealed the Agreement’s end.

The PA was set up in 1896 to monitor and discuss proposals from the AB for the introduction of RPM. The NBA’s end in 1995 put the organisation under some pressure. Money promised by the BA in the defence of the NBA at the RTPC was not forthcoming, even thought the PA had spent money on starting a legal defence of the NBA. The reason for this owed much to the perception that the publishers and PA were responsible for the NBA’s end.

iv. Has evidence gathered since NBA suspension supported with it or disproved the 1962 judgement?

From the evidence presented in Chapters Six and Seven, one of the ‘tripod’ of detrimental effects noted by the RTPC in 1962 was not realised - that without the NBA there would be fewer and less well equipped stockholding bookshops. The UK book trade has not been decimated by the ending of RPM on books. Certainly, if the interviews contained in Chapter Seven are accepted, the trade in summer 1997 was in
good shape. In some cases supermarket chains were exerting pressure on some of the interviewees. This was countered by moving into ‘niche’ products (children’s books, remainders) to compensate for losing out on the MMPB trade. Overall, it was apparent that the trade had changed since 1995, but that these changes were not wholly negative. Certain positive examples of change were noted throughout the interviews:

• Several booksellers increased their customer order business. This was made possible by an efficient wholesaling business and 24 hour delivery - a direct result of NBA suspension;

• Customer loyalty cards were a popular method of price promotion after suspension. These schemes were largely introduced by wholesalers;

• Price promotions were generally saved for Christmas. Few booksellers discounted books throughout the year.

We can safely conclude that in terms of fewer and less well equipped stockholding bookshops the UK bookselling trade was not adversely affected by the ending of the NBA. In terms of the other two legs of the ‘tripod’ there is evidence of more expensive books. If Cranfield research is accepted, book prices rose by 10% in the September 1995 to September 1996 period\(^4\), this in their opinion to give ‘accommodation’ to booksellers losing margin by discounting. This conclusion is countered by the evidence given by booksellers in Chapter Seven, where (as noted above) price promotions were seasonal rather than year-round. No evidence can safely be produced for fewer published titles. 1997 totals will be published in 1998; 1996 totals include books which were commissioned before NBA suspension in September 1995.

Evidence presented in Chapters Six and Seven conclusively disproves at least one of the ‘tripod’ of detrimental effects predicted at the 1962 RTPC. Book prices did rise in the year after suspension. No evidence can be presented for the third leg of the
‘tripod’. The overall picture is clear. The book trade has adapted to the trade without RPM. While the trade is different, negative effects have been limited, and where these have occurred booksellers have adapted. However, NBA suspension and abolition has not provided any real stimulus to the market.

v. Does evidence of RPM suspension parallel experience in other countries which have introduced or removed RPM?

Parallels between the UK experience of book RPM and other European countries were rare. All three Agreements considered were different in scope, method and enforcement.

Three EU countries were considered; France, Belgium and the Netherlands. Of the three, France provided the most complex case - RPM was introduced by statute in 1981. It is the only European country to have introduced RPM on books since the second world war, and the only European country to introduce RPM specifically to protect its book trade. Parallels with the UK experience cannot be made with any safety. The French book trade operated an RRP system until 1979. No records were kept of book price increases in the 1979-1981 period. The reason for RRP abolition in 1979 was excessive discounting, and this has not been experienced in the UK since NBA suspension in 1995. French experience of RPM, from the evidence gathered in Chapter Eight, was broadly positive.

The RPM agreement operated between Belgium and the Netherlands bore few parallels with the NBA. All booksellers and publishers had to be signatory to the Agreement before selling books in either country. This was not the case with British or Irish publishers. The VBBB-VBVB Agreement was extremely restrictive. The system survives in Holland, where we noted in Chapter Eight the ‘scale out’ system for imported books. We also noted that this Agreement is re-examined every five years. As with France, RPM on books in the Netherlands is seen as positive for the book trade. Evidence of RPM abolition in Belgium following the banning of the VBBB-VBVB Agreement in 1984 was inconclusive.
vi. Thesis final summary.

The NBA ended as a result of pressure exerted by publishers, booksellers, supermarkets and competition authorities. It is evident from this thesis that the combination of these factors were finally to end the Agreement. In this thesis, various contributory factors to suspension were examined. In all cases it was difficult to isolate one strand as having more influence than another. In 1995, elements of the UK book trade considered that the NBA no longer was relevant to their trade; RPM was a hindrance to their trade by not allowing price competition. That the NBA was voluntarily suspended gave it little or no chance of defence at the RTPC. It was formally banned at the RTPC, with few dissenting voices, in March 1997.

However, it is equally evident from this thesis that the trade without RPM has not radically altered. Certainly, in terms of structure there is no evidence to show that the independent bookselling trade has been decimated by price competition. The trade, albeit with some change, has carried on much as before. The ending of the NBA has not seen the radical negative changes predicted at the RTPC in 1962, nor so far has it resulted in a buoyant trade. It is, however, in December 1997, early days.

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1 Barker, R. & G. Davies. *Books are different*, 1966, p. 72.
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Appendix I. The Net Book Agreement.

We the undersigned several firms of publishers, being desirous that in so far as we publish books at net prices (as to which each publisher is free to make his own decisions), those net prices shall normally be the prices at which such books are sold to the public as hereinafter defined, and in order to avoid disorganisation in the book trade and to ensure that the public may be informed of and able uniformly to take advantage of the conditions under which net books may be sold at less than the net prices, hereby agree to adopt and each of us does hereby adopt the following standard conditions for the net books published by us within the United Kingdom.

Standard Conditions of the sale of net books.

i. Except as provided in clauses ii to iv hereof and except as we may otherwise direct net books shall not be sold or offered for sale or caused or permitted to be sold or offered for sale at less than the net published prices.

ii. A net book may be sold or offered for sale to the public at less than the established price if:

a) it has been held in stock by the bookseller for a period of more than twelve months from the date of the nearest purchase by him or any copy thereof and

b) it has been offered to the publisher at cost price or at the proposed price whichever shall be lower and such offer has been refused by the publisher.

iii. A net book may be sold or offered for sale to the public at less than the net published price if it is second hand and six months have elapsed since its date of publication.
iv. A net book may be sold at a discount to such libraries, book agents, quantity buyers and institutions as are from time to time authorised by the Council of the Publishers Association of such amount and conditions as are laid down by the instrument of authorisation. Such amount and conditions shall not initially be less than those prevailing at the date of this agreement.

v. For the purpose of this clause (I) hereof a book shall be considered as sold at less than the net published price if the bookseller:

a) offers or gives consideration in cash to any purchaser except under licence from the Council of the Publishers Association or:

b) offers or gives any consideration in kind (e.g. card indexing, stamping, reinforced bindings etc., at less than the actual cost thereof to the bookseller).

vi. For the purposes of this agreement, and of these standard conditions:

Net book shall mean a book, pamphlet, map or other similar printed matter published at net price. Net price and published price shall mean the price fixed from time to time by the publisher below which the net books shall not be sold to the public. Public shall include any company, firm, corporation, club, institution, organisation, association or other body.

vii. The above conditions shall apply to all sales executed in the United Kingdom and the Republic of Ireland whether effected by wholesaler or retailer when the publisher's immediate trade customer, is in the United Kingdom or the Republic of Ireland.

We the undersigned several firms of publishers further agree to appoint and each of us does hereby appoint the Council of the Publishers Association to act as our agent in the collection of information concerning breaches of contract by persons offering for
sale net books, and in keeping each individual publisher informed of breaches in respect of such net books as are published by him and we further undertake and agree that we will enforce our contractual rights and our rights under the Restrictive Trade Practices Act 1956 if called upon to do so by the Council of the Publishers Association if so requested by us in respect of any cost of such action incurred by us or by the Council of the Publishers Association on our behalf.

With immediate effect, and as an interim measure in consequence of a decision of the Court of First Instance of the European Communities dated 9 July 1992, the Standard Conditions of Sale of Net Books are amended to exclude any effects so far as:

1. Booksellers in the Republic of Ireland are concerned;

2. The Standard Conditions of Sale affect sales by a bookseller;

3. The Standard Conditions of Sale have been applied to books published in another Member State of the EEC and imported into the United Kingdom from that or any other Member State;

4. Re-imports of books acquired from a wholesaler in another Member State of the EEC are concerned, unless that wholesaler acquired the books for the sole purpose of supplying them to a trade customer in, or who intended to re-import them into, the United Kingdom and the trade customer acquired the books in order to circumvent resale price maintenance of books in the United Kingdom.

Clause vii of the Standard Conditions of Sale of Net Books is amended to read as follows:

The above conditions apply to all sales executed in the United Kingdom to customers in the United Kingdom whether effected by wholesaler or retailer when the publisher’s immediate trade customer, whether wholesaler or retailer, or the wholesaler’s immediate trade customer is in the United Kingdom provided that, where the wholesaler is in another Member State of the European Economic Community, the conditions shall not apply unless such wholesaler has acquired the books for the sole
purpose of supplying them to a trade customer, or who intended to re-import them into the United Kingdom and that trade customer acquired the books in order to circumvent resale price maintenance of books in the United Kingdom.