

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

I. Conclusions as to the Conditions defined in the Act

132. We are required by paragraph 3 of the reference to investigate and report on whether the conditions to which the Act of 1948 (as amended) applies in fact prevail as respects the supply of wallpaper. Under the Act the conditions are deemed to prevail, as respects the supply of goods of any description, if (*inter alia*) at least one-third of all the goods of that description which are supplied in the United Kingdom are supplied by or to one person or two or more persons who are inter-connected bodies corporate.

133. The following table shows for each of the years 1958 to 1962 the total sales of wallpaper in the United Kingdom by manufacturers and importers, the sales of the W.P.M. Group as manufacturers and the percentage of the total represented by the W.P.M. Group's sales:—

	<i>Total⁽¹⁾ Sales</i>	<i>Sales by⁽²⁾ W.P.M. Group</i>	<i>Percentage sold by W.P.M. Group</i>
	£m.	£m.	
1958	13.9	9.5	68
1959	13.7	9.0	66
1960	18.6	12.2	65
1961	16.2	13.0 ⁽³⁾	80 ⁽³⁾
1962	20.7	16.4	79

(¹) The total sales include estimated figures for sales by importers, based on the value of imports.

(²) The sales figures for the W.P.M. Group include sales to wholesale and retail distributing companies in the Group and exclude the sales of those distributing companies.

(³) Including sales of manufacturers acquired during 1961.

134. It is clear that the W.P.M. Group was responsible for much more than one-third of the total supply of wallpaper in the United Kingdom during the five years in question and we have no reason to suppose that there has been any significant change in the situation since 1962. We conclude therefore that the conditions to which the Act applies prevail as regards the supply of wallpaper in the United Kingdom by reason of the proportion so supplied by the W.P.M. Group.

II. Conclusions as to the "Things" described in Paragraph 4 of the Reference

135. Having found that the conditions to which the Act applies prevail, we are required by paragraph 4 of the reference to investigate whether and to what extent the things set out in sub-paragraphs (a), (b), (c) and (d) of that paragraph are done by the parties concerned—in this case the W.P.M. Group—as a result of, or for the purpose of preserving, those conditions.

136. The "things" set out in paragraph 4 of the reference are described in terms which are capable of covering a wide variety of different practices. We therefore have to consider whether any of the practices of

the W.P.M. Group fall within one or another of these descriptions and, if so, whether they are things done as a result of, or for the purpose of preserving, the conditions. In this connection it is convenient here to consider certain general arguments submitted by the Group as to the meaning to be placed upon the expression "things which are done by the parties concerned . . . for the purpose of preserving those conditions" (Section 6 (1) (a) of the Act of 1948).

137. In the first place the Group argues that if we are to find that anything it does is done for the purpose of preserving the conditions, we must be satisfied that it was done, not merely to preserve or increase the Group's share of the total trade, but specifically to prevent that share from falling below the proportion of one-third. It goes on to say that since the Group's share has not been in danger of falling below one-third at any material time we are not in a position to find that any of its practices are things done for the purpose of preserving the conditions.

138. If this argument were well founded it would, of course, stultify many of our inquiries, since these are rarely concerned with suppliers whose share of the trade only barely exceeds the proportion of one-third which is specified in Section 3 (1) of the Act. We think the Group's argument is misconceived in as much as that Section specifies the minimum proportion ("at least one-third") necessary to establish that the conditions prevail, but under Section 6 (1) we are required to investigate not only whether the conditions prevail but "if so in what manner and to what extent, and . . . the things which are done by the parties concerned . . . for the purpose of preserving those conditions". We are, therefore, unable to accept this argument.

139. The Group's other general arguments concern the meaning of the expression "for the purpose of". It contends that, even if we do not accept the argument referred to in paragraph 137, we must be satisfied that the thing in question is done as a matter of deliberate design and policy for the purpose of preserving the company's share of the trade. Furthermore the Group says that the purpose of preserving its share of the trade must be shown to be the predominant purpose, and not merely one of the purposes, of the action in question. In the case of acquisitions for instance (see (a) below) it is said that it is not sufficient to establish that the Group wanted to maintain or increase its share of the trade, for this might be said of the normal business transactions of practically any supplier at any time; the Commission must be satisfied that there is a deliberate policy of buying up competitors in order to diminish and restrict competition, a policy peculiar to the monopoly position of a monopoly supplier.

140. So far as the question of predominant purpose is concerned we do not think that the use of this phrase by Viscount Simon in the case cited in support of the Group's contention (see paragraph 93) affords us any help. Viscount Simon was there discussing what constitutes an actionable conspiracy; he was not seeking to construe words in an Act of Parliament dealing with an entirely different subject and he certainly did not suggest that the words "for the purpose of" in any context

connoted only the predominant purpose. In our view we need to be satisfied that the evidence as a whole justifies the conclusion that the preservation of the conditions can be regarded as one of the purposes of the action in question, irrespective of whether or not such purpose is the predominant purpose. We do not proceed on the assumption that a supplier's every action is planned from the beginning with a definite purpose, or a number of definite purposes, in mind. But we consider that where certain consequences of a supplier's action are reasonably foreseeable such consequences can legitimately be regarded as having been foreseen, and further that the foreseeable consequences of such action may illuminate the motives and purposes of the action. Reasonable foreseeability that the consequences of such action will tend to preserve the conditions is therefore, in our view, evidence that the action is for the purpose of preserving the conditions.

(a) *Whether and to what extent "interests are acquired in undertakings engaged in the manufacture or supply of wallpaper"*.

141. As we have shown in Chapter 2 the Group has acquired some 28 wallpaper manufacturing undertakings at various dates from 1906 to 1961 while its acquisitions of wallpaper distributing businesses also began about 1906 and have continued up to 1963. On the manufacturing side these include the acquisition of two substantial competitors in 1961. On the distributing side more than half of the retail shops now owned by the Group have been acquired during the past five years whilst the Line organisation and some 50 other merchanting depots were acquired in 1961. We therefore conclude that the acquisition of wallpaper undertakings is a practice of the W.P.M. Group or, in the terms of the reference, that "interests are acquired" by W.P.M. "in undertakings engaged in the manufacture or supply of wallpaper".

142. The Group has told us that "it has tended and may tend to receive offers to purchase such interests which it would not receive but for its preponderance as a manufacturer of wallpaper". It argues, however, that this is no more than to say that the preponderant position was a *causa sine qua non* of the acquisitions which followed such offers and that the offers may have been the result of its preponderant position but the acceptances were not. It suggests that the Commission must be satisfied that the Group accepted the offers as a result of its preponderant position before they can say that the acquisitions were "as a result of" the conditions. The Group asserts that its attitude to offers such as those from shareholders of Smith & Walton and K.L. Holdings would have been the same whether its share of the wallpaper trade was more or less than one-third.

143. In cases where both prospective purchaser and prospective seller are willing to consider the transaction we doubt whether it is always possible to say that the initiative for an acquisition came exclusively from one side; and we have noted that in one case at least (that of Smith & Walton, see paragraphs 39 and 97) the Group, having acquired a minority interest as the result of an offer, subsequently took the initiative by buying further shares in the open market and then by starting the negotiations which resulted in the Group obtaining a majority interest. Assuming, however, that the initiative came entirely from the vendors, we

still could not accept that the acquisitions were not a result of the Group's preponderant position. Offer and acceptance must be regarded as parts of one transaction; and if the offer is a result of the conditions—as we are satisfied was the case at least in regard to most of the acquisitions since 1934—then the acquisition itself is a result of the conditions.

144. We conclude, therefore, that interests are acquired by the Group in undertakings engaged in the manufacture or supply of wallpaper as a result of the conditions which we have found to prevail.

145. On the question whether these interests are also acquired for the purpose of preserving the conditions, the Group has made some particular submissions with regard to the wallpaper businesses it has acquired from 1934 onwards. It says that four of the six wallpaper manufacturing businesses it acquired in 1934 (see paragraphs 29 to 31) were bought in order to get a firmer footing in the then developing trade with retail shops; one of the acquired mills was closed down but the other three were developed as "fighting mills" to compete with the remaining independent manufacturers for the retail trade. The Group says that the two other wallpaper manufacturing businesses acquired in 1934 were of little importance, that since that date it has not taken the initiative in acquiring any wallpaper manufacturing businesses, and that from 1955 onwards it frequently refused offers to buy a business which I.C.I. subsequently thought it worth while to acquire. As regards the acquisitions of 1961—those of Smith & Walton and K. L. Holdings (see paragraphs 34 to 39)—the Group asserts that its dominant purposes were to maintain its position in the paint trade, to protect itself against Smith & Walton's competition in the wallpaper trade in Australia and New Zealand which was damaging its own export trade, and to prevent an old-established and friendly wallpaper manufacturer (Shand Kydd, a subsidiary of K.L. Holdings) from being acquired by a paint manufacturer (I.C.I.) and falling under the dominance of the paint trade.

146. The Group says that merchanting businesses have been acquired partly to strengthen its position in the paint trade, partly to enable it to create what are, in effect, regional depots to provide for the needs of independent wallpaper retailers, and partly (as in the case of Line) as an incidental result of the purchase of a manufacturing business. As regards retailing businesses the Group's aim is to ensure that there are shops retailing its wallpaper and paint in all towns with a substantial population and in this connection it says that its primary purpose is to obtain outlets for its paints.

147. Having regard to the submissions which are summarised in paragraphs 145 and 146 and to its general arguments referred to in paragraphs 137 to 140 the Group contends that it cannot be said that any of the acquisitions were made for the purpose of preserving the conditions.

148. We think it is clear from the statements of the Chairman of W.P.M. in 1934 (see paragraph 29) that the competition of the more important of the manufacturing businesses acquired in that year had been having an adverse effect on W.P.M.'s share of the trade and that they were acquired for this

reason. The Group has laid emphasis on the fact that its share of the trade, after rising sharply in 1935, declined progressively thereafter at least until the early 1950s, but we do not think that this helps to support its arguments in any way. If the Group's history is looked at as a whole it is clear that its share of the market, though always more than one-half, has fluctuated considerably, with peaks occurring at the time of W.P.M.'s formation in 1899, immediately after the 1914-18 war, in 1935 and in 1961/62. The principal manufacturing acquisitions were in 1915, 1934 and 1961. It appears to us that each time that the Group's share of the market has attained a peak this has been followed by a period when new competitors have come into the market and achieved some success with the consequence that the Group's share of the trade has declined. Such periods have in turn been followed by the acquisition by the Group of some of the competing businesses. The fact that the Group has not so far succeeded in maintaining the shares of the trade that it enjoyed immediately after its principal acquisitions is not, in our view, in any way inconsistent with the supposition that an immediate purpose of the acquisitions was to increase its share of the trade. So far as the important purchases of 1961 are concerned, we have seen no documentary evidence (for example in its minutes or correspondence) in support of the Group's assertions as to its purposes. While accepting that the Group had in mind the effect on its paint trade and on its export trade in wallpaper and its desire to prevent Shand Kydd from falling into the hands of I.C.I., we cannot accept that the foreseeable consequences for the Group's share of the home trade in wallpaper of acquiring two important wallpaper manufacturing businesses did not also constitute a substantial purpose of the transactions.

149. The considerations mentioned in the preceding paragraph do not necessarily apply to the Group's acquisitions of merchanting and retailing businesses. We have not found that the Group supplies at least one-third of the total amount of wallpaper supplied at the wholesaling or retailing stages; we are only concerned therefore with the question whether the acquisitions of the distributing businesses are for the purpose of maintaining its share of the manufacturing trade.

150. The significant expansion of the Group's interest in the merchanting trade which began in 1934 seems to have been due to a desire to improve its distributing facilities and particularly to enable it to meet the growing needs of retail shops for supply in stock lots (the starred way trade). Most of the existing merchants were not interested in this trade, possibly because the mark-up was smaller in the starred way trade and prices were not maintained, and we think that W.P.M. had to choose between setting up a series of regional depots of its own to trade in competition with existing merchants (who were already tied to the Group by exclusive dealing), and acquiring a number of those merchants to carry out its policy. In general W.P.M. chose the latter alternative. We have been told moreover (see paragraph 102) that prior to 1961 all the wallpaper merchanting businesses which were acquired already dealt exclusively in W.P.M. wallpapers so that their acquisition had no effect upon the number of outlets which were open to the independent manufacturers.

In general independent manufacturers seem to have experienced little difficulty in finding outlets for their small production (see paragraphs 80 and 83). The acquisition in 1961 of the Smith & Walton manufacturing business carried with it the acquisition of the Smith & Walton merchanting business also, but since this merchanting business dealt exclusively in Smith & Walton's products, the transaction did not affect the merchanting outlets open to other manufacturers. In these circumstances we think that the acquisition of merchanting businesses was not a thing done for the purpose of maintaining or increasing the Group's share of the trade at the manufacturing stage.

151. The Group's motives in acquiring retail shops seem, however, to go beyond the desire to improve the efficiency of its distributing organisation. These shops appear to have been acquired in order to provide it with additional retail outlets for its own products to the exclusion of those of other manufacturers. Until recently these shops were restricted to handling the Group's products and, although they are now permitted to deal in wallpaper made by other United Kingdom manufacturers, there can be no doubt that they are primarily a means of stimulating demand for the Group's own products and thereby maintaining or increasing its share of the trade at the manufacturing stage.

152. We conclude, therefore, that the acquisition of wallpaper manufacturing interests and the acquisition of wallpaper retailing interests are things done by the Group for the purpose of preserving the conditions, but the acquisition of merchanting interests is not a thing done for that purpose.

(b) Whether and to what extent "agreements or arrangements are made under which restrictions as respects the supply or acquisition of wallpaper are imposed upon or are accepted by persons carrying on the business of supplying wallpaper".

153. Until 1961 distributors could not buy wallpaper from the Group at a discount off mill price unless they undertook to buy and sell on an exclusive basis (see paragraphs 52 to 54). In May 1961 the Group decided in principle to abandon this practice and we have described in paragraphs 55 to 64 the steps that have subsequently been taken towards implementing this change of policy.

154. The Group concedes that the exclusive trading arrangements it operated until December 1961 are covered by the description in sub-paragraph (b) of paragraph 4 of the reference. It claims that it has not had any such exclusive arrangements since that date, except in Northern Ireland until June 1962. It submits that since no such arrangements are now in operation we cannot find that the making of exclusive arrangements is a thing done for the purposes of the Act and of our reference. It has not, therefore, submitted arguments on the question whether this particular practice can be found to be a thing done as a result of, or for the purpose of preserving, the conditions, though we assume that its general arguments, dealt with in paragraphs 137 to 140, would apply in this case.

155. The arrangements operated until December 1961 clearly fall within the description in sub-paragraph 4(b) of the reference. The practice was

in operation in September 1961, when our reference was made, and for some time thereafter. We have been assured that the practice has since been abandoned. We have no doubt that the exclusive arrangements formerly operated were intended to maintain the Group's hold on the market by depriving its manufacturing competitors of access to the distributive outlets concerned and that they had this effect. The question to be resolved, therefore, is whether we are entitled to find that a practice which was in operation when our reference was made can be a "thing done" even though it may since have been abandoned.

156. Put briefly, the Group's case on this point is that the Commission are required to report on "the things which are done" by the parties concerned and whether such things "operate or may be expected to operate" against the public interest (Section 6(1)); it would be not only wrong but also absurd, it says, to consider whether something which is no longer done "operates" (at the present time) or "may be expected to operate" (in the future) against the public interest, and we are not required to consider whether it used to operate against the public interest.

157. We cannot accept this interpretation of the Act. Where it appears to the Board of Trade that it is or may be the fact that conditions to which the Act applies prevail they may, if they think fit, refer the matter to us for investigation and report (Section 2(1)). The Board have discretion, which they exercised when making the present reference, to confine the investigation, so far as the public interest is concerned, to specified things done by the parties concerned (Section 6(2)). We take the view, therefore, that if such a thing is done at the time when the Board make the reference we are required to report upon it, both as to the facts and as to the public interest. Our investigations cannot, however, in the nature of things be instantaneous, and we must take into account also any modifications of the practice—including, where appropriate, its complete abandonment—during the period of inquiry. We do not think that the language of the Act in Section 6(1) is inconsistent with this interpretation; the question whether a thing "may be expected to operate" against the public interest is not in our view necessarily confined to cases where existing practices are intended to be continued but extends to those where practices discontinued since the date of the reference may be resumed.

158. We conclude, therefore, that the making of exclusive arrangements with distributors was at the date of our reference a thing done by the Group for the purpose of preserving the conditions.

159. Another practice which falls to be considered under head (b) is the making of arrangements with distributors for maintaining the resale prices of pattern book ways. The Group concedes that these, too, are arrangements of the kind described under that head but says that their purposes have nothing to do with preserving the conditions. This is, it says, an ordinary commercial practice, unrelated to any monopoly situation (see paragraph 139); it is adopted by the Group as a necessary protection for the pattern book merchant against price-cutting by competitors and also to protect both the merchant and the public from the demand on the part of decorators for a higher margin (see paragraphs 126 and 127).

160. We think that what is in the interest of merchants is also in the interest of the Group, in as much as the ability of the Group to sell its wallpapers through decorators depends upon the willingness of the merchants to provide an efficient wholesaling link between the Group and the decorators. It does not follow, *ipso facto*, that maintaining resale prices is something done by the Group to preserve its dominant position since—as the Group points out—it is a very common practice adopted by many non-monopolist suppliers. In the present case, however, we think it significant that the practice is operated only in respect of pattern book ways, which account for about half of the home wallpaper sales of the Group's mills. Although nearly one-third of these pattern book ways are now sold through retail shops, they are still principally sold through pattern book merchants who resell in room lots to decorators, and it is for this reason that their prices are maintained. The Group's pattern book ways are the only wallpapers that are price-maintained and if, as we think, the Group is right in asserting that this is a strong inducement to the pattern book merchant to stock and sell them, it follows that the practice of resale price maintenance tends to preserve the Group's near monopoly in this section of the trade. The Group contends that it cannot be held responsible for the fact that other manufacturers do not maintain the prices of their wallpapers. It appears to us that in practice other manufacturers have very little choice in the matter. The Group is the only manufacturer whose scale of production is such that it can set aside certain patterns for sale primarily through decorators. The small manufacturer who wishes to sell some of his patterns through decorators can hardly maintain his prices if, as is the case, he also wishes to sell the same patterns through retail shops in competition with the Group's starred ways which are not price-maintained. We think that it must be apparent to the Group that its policy of maintaining resale prices of pattern book ways while offering an alternative line of wallpapers which are not price-maintained would have this effect, and that it maintains the prices of pattern book ways with a view, *inter alia*, to preserving its near monopoly in the trade through decorators.

161. We conclude, therefore, that the making of arrangements with distributors for maintaining the resale prices of pattern book ways is a thing done by the Group for the purpose of preserving the conditions.

162. There is one other arrangement calling for consideration under head (b). The Group has from time to time refused to supply wallpaper direct to certain retailers (see paragraph 77). We consider most of these cases under head (d) below, but in one case the Group has told us that it is now selling wallpaper to the company concerned on condition that it does not resell through certain of its outlets. This clearly would be a restrictive arrangement of the kind described under head (b) but we are satisfied that the practice is due to the desire of the Group—in common with many other manufacturers—to discourage the sale of its products in conditions which it considers unsuitable. We conclude, therefore, that this is not a thing done by the Group as a result of, or for the purpose of preserving, the conditions.

(c) Whether and to what extent "premises are acquired or used or permitted to be used for the purpose of there being carried on thereon the business of supplying wallpaper".

163. Since 1906 it has been the practice of the Group to acquire premises and to use them or permit them to be used for the purpose of carrying on the wholesale and retail distribution of wallpaper (see paragraphs 46 and 49). We do not think that the acquisition of premises, as distinct from the acquisition of existing wallpaper businesses, can be said to be a result of the conditions, and for reasons similar to those given in paragraphs 150 to 152 we do not regard the acquisition and use of premises for the carrying on of wallpaper merchandising businesses as being for the purpose of maintaining the Group's share of the trade at the manufacturing stage, but we do consider that the acquisition and use of premises for wallpaper retailing are for that purpose. We conclude, therefore, that "premises are acquired or used or permitted to be used for the purpose of there being carried on thereon the business of supplying wallpaper" and that this is a thing done for the purpose of preserving the conditions.

(d) Whether and to what extent "action is taken or threatened which is calculated or likely to have the effect of

- (i) preventing or restricting the supply of wallpaper to or its acquisition by any person carrying on the business of supplying wallpaper,*
- (ii) preventing or restricting such supply or acquisition at normal trade prices or on normal trade terms, or*
- (iii) otherwise penalising any such person in the carrying on of such business".*

164. We record in paragraph 88 some criticisms of the practice of restricting the distribution of Palladio Mondo and Sanderson wallpapers. This practice is covered by the description above but in the light of the Group's explanations (see paragraphs 72 to 76) we do not consider that this is done as a result of, or for the purpose of preserving, the conditions. We have also recorded in paragraph 77 some cases where the Group has in recent years refused to supply wallpaper direct to certain distributors. We have dealt in paragraph 162 with one of these cases. Of the other cases mentioned, one was a company which was not "carrying on the business of supplying wallpaper", and a number were refused for purely commercial reasons. The rest were cases, before the date of our reference, where the distributor wanted to buy direct from the Group at a discount off mill price but was unwilling to observe the exclusive condition which then applied. At this date it is not entirely clear whether the Group actually refused to supply or simply refused to allow any discount, but in any event these cases do not raise any issue that we have not already dealt with. The terms of sub-paragraph (d) of paragraph 4 of our reference are very wide, but we conclude that there is nothing done by the Group as a result of, or for the purpose of preserving, the conditions that is covered by this sub-paragraph other than what has already been dealt with under the other sub-paragraphs.

III. Conclusions on the Public Interest

165. Our terms of reference do not require us to consider whether the conditions which we have found to prevail—the position of the W.P.M. Group as a supplier responsible for more than one-third (in fact about 80 per cent.) of the total home trade in wallpaper at the manufacturing stage—operate, or may be expected to operate, against the public interest. Our only concern is with the effect on the public interest of those things which we have found to fall under one or other of the headings in paragraph 4 of the reference and to be done by the Group as a result of, or for the purpose of preserving, the conditions. The practices in question are:—

- (i) the acquisition of interests in undertakings engaged in the manufacture or supply of wallpaper and the acquisition of premises for use in the retail distribution of wallpaper (paragraphs 144, 152 and 163);
- (ii) the making of exclusive agreements or arrangements with distributors of wallpaper, as practised at the beginning of our inquiry (paragraph 158);
- (iii) the making of arrangements with distributors for maintaining the prices of pattern book ways on resale (paragraph 161).

(i) *Acquisition of Wallpaper Businesses and Premises*

166. The Group's arguments in relation to its manufacturing acquisitions fall under two heads. In the first place it asserts that, though by acquiring manufacturing businesses it may temporarily reduce the aggregate volume of wallpaper trade in the hands of competitors, it nevertheless remains exposed to vigorous competition in price and quality, not only from wallpaper manufacturers in the United Kingdom (whose sales are said to be increasing at the present time and some of whom have announced plans for extending their plant) but also from foreign wallpaper manufacturers and from the paint industry. In this connection, too, it makes the subsidiary point that for most practical purposes Shand Kydd remains an independent competitor of the rest of the Group. Secondly the Group argues that its own organisation is free from the defects most commonly attributed to monopolies (see paragraph 115), which cannot therefore be advanced as grounds for disapproving of any extension of its interests.

167. The Group appears to us to overstate the effectiveness of the competition to which it is exposed. Competition from paint, no doubt, has some ultimate restraining effect upon the price of wallpaper; but for the ordinary householder any price comparison is blurred by differences in the costs of applying paint and wallpaper (or, if he contemplates doing the job himself, by differences in the time and skills required). Most of the foreign wallpaper imported into this country (in 1962 only about 5 per cent. of the total supply) has to bear a customs duty of 20 per cent.; it can attract some demand as a matter of fashion so long as its price is not substantially higher than that of the home product, but we think that such restraining influence as it exercises upon the home price is of very limited effect. There remains the competition provided by nearly a dozen United Kingdom wallpaper manufacturers. It is an inescapable

fact that each manufacturing acquisition by the Group reduces the volume of this competition, for the time being at least; and in 1962 these independent manufacturers shared between them some 16 per cent. of the market. Their competition is probably most effective at the cheaper end of the trade where it may have some influence upon the quality and prices of the Group's products, but the Group itself has said that it is the price leader in the industry and in general we think that it is in a position in which it can price its products without being seriously influenced by what its competitors are doing. There is, of course, a new factor in the situation, namely the recent entry of I.C.I. into the wallpaper manufacturing field. I.C.I. is potentially a formidable competitor, but it remains to be seen whether it will develop its wallpaper interests on a scale in any way comparable with those of the Group.

168. So far as the special position of Shand Kydd is concerned, we note three points which appear to us to be relevant. First, the Shand Kydd mill now observes the central pricing procedure which applies to all the other mills of the Group. Secondly, but for the acquisition Shand Kydd might have ceased to co-operate with the Group and become an outright competitor. Thirdly, if those who at present control a majority of the seats on the board of its parent company (K.L. Holdings) should relax their active interest in the business, it seems unlikely that control could pass to anyone other than the Group, which holds a majority of the equity shares and has an option to purchase the remainder should the present owners wish to sell them while the Group retains its holding of "B" shares.

169. It appears to us accordingly that the Group's manufacturing acquisitions over the years have helped materially to maintain its command over the wallpaper market and have severely limited the effectiveness of the competition it encounters. We take the view that such a course of action is against the public interest unless it can be shown that the monopoly position so established and maintained is used to the public benefit, for example in promoting efficiency and so reducing costs and prices. We have not found the Group's arguments on this subject convincing. Its twelve mills are said to compete with one another in design, new ideas and service and, subject to central control, in price but nevertheless to enjoy most of the advantages to be expected in an organisation of its size (see paragraph 104). We do not regard limited internal competition of this kind as a substitute for external competition. We have found no evidence of effective price competition between mills and can see no ground for believing that in this particular case internal competition has produced substantial benefits. We note that the Group applies certain measures of rationalisation, for example bulk purchasing of materials, and we think it has probably enjoyed certain advantages of scale, but we are not satisfied that significant benefits to the public have thereby been provided. In a trade such as the wallpaper trade there seem to be narrow limits to the advantages of scale, as is shown by the ease with which relatively small manufacturers have established themselves on a competitive basis (whereafter they have tended to be acquired by the Group). Having regard to the terms of our reference, we have not thought

it appropriate to investigate the Group's costs and profits or to verify the figures which the Group itself has submitted (see paragraphs 108 to 110). The Group claims that these figures indicate that it has not exploited its monopoly position by taking an outstandingly high rate of profit. However this may be, the figures seem to us to provide no indication that costs and prices to the public would not have been lower if competition had not been restricted by the Group's own actions. All of these considerations lead us to the conclusion that the Group's acquisitions of wallpaper manufacturing businesses have not been shown to result in any such advantages to the public interest as might outweigh the disadvantages inherent in the suppression of competition.

170. The considerations in relation to the Group's acquisitions of merchanting and retail businesses and retail premises are very different. We do not take the view that a manufacturer should not participate in the wholesale or retail trades. It might be another matter if this were a case of a monopolist manufacturer obtaining a monopoly in the distributing sections of his trade as well; but the Group appears to control less than one-third of the merchanting and of the retail trade in wallpaper and we see no reason for supposing that other wallpaper manufacturers experience any difficulty in distributing their products because the Group controls a minority of the merchanting and retail businesses in the country. In these circumstances we do not find it necessary to deal with the Group's arguments in detail.

171. We conclude, therefore, that the acquisition by the Group of interests in undertakings engaged in the manufacture of wallpaper operates and may be expected to operate against the public interest, but the acquisition of interests in undertakings engaged in the wholesale and retail distribution of wallpaper and the acquisition of retail premises do not so operate and may not be expected to do so.

(ii) *Exclusive Dealing Arrangements*

172. We are concerned here with a practice which was being operated when our reference was made but which, we have been assured, has now been abandoned and, so far as the Group can foresee, will not be resumed. In effect, we are called upon to consider whether the practice was operating against the public interest until it was abandoned and whether it may be expected to operate against the public interest should it ever be revived.

173. The Group says that it abandoned its exclusive arrangements for commercial reasons and that we must not take this change of policy as an indication that, in its view, these arrangements were against the public interest. Apart from this it has submitted no arguments on this aspect of the practice, having regard to its contention that we are not entitled to find that it is a "thing done" for the purposes of our reference (see paragraphs 154 to 158).

174. In the wallpaper industry the effect of exclusive dealing was that a great majority of the merchants and of the large retailers of wallpaper undertook not to handle any wallpapers other than the Group's products (subject to exceptions for Shand Kydd before it became part of the Group and, recently,

for room lots of imported wallpapers). In practice the distributive trade was sharply divided between "combine" and "non-combine", the former class being by far the more important. We do not think that this system either promoted efficiency in distribution or stimulated competition. It is difficult to believe that it led to any overall economy in distribution. One effect may well have been to increase the number of distributors handling wallpaper, since independent manufacturers inevitably had to seek new outlets. Moreover, the independent manufacturers in order to obtain outlets were obliged to give higher margins than were obtainable from the Group; and we think it probable that this tendency was strengthened by the artificial and unequal division of the market between "combine" and "non-combine" distributors. The effect of the system on the independent manufacturers was to set a severe limit on their opportunity to compete "value for value, price for price and service for service" (see paragraph 83). Exclusive trading, if practised by a supplier with so large a share of the market as that enjoyed by the Group, is calculated to consolidate and perpetuate his dominant position. We think that the Group's exclusive arrangements had this effect in the sense that they helped to retard that decline in its share of the trade which appears to have been a feature of its history in the absence of new acquisitions (see paragraph 148).

175. We conclude, therefore, that the Group's practice, up to and beyond the date of our reference, of making exclusive arrangements with distributors operated against the public interest. So far as the future is concerned we note the Group's assurance as to the discontinuance of the practice; should it ever be revived in a situation where the Group had a dominant share of the market we consider that it might be expected to operate against the public interest.

(iii) *Arrangements for Resale Price Maintenance of Pattern Book Ways*

176. The arguments on the public interest in relation to this practice are very closely allied to those we have already discussed when determining that the practice is a thing done for the purpose of preserving the conditions (see paragraphs 159 to 161). The Group says that it is in the public interest to preserve a method of distribution—that through pattern book merchants and decorators—of which a section of the public still wants to avail itself. It asserts that without resale price maintenance the pattern book merchants would be unable to meet the heavy cost of producing their pattern books and would have difficulty in resisting the demand from decorators for higher margins, and that the probable consequences would be an increase in price (which might well extend to those wallpapers which are not price-maintained), a lower standard of service and a decline in the trade in the better class of wallpapers; and this might lead to the termination of the pattern book system of distribution through decorators. For these reasons pattern book merchants, the Group says, may tend to confine their purchases to the products of the only manufacturer who maintains prices, but the remedy for this situation is in the hands of the other manufacturers who could themselves adopt the same system.

177. The advantages and disadvantages to the public interest of resale price maintenance as a practice common to many trades are frequently a matter of public discussion and dispute. We confine ourselves to the question

whether, as practised by the monopoly supplier in the circumstances of this particular trade it operates against the public interest. We have already found that the practice is operated to preserve the Group's near monopoly in the trade with decorators. As we have indicated in paragraph 160, we do not agree that the remedy is in the hands of the Group's competitors ; we think that the practice actually does preserve that near monopoly and we cannot regard it as desirable unless it can be shown to bring some positive advantage to the public interest. We find it difficult to agree with the Group that the preservation of this method of trading, which it agrees is tending to decline, is necessarily beneficial. The Group itself is not satisfied that decorators perform a service commensurate with the margin they are allowed. This margin must ultimately be paid for by the public. If a part of the public wishes to use the services of decorators in purchasing wall-paper we see no reason why it should not continue to do so, but we doubt whether the public interest is best served by a practice intended to support and preserve this method of trading.

178. As in other trades, the consequences of abandoning resale price maintenance are not entirely predictable. In general the retail price of wallpaper is about two and a half times the manufacturer's net selling price, or in other words the total distributive margin accounts for about 60 per cent. of the price paid by the public (exclusive of Purchase Tax). We recognise that this is a trade in which there are some unavoidably high distributive costs for which the public must expect to pay ; these include the costs of providing the public with facilities for inspecting a range of patterns, of a relatively high rate of wastage and damage and of a high incidence of losses on stock due to the element of fashion in the trade. We are not in a position to say whether or not the margins actually allowed to, or taken by, distributors are reasonable in relation to their costs but, having regard to the very high level of margins as compared with most other trades, we consider that this is a trade in which any practice tending to remove or ease the pressure of competition upon retail prices is, *prima facie*, undesirable. We should, therefore, need to be convinced that abandonment of the practice would result in some obvious overriding disadvantage before we could conclude that the practice was not against the public interest.

179. According to the Group there would be a very real possibility of gross inflation of margins and deterioration in service and in the provision of the better class of wallpapers if the resale price maintenance of pattern book ways were abandoned. We can attach no importance in this connection to what is said to have happened in the United States, since conditions there are entirely different. Nor do we think that the Group's case is assisted by comparing the wallpaper trade with the book trade ; the two trades differ widely in structure and in the latter there is very fierce competition between a large number of suppliers none of whom predominates. The sale of wallpaper through decorators is, as we have said, a declining section of the trade. The alternative method of buying wallpaper through retail shops is growing in importance and, indeed, about one-fifth of their sales consists of the Group's pattern book ways which are price-maintained. The facilities in these shops for the public to inspect a wide range of patterns are constantly improving. We do not see why there should be any danger of a decline in the provision of the better class of wallpapers. Experience

of trading without resale price maintenance might well lead to some reorganisation of the distributive trade, but we see no reason why this should have an adverse effect on the public interest. So far as prices are concerned merchants, retailers and decorators would be free to determine their own selling prices for all the wallpapers they handled. There seems no reason to expect that the already wide margins would tend, in these circumstances, to widen still further. Since the decorator normally resells wallpaper to the public as part of a transaction in which he also charges for work done, the pressure of competition might not be fully effective at this point; but in as much as merchants and retailers would be trading in the knowledge that their competitors might undercut their prices we think this should have a wholesome effect upon efficiency and costs in the distributive trade, and ultimately upon the retail prices not only of pattern book ways but of all wallpaper.

180. Thus our judgment as to the effect of resale price maintenance in the wallpaper trade is considerably influenced by the facts that it is practised by the monopoly supplier and by no other supplier, that it is applied only to one-half of the monopoly supplier's products with a view to supporting a particular method of trading, and that some of the goods to which it is applied are nevertheless supplied through other channels where they exercise an influence on the price structure.

181. We conclude, therefore, that the Group's practice of maintaining the resale prices of pattern book ways operates and may be expected to operate against the public interest.

IV. Summary of Conclusions : Recommendations

182. We have concluded that the conditions to which the Act applies prevail as regards the supply of wallpaper in the United Kingdom by reason of the proportion so supplied by the W.P.M. Group (paragraph 134). We have summarised in paragraph 165 our conclusions as to the things that fall under one or another of the headings in paragraph 4 of our reference and that are done by the Group as a result of, or for the purpose of preserving, the conditions. As to the effects upon the public interest of these things done by the Group we have concluded that :—

- (i) the acquisition of interests in undertakings engaged in the manufacture of wallpaper operates and may be expected to operate against the public interest (paragraph 171);
- (ii) the practice, up to and beyond the date of our reference, of making exclusive arrangements with distributors operated against the public interest and might be expected so to operate should it ever be revived in a situation where the Group had a dominant share of the market (paragraph 175);
- (iii) the practice of maintaining the resale prices of pattern book ways operates and may be expected to operate against the public interest (paragraph 181);

- (iv) the acquisition of interests in undertakings engaged in the wholesale and retail distribution of wallpaper and the acquisition of premises for use in the Group's retail distribution do not operate against the public interest and may not be expected to do so (paragraphs 170 and 171).

183. We therefore recommend :—

- (1) that the Group should not in future acquire interests in undertakings engaged in the manufacture of wallpaper without obtaining the consent of the Board of Trade ;
- (2) that the Group should not revive the practice of exclusive trading in its supply of wallpaper without the like consent ;
- (3) that the Group should terminate its existing resale price maintenance arrangements in relation to its sales of wallpaper and should not enter into any such arrangements in future so long as it continues to supply at least one-third of the total United Kingdom supply of wallpaper.

R. F. LEVY (*Chairman*)

T. BARNA

BRIAN DAVIDSON

L. T. M. GRAY

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A. S. GILBERT (*Secretary*)

12th December, 1963