

CHAPTER 5

Conclusions and Recommendations

I. The Conditions of the Act

89. We are required to report whether the conditions to which the Act of 1948 (as amended) applies in fact prevail as respects the supply of household detergents in the United Kingdom. Under section 3 of the Act the conditions are deemed to prevail as respects the supply of goods of any description if at least one-third of all the goods of that description which are supplied in the United Kingdom are supplied by or to (a) one person or two or more inter-connected bodies corporate, or (b) two or more persons who (other than by an agreement which is required to be registered with the Registrar of Restrictive Trading Agreements) so conduct their respective affairs as in any way to prevent or restrict competition in connection with the production or supply of any of the goods.

90. Sales of household detergents in the United Kingdom by manufacturers in 1962 and 1964 may be summarised as follows:

	1962		1964	
	£'000	Tons '000	£'000	Tons '000
Unilever.. .. .	29,492 (46%)	200 (50%)	30,377 (44%)	195 (45%)
P&G	28,244 (45%)	164 (41%)	32,240 (46%)	183 (43%)
Others	5,475	38	7,086	50
Total	<u>63,211</u>	<u>402</u>	<u>69,703</u>	<u>428</u>

There is no reason to believe that the market shares have changed since 1964 to such an extent as would be significant for our present purpose.

91. We conclude therefore that the conditions to which the Act applies prevail because more than one-third of all the household detergents supplied in the United Kingdom is supplied by (i) Unilever and (ii) P&G.

II. The Public Interest

92. Thus the public interest issues are concerned with the shares of the household detergents market enjoyed by Unilever and by P&G and with the things done by each of them as a result of or to preserve their respective positions. Although we have to reach conclusions about each of the companies individually it is obvious that, from the point of view of either of them, one of the most important facts in this market is the existence of the other; and our judgment upon the public interest clearly cannot be formed by considering either 'monopoly' in isolation.

93. In practice we have found that the central interest of this inquiry has been in the methods by which the two companies compete with one another. Competition between them in advertising and sales promotion is not only one of the most striking features of the industry from the point of view of the public; it is also an extremely important element in their costs. But the issue arising from their policies in this respect is linked with others. Advertising and promotional expenditure is one, but only one, of the factors which contribute to the determination of the prices paid by the public. We have to consider what part is played by profits in this context, whether efficiency is sharpened by the methods of competition which are employed (including competition in promotion) and, if so, whether the benefits of such higher efficiency are shared with the consumer. In this connection, too, we must ask ourselves whether the character of the competition between Unilever and P&G, who at present have between them some 90 per cent of the household detergents market, is such as to deter other suppliers and potential suppliers from competing effectively and, if so, whether this is desirable. All of these linked issues might, no doubt, be brought together under the question whether the pricing policies of the two companies are against the public interest; but their policies in relation to advertising and promotion are of such importance in themselves as to merit separate preliminary consideration.

Advertising and sales promotion policies

94. The main criticisms of the policies of the two leading suppliers are:

1. that their advertising matter is more concerned with emphasising unprovable qualities and building up a 'brand image' than with informing the public about the practical attributes of the product and how the best use can be made of it;
2. that their promotional activities encourage the consumer to buy particular products for the sake of benefits (gifts, prizes) which have nothing to do with the products themselves;
3. that the effect of emphasising the brand image is particularly uneconomic when it leads a manufacturer to market two very similar products under different brand names;
4. that this emphasis also leads the manufacturers to undertake wasteful expenditure on launching new products or changing the formulation of existing products for the sake of 'improvements' which are of little or no intrinsic value to the user;
5. that because competition between the two companies is concentrated on advertising and promotion, the expenditure of both of them in this field is unduly high;
6. that, as a result, not only does the public have to pay for costs from which it obtains no benefit but also, at least as regards powders, newcomers to the industry are deterred by the high cost of entry.

Broadly speaking, criticisms 1 to 4 may be said to concentrate on the character of the manufacturers' advertising and promotion, while criticisms 5 and 6 relate to the level of their expenditure. There is, of course, a connection between these two general lines of attack but it is convenient to discuss the criticisms and the manufacturers' counter-arguments under these two main heads.

95. The manufacturers' arguments in defence of the kind of advertising and promotional methods they use may be summarised as follows:

- (a) Clear instructions on how to use the products are in fact printed on the containers; but it is not practicable to give more advice than is already given on how a product will respond to varying degrees of hardness in the water or on such matters as the effect of detergents containing fluorescers on certain fabrics (which is a problem for the fabric maker rather than the detergent manufacturer). The purpose of advertising and promotion must in any case be much wider than this, for the public must continually be persuaded to try and to re-try the product. The methods which have to be used by mass producers to communicate with their customers for this purpose should not be judged by the standards of taste of a minority of the public. The building up of the 'brand image' is an essential part of the operation of persuading the customer to test the manufacturer's claims by buying the product. These claims are essentially factual, though expressed in simple, often colloquial, terms; meaningless or false claims would only defeat the manufacturer's purpose, which is to develop a well-founded belief in the brand.
- (b) Promotional schemes involving gifts and prizes are among the most economical methods of creating interest in the brand. They provide an extra incentive to buy the brand; customers like them; and against the cost of providing them should be set not only the promotional effect so far as the manufacturer is concerned but also a real additional benefit gained by the customer. Unilever adds that the minority of customers who dislike such schemes have the option of buying one of its 'Square Deal' brands.
- (c) No one brand image can cover all requirements. Two brands made by the one manufacturer may, on occasion, be fairly similar in composition but they appeal to different sections of the market (geographically, socially etc. or simply as a matter of personal preference) and if one were withdrawn the custom would not automatically be transferred to the other. The extra manufacturing cost of marketing two similar brands instead of one is small; in effect, the choice available is as wide as the customer is prepared to pay for.
- (d) The manufacturer can only stay in business by finding out what the customer wants and then providing it. If, on occasion, what the customer wants appears to the manufacturer to have little or no value for washing purposes (e.g. the blue tint of some powders) the cost of providing it is negligible. In general what the customer has wanted has been detergents of increasingly improved performance, and those now on the market are, in fact, demonstrably more efficient than those that were being sold ten years ago.

96. We are concerned here with the character of the advertising and promotion in this industry insofar as it may be relevant to questions of efficiency. Can it be said that any of the methods actually used are wasteful, in the sense that they represent expenditure (for which the customer ultimately pays) which could be eliminated without any compensating increase in other costs? The manufacturers' answer to this question is 'No'. They say that every promotion they undertake is designed to maintain or increase the market share of the brand concerned; that the ability to get the maximum result for the minimum expenditure is one of the skills that have been sharpened by competition between them; and that if they did not use their skills in this way they would not be in a

position to give the public the benefits of cost-saving by mass-production and by eliminating the need for sales promotion by retailers (see paragraph 100). While we accept that some expenditure on promotion may result in cost-saving elsewhere, we do not think it follows that the balance between promotion and cost-saving achieved in this industry by two manufacturers of roughly equal strength competing with each other is necessarily the ideal one. The situation that exists in this industry does appear to us to have led to the use of forms of promotion which may gain a temporary market advantage over the competitor but are less successful in creating a permanent demand for the brand. We are told, indeed, that it is because brand loyalty is relatively weak that reiteration of claims and frequent promotion campaigns are necessary.

97. We recognise and welcome the improvements made by the two companies in the informative quality of their labelling and hope that they will continue to give this matter their attention. We do not think that there is undue multiplication of brands of household detergents, that in general the instructions given on their use are inadequate or misleading, or that there is a great deal of wasteful effort to produce qualities and characteristics which have no intrinsic merit. We think, however, that claims which might appeal to the more discriminating user give way to those which are believed to be of more general appeal; and in spite of the insistence of both Unilever and P&G that quality and product improvement are the first requirements for competitive success they seem ultimately to assume that the housewife will be moved to prefer one brand to another less by superior washing power than by the competing attraction of plastic daffodils as compared with whatever concomitant 'gift' may be offered with another brand. Promotions which operate by attracting custom for the time being to a particular brand of detergent by offering some quite different article—whether accompanying the detergent as a 'free' gift or obtainable at a special low price as a result of buying the detergent—seem to us open to objection because they distract the customer's attention from the merits or demerits of the detergent.

98. As to the level of advertising and promotion expenditure, the main arguments of Unilever and P&G may be expressed briefly as follows:

- (a) The use of mass media of communication, supported by promotion schemes which create interest and excitement, is essential to enable the detergents manufacturer to establish and, by constant repetition, maintain that contact with the customer without which he cannot sustain a high level of demand for his product. By these means he puts himself in a position where he can (i) achieve economies of scale in production and distribution and (ii) keep the retailer's margin at a low level; and the substantial outlay on advertising and promotion which is necessary for these purposes sharpens his cost consciousness in other fields. Generally speaking, the level of advertising and promotion expenditure is higher where there are more competitors in the market; while therefore it may be true that this expenditure is higher in conditions of competition between two suppliers than it would be if there were a single monopoly (which would, however, be less cost-conscious in other respects) it is lower than it would be if there were more competitors. The existence of potential competitors (see (b) below) in any event sets a very real limit to the level of Unilever's and P&G's expenditure, for if their costs were too high others would come into the market to sell at lower cost and lower prices.

- (b) New entrants could minimise their costs by entering the market on a regional basis; or multiple stores could have their own brands of powders made up for them, as some of them already do with liquid detergents.* New entrants are deterred, not by the necessary outlay on advertising and promotion, but by their inability to match the costs of the two leading manufacturers or their skills in identifying and meeting consumer demand.

99. It is relevant at this point to set out the following breakdown of the average retail prices charged for the two companies' household detergents:

	Unilever	P&G
Factory cost	46	43½
Research, administration, distribution	7½	7
Selling:		
Advertising	11	10
Promotions	6	8½
Market research	1½	½
Other	4½	4
	<u>23</u>	<u>23</u>
Total manufacturer's cost	76½	73½
Manufacturer's profit	7½	10½
Manufacturer's realised price	84	84
Retailer's margin	16	16
Retail price	<u>100</u>	<u>100</u>

Notes: (1) 'Manufacturer's realised price' is net of special reductions ('3d. off' etc.) which are not therefore included as promotional costs.

(2) So long as there were recommended retail prices the retailer's margin was normally 18/19 per cent of the recommended price; but in practice there was considerable price-cutting and our calculation is intended to reflect our estimates of actual average retail prices and margins.

(3) The calculations are based on Unilever's figures for 1964 and P&G's for 1964-65 for all household detergents within our terms of reference. While each set of figures fairly reflects the average make-up of the particular company's prices they should not be taken as reflecting comparative costs for like products; apart from the fact that there is a substantial difference between the two companies in the proportion as between soap and synthetic products there are effective price differences between like products, due to special reductions, differences in weight per packet etc. (see paragraph 112 for our further observations on this subject.)

For our present purpose the principal point of interest is that manufacturer's selling cost accounts on average for nearly a quarter of what the customer pays for the product, the greater part of this cost—nearly one-fifth of the retail price—representing expenditure on advertising, promotion and market research. Total selling cost, including the retailer's margin, amounts to almost two-fifths of the retail price.

100. Although we have little information on which to base precise comparisons we think there can be no doubt that the level of advertising and promotion expenditure in this industry is exceptionally high. Both Unilever and P&G made certain comparisons with other products (see Appendix 12, paragraphs 120 and 142). P&G's figures were intended to show that advertising (excluding other forms of promotion) was not responsible for as high a proportion of the price paid by the consumer for detergents as was the case with a number of other branded goods sold in quantity on a national scale. Unilever's figures,

*See paragraph 72.

however, appeared to shew that advertising and promotion expenditure, as a whole, was high in this industry by comparison with the others for which it gave estimates. The company indeed acknowledged that the household detergents industry was one of the 'advertising-intensive' industries, that is industries in which direct appeal from manufacturer to customer tends to supersede the functions of the salesmen and of the retailer; the comparisons it made were designed rather to show that total distribution cost (i.e. manufacturer's selling cost, including advertising and promotion, plus retailer's margin) was not abnormally high. There may be other industries which are even more 'advertising-intensive' than household detergents, but establishing that point does not help us to decide whether some of the expenditure incurred is wasteful. Both companies have also argued that the costing information does not disclose any relative increase in advertising and promotional expenditure over the period examined (see Appendix 12, paragraphs 123 and 142).

101. In our view the most useful figures in this connection are the indices of selling prices and expenditure per ton of product which we prepared (see paragraphs 64 and 68 and appendix 10, paragraphs 76, 78, 82 and 84) and we select from these figures the following:

	Unilever			P&G			
	(year ending 31st December)			(year ending 30th June)			
	1954	1959	1964	1954	1959	1964	1965
Selling price	100	108	118	100	96	100	105
Selling expenses	100	70	88	100	81	96	99
Other costs	100	106	113	100	95	90	97
Total costs	100	93	103	100	91	92	97

In considering these figures we have to bear in mind that the differences between the two companies in the movement of average prices and costs per ton reflect to some extent the differing proportions in which they are interested in soap and synthetic products respectively. The main points which are relevant for our present purpose, however, are that the selling expenses per ton in the most recent years examined were less than in 1954 for both companies (though the difference in P&G's case is slight); from 1954 to 1959, however, there was an appreciable fall in the indices for both companies, but this has since been followed by a substantial increase in both cases. The interpretation we put upon these figures in the light of other evidence is that in 1954 the selling expenses of both companies still reflected the exceptional promotional effort in connection with the competitive launching of the new synthetic detergents.* This particular effort became less intense thereafter and, on Unilever's part at any rate, there was an attempt to substitute price competition for competitive advertising campaigns which tended to cancel one another out (see paragraph 18). By the late 1950's, however, shares of the market appear to have become more stable so far as the main products—laundry powders—were concerned. Since then P&G has slowly gained ground at Unilever's expense, the competition between the two companies for market shares being reflected in an increase in their selling expenses, including their advertising and promotion expenses. The manufacturers may be right in suggesting that this tendency would have been intensified had there been more competitors in the field; but we are concerned with the position as it exists, and it is in our view a matter for serious concern that competition between two leading manufacturers should take this form.

*P&G's Tide was launched in 1950, but was not in national distribution until 1952. It was followed by Unilever's Surf (1952), P&G's Daz (1953) and Unilver's Omo (1954)—see paragraph 17.

102. The manufacturers claim that their expenditure in this field is not wasteful since there are compensating economies in their production and other costs and in retailers' margins. We do not dispute that the advertising of branded goods for sale on a national scale can have these effects. We have no doubt that each company is able to make its products at a unit manufacturing cost which is lower than it would be if demand for the brands concerned had not been built up by nation-wide advertising. It also seems probable that the relatively low retail margin on these goods which is now more or less traditional is due in part at any rate to the policy of brand advertising which was pursued by Levers and other soap makers for many years before the war. It does not seem to us to follow that extra advertising and promotion, undertaken by Unilever and P&G to maintain their market shares against each other, result in extra economies elsewhere. So far as the retail margin is concerned we think that there has been some effective reduction, on average, in recent years because of an increase in price-cutting by retailers. This has been due mainly to the development of new, more economical methods of retailing by self-service stores. It is a fair point that the advertising of branded goods has helped to make these methods possible, but we do not think that this in itself can be taken to justify the whole of the advertising and promotion expenditure of Unilever and P&G.

103. To a considerable extent the companies' arguments hinge upon the assertion that the existence of potential competitors must restrain both companies from undertaking wasteful expenditure. We might have been more impressed by this assertion if it were apparent that this factor was holding down prices, since this would confirm that there was an active incentive to minimise costs. It is for this reason that the issue of advertising and promotion cost, as we have said in paragraph 93, appears to us to be linked with that of prices and profits. As we shew in paragraph 109, the rates of profit earned have been substantial on the part of Unilever and very high on the part of P&G. It is by no means clear to us, therefore, that either company can be said to have been under pressure to minimise its costs, and P&G in particular appears to have enjoyed considerable room for manoeuvre, in the sense that it could choose between maximising its profits from its existing share of the market, or trying to increase that share at Unilever's expense either by increasing its promotional effort (without inviting new competition by raising prices) or by reducing its prices.

104. This brings us to the question of the effect upon potential new entrants to the industry of the policies pursued by the two large suppliers in relation to advertising and promotion. It is difficult to see any reason, other than that the terms of entry are too onerous, why this profitable field should, with the exception of liquid detergents, have been left largely in the hands of the two companies. Some of the more obvious potential competitors, such as large chemical manufacturers, are probably not deterred by the mere size of the initial investment required, but they may well feel reluctant to participate in—and by participating, perhaps, to intensify—the process of competition in promotion expenditure which appears to prevail in the industry. Such consideration need not, of course, deter them from making detergents for sale to independent marketing companies. Several chemical manufacturing companies do in fact operate in this way so far as washing-up liquids are concerned, but there is very little activity of this kind in the field of powder detergents. We are indeed a little surprised that multiple stores which market their own brands of liquid detergents do not as a rule market their own brands of powders.* It is certainly not impossible for

*See paragraph 72.

them to buy powder detergents, either in bulk or made up to their requirements, and when selling in their own stores they can avoid the kind of advertising and promotional costs that are incurred by Unilever and P&G.

105. Taking into account all the considerations we have discussed in paragraphs 94 to 104 we conclude that the policies pursued by Unilever and by P&G on advertising and promotion, resulting as they do in very large expenditures thereon, are 'things done' by them for the purpose of preserving their respective 'monopolies'. We think that the expenditures incurred are unnecessarily high and that one effect is to keep new entrants out of the market, but before stating our conclusion as to the effects of the policies upon the public interest we think it necessary to consider the related subject of prices and profits.

Price policies and profits

106. The principal criticisms to be considered under this head in the light of the evidence we have obtained are:

- (1) that there is little genuine price competition between Unilever and P&G, prices for comparable products in comparable containers* tending to be the same;
- (2) that prices are unnecessarily high, having regard to the levels of both advertising and promotion expenditure and profits;
- (3) that, in Unilever's case in particular, the prices of soap products are kept at a higher level than would be necessary if its synthetic products were more profitable.

107. The replies of Unilever and P&G to these criticisms are to the following effect:

- a) Each company decides its prices independently. Competition between them makes it inevitable that prices tend to be similar or the same; neither would put up its prices unless it were satisfied (as is generally the case) that the other, being subject to the same cost pressures, would be likely to follow, and neither could as a rule afford not to follow if the other reduced its prices. Price similarity, nevertheless, often disguises real differences (e.g. different weights in the containers), but 'added value' attracts demand more than price-cutting.
- (b) The prices charged by Unilever and P&G have not, according to their calculations, risen to the same extent as the cost of living and have not attracted newcomers to the industry. This shows that the prices are not too high. The amount of profit earned by either company, within the price 'ceiling' imposed by the need to discourage new competitors, is a reflection of its efficiency. Neither company accepts in its entirety our methods of calculating its profits and P&G disputes the validity of such comparisons as we make between its profits and the average profits of manufacturing industry (see appendix 10, paragraphs 79, 85 and 86.) P&G, while accepting

*Generally speaking, each company markets its products in a range of containers of different sizes (e.g. Small, Medium, Large and Giant). The quantity of product in containers of the same size group is not standard, though prices are frequently the same (see paragraph 57 and appendix 10, paragraph 71).

that its rates of profit on capital employed earned on household detergents may well be much higher than any such average, says that these are justified because (i) the company has been outstandingly successful in achieving cost savings in production, distribution and utilisation of capital and, though passing on the greater part of these savings to the consumer, is entitled to retain some benefit for itself, (ii) it is entitled to obtain a return for the technical services of the parent company, which are under-valued in the costs and (iii) it is a successful company conducting an expanding business in an industry where the risks are high because recoupment of the large outlay on advertising and promotion depends on maintaining maximum efficiency.

- (c) According to Unilever its soap and synthetic products are priced independently. The former have been profitable because consumer acceptance makes promotion economical; the profitability of the latter has been limited so far because of the difficulty experienced in establishing them in the market, arising from the initial lead won by P&G in the synthetic field in the years after the war.

108. We accept in principle that, where two suppliers of comparable strength are competing for a market with similar products, neither can expect to retain for long any price advantage over the other, so that their prices may tend to come together. This ought not to mean that neither party should ever seek to obtain such an advantage. In this industry, quality differences apart, there are effective variations and differences in price from time to time, first because there is no uniformity in the quantity of product offered at a given price,* and secondly because of temporary, promotional price reductions. Both companies appear to us in recent years to have been anxious, while making use of the technique of temporary, selective price-cutting (whether on the '3d off' basis or by giving more of the product for the same price) to give some customers an arbitrary bonus, to avoid the appearance of price competition. The practice, now abandoned, of giving one another advance information of impending price changes may, as the companies assert, have had little or no effect in bringing about price uniformity, but we think that it was symptomatic of their attitude.

109. We have already, when discussing advertising and promotion, touched upon some aspects of the more general defence of their prices and profits submitted by the companies and have indicated our doubts about the effectiveness of the price 'ceiling' which the existence of potential competitors is said to create. Our judgment on this point is very much influenced by consideration of the profits which the two companies have been able to earn while continuing to keep the field very largely to themselves. We have discussed elsewhere the two companies' objections to our methods of computing their profits and P&G's objections to comparisons with average profits of manufacturing industry†. Although there is room for argument on various points which could affect some of the figures marginally, we are satisfied that the following table affords a fair general comparison between the rates of profit on capital employed earned by Unilever and P&G in their household detergents businesses and those earned, on average, by manufacturing industry generally:

*See footnote to paragraph 106.

†See appendix 10, paragraphs 81 and 87.

Profits on capital employed

	Historic cost basis			Replacement cost basis		
	Household detergents business		Manufacturing industry average	Household detergents business		Manufacturing industry average
	Unilever	P&G		Unilever	P&G	
	%	%	%	%	%	%
1959	n/a	41.6	15.9	n/a	29.3	12.2
1960	46.8	49.1	16.6	34.3	36.2	13.1
1961	18.2	48.0	14.0	12.9	34.8	11.1
1962	20.7	60.2	12.6	14.8	42.4	9.9
1963	37.1	58.1	13.5	26.9	40.3	10.8
1964	25.1	52.0	n/a	17.6	36.9	n/a
1965	23.4	53.2	n/a	16.4	37.0	n/a

Note: 1965 figures for Unilever are estimates.

110. The indices for manufacturing industry are average figures for companies of diverse structure and interests, whose individual profitability varies widely; furthermore each company whose figures are brought within the averages, no doubt, has a number of products and interests which are themselves of varying profitability. Where we set the rates of profit earned by certain companies on certain sections of their businesses—in this case, the profits earned by Unilever and P&G on goods covered by our terms of reference—beside the average profit rates of manufacturing industry, we have these considerations very much in mind. We think that in the present case, after taking into account all the submissions about these figures to which we have referred, there can be no doubt that P&G over the period examined was earning rates of profit on its household detergents business which were very much above the average for manufacturing industry; and the company, indeed, has acknowledged that this is likely to be true. The rates of profit earned by Unilever on household detergents over (approximately) the same period, while varying widely from year to year, have been less than P&G's but, in general, substantially above the average for manufacturing industry. Sales of household detergents in the United Kingdom account for about two-thirds of P&G's total business but for less than 5 per cent of Unilever's.

111. Each company asserts that it earns its profits on household detergents by its efficiency in production and distribution, which it is impelled to improve from year to year not only because of the competition offered by the other but also because if it were to relax its efforts it would be providing an opening for new competitors. We have taken note in particular of all that P&G has said about its efforts and achievements, year by year, in this field. We know of no yardstick by which the comparative efficiency of companies can be accurately measured, but we have no doubt that P&G has been able to mitigate to some extent the effects of rising basic costs by introducing changes in methods, particularly in manufacturing, and by persuading its suppliers to change their own production methods. The company's attention to these matters, no doubt, accounts in part for the high profits it has been able to earn.

112. Unilever's efficiency is more difficult to evaluate. It has not made any such detailed claims as those put forward by P&G. It has acknowledged that P&G won an initial lead in the field of synthetic products which it has not found easy to catch up. Its soap products have clearly been the more profitable. In the years 1960 to 1964, when the profit on sales earned by Unilever for household detergents as a whole varied from 7 per cent to 15 per cent, the corresponding figures for soap powders taken by themselves ranged, according to our calculations, from 11 per cent to 20 per cent; the corresponding figures for

synthetic powders were from a loss of 2 per cent to a profit of 11 per cent and for synthetic liquids from a loss of 15 per cent to a profit of 3 per cent.* If relative profits are regarded as a criterion of efficiency, these figures might seem to suggest that Unilever must, in some respects, be less efficient than P&G on the synthetic side. However, Unilever's costs per lb. of product do not, in general, appear to be any higher than P&G's for comparable products; they are rather lower for soap powders, rather higher for synthetic liquids and much the same as P&G's for synthetic powders. Thus the lower return on capital employed obtained by Unilever as compared with P&G appears to be due principally to the facts that (i) generally speaking, it offers a greater weight of product at a given price with the result that its profit per lb., except for soap products, is lower than P&G's, and (ii) its utilisation of fixed assets is less intensive than P&G's. So far as the first of these factors is concerned, although we have compared costs weight for weight there are no doubt differences of quality between the products compared. We do not think that these are assessable in any scientific sense. It may be said that the buying public have made their own assessment insofar as they are prepared to accept a smaller quantity of P&G's than of Unilever's product at a given price, but this 'consumer acceptance' might be a result of more successful advertising on P&G's part.

113. Both companies asserted, as we have said, that their prices had not increased as fast as the cost of living in recent years. Their assertions were based on certain comparisons between average retail prices for products covered by the reference and the Index of Retail Prices published by the Ministry of Labour (see appendix 12, paragraphs 119 and 150). We do not dispute the accuracy of these particular comparisons. The movement of prices of liquid detergents has undoubtedly been downwards and this, to some extent, disguises the trend for other detergent products. Thus according to our own calculations which take into account changes in the weights of packages and other relevant factors, the price of Persil increased between 1960 and the end of 1964 by more than 20 per cent compared with a rise of 16 per cent in the Retail Price Index; over broadly the same period, the increase in the price of Fairy Snow was 14 per cent. In the case of synthetic powders, the price of Surf fell, and while the prices of all the other principal powders were increased none rose by more than 12 per cent. We have, however, noticed that the prices of most ingredient materials for synthetic powders fell during the period 1959–April 1965 and that the increases in selling prices were used either to cover increases in costs other than ingredient materials or to increase profits.

114. P&G has made a detailed submission intended to show that it has passed on to the public the greater part of the economies it has achieved by improved efficiency (see appendix 12, paragraphs 151 to 153). Using 1961–62 as a base year, the company claims that in the subsequent three years it retained as additional profit only £0.3 million out of the £1.9 million of additional cost saving it estimated it had achieved by improved efficiency. We found, however, that if the calculation was projected back to 1958–59 as a base year the addition to profit up to 1964–65 amounted to £12.1 million against savings (as estimated by the company) of £7.1 million. It appears to us that the company used its efficiency savings, among other factors, to raise the profits to a very high level by 1961–62; since then it has, roughly, maintained this high level of profit while passing on the greater part of further efficiency savings to the public.

*See appendix 10, paragraph 78. The figures quoted are on the historic cost basis for depreciation.

115. Generally speaking, we think that selling costs have played a more significant part than manufacturing costs in determining the movements of both companies' prices, and that, in any event, the average increase in prices since 1954 has been proportionately greater than the increase in total costs (see paragraph 101). Our view is that competition between Unilever and P&G tends to result in the escalation of advertising and promotion costs and to that extent to increase the price that the public is required to pay; that in this situation neither company is under effective pressure from third parties to reduce the prices of its main products, namely washing powders; and that, with their comfortable rates of profit, neither company is under pressure from the other to reduce its prices. P&G seems to be in a particularly strong position relative to Unilever; its overall costs have given it, at existing prices, handsome profit margins and, at the same time, a steady increase in its share of the market. It seems that P&G has the initiative and, therefore, considerable room for manoeuvre downward on price, to which Unilever would have to respond if it were to maintain its relative market position; and this would, of course, bring great pressure to bear upon Unilever to minimise not only its factory costs but also its selling costs. However, as we have shewn, P&G has not, in fact, used its advantage in this way.

116. We conclude that the price policies pursued by Unilever and by P&G are 'things done' by them as a result of their respective 'monopoly' positions. We said in paragraph 105 that the effects upon the public interest of these policies and of the two companies' policies on advertising and promotion needed to be considered together. In this connection we find ourselves in agreement with much that was said in the relevant report of the National Board for Prices and Incomes made in October 1965.* We agree that there was a strong case for terminating recommended retail prices. As we have mentioned in paragraph 102 there has been some effective reduction in retail margins in recent years because more economical methods of retailing have led to an increase in price-cutting; but recommended prices probably continued to have some effect on some retailers, and we are glad that the companies, following the Board's recommendation, have now abandoned them. We agree, too, with the Board's view (as expressed in chapter 6) that expenditure on advertising and promotion goes beyond the level needed for informing the public. And we entirely agree with the Board's general conclusion that 'the consumer would benefit if the area of competition on price could be increased, at the expense, if need be, either of outlays on advertising and promotion or of profit' (paragraph 61). This is, indeed, the crux of the public interest issues we have had to consider. Our principal criticism is that competition in advertising and promotion has tended to displace price competition. The effects of this are not only to increase prices to the extent that the additional expenditure in this field is wasteful, but also (except perhaps in the field of washing-up liquids) to keep new entrants out of the market, to weaken other competitive restraints on prices and profits, and to create a situation in which even the less successful of the two principal competitors can earn extremely comfortable profits while those of the more successful are outstandingly high.

117. We further conclude, therefore, that the price policies and the policies on advertising and promotion of Unilever and P&G operate and may be expected to operate against the public interest inasmuch as, while tending to keep

*Cmd. 2791. HMSO.

new entrants out of the market, they result in over-concentration of competition on advertising and sales promotion to the detriment of effective direct price competition and in unduly high profits with the consequence that the public are charged unnecessarily high prices.

The monopoly positions

118. Both Unilever and P&G belong to powerful groups operating on an international scale. The Unilever group's interests are more diverse than those of the P&G group, but so far as household detergents are concerned these two are undoubtedly the leading producers in the world, though in some overseas markets there are other competitors who offer them more vigorous competition than any they have to meet at present in this country. The Unilever group's base is in this country, where its position as one of the leading detergents producers has developed out of its earlier monopoly position as a soap maker. The P&G group, on the other hand, originally built up a soap business in the United States, which remains its base and by far its most important market. It first entered into competition with Unilever in this country when it acquired the Hedley business in 1930. From then on it steadily expanded its share of the United Kingdom market and since the 1950's has competed with Unilever on approximately equal terms.

119. We do not find a great deal in the history of either company which seems to have a significant bearing upon the issues on which we have to form a judgment. It is no doubt true that Unilever owes its present position in part to various acquisitions and amalgamations which took place many years ago. It is arguable that it was still pursuing a policy of acquisition for the sake of market domination when it took over a group of companies which included Domestos Ltd. in 1961 (see paragraph 22 and appendix 12, paragraph 104 (e)). Unilever says that it was principally interested in a Domestos product which is outside our reference but, however this may be, one effect of the acquisition was substantially to increase Unilever's share of the market for washing-up liquids at a time when it had not found a really satisfactory answer to P&G's Fairy Liquid. The effect on market shares for household detergents looked at as a whole, however, was not of great significance. So far as concerns former agreements by which Unilever and certain other companies undertook to keep out of one another's fields of interest (see paragraph 9), these may have had some influence in determining that the other companies concerned should not start upon a course which might have made them competitors of Unilever today, but we think that probably they only agreed to refrain from doing what they had no intention of doing in any event. Patents may in the past have played a small part in helping Unilever or P&G to preserve for a time a technical lead over the other in certain respects but we do not think their influence has been important in this way or in keeping other competitors out of the industry.

120. In examining the two companies' policies on prices and on advertising and promotion we have very largely covered those aspects of the current situation between them which are relevant to our reference. One matter which we have not dealt with is the problem of detergent foam in rivers. The problem is still under consideration by the Standing Technical Committee on Synthetic Detergents and we have set out elsewhere the views of the two companies on this question (see paragraph 7 and appendix 5). Our concern with it has been whether there was any reason to believe that either company, because

of apprehension as to the effect upon its market share (e.g. because its products would be more expensive or less attractive to the customer), was unwilling to apply possible remedies for the nuisance that undoubtedly exists. We are satisfied, however, that while both have been reasonably cautious about adopting expensive, unproved remedies both have done their best to contribute to an ultimate solution. We do not think there are any grounds for saying that their policies in this respect are pursued as a result of or to preserve their 'monopoly' positions.

121. We have criticised the policies of both companies and found that they operate against the public interest in certain respects. In spite of the fact that these two companies have to earn their profits in competition with each other, the return on capital earned by both of them on household detergents is high, and in one case it is very high. This situation arises because the competition between them is concentrated in the field of advertising and promotion. This not only results in wasteful expenditure but also deters potential competitors who might, otherwise, provide a safeguard against excessive profits. P&G, in justification of the level of profits it earns, has asserted that this is a high risk industry because the large outlay on advertising and promotion can be recouped only if maximum efficiency is maintained (see paragraph 107(b)). To the extent that this is true in existing circumstances we think that the conditions of high risk have been created by the companies themselves, and created unnecessarily. If competition can be diverted from excessive advertising and promotion to prices, we believe that the result will be not only a saving in cost but also a more effective check upon profits than in the past. We believe that there are practicable remedies which can bring about these results (see paragraphs 122 to 126) and we do not find that the monopoly position of either company, as distinct from certain things that they do, operates or may be expected to operate against the public interest.

III. Remedies

122. We have mentioned in paragraph 116 the remarks of the National Board for Prices and Incomes on the possibility of increasing the area of competition on price 'at the expense, if need be, either of outlays on advertising and promotion or of profits'. In the light of our conclusions on the public interest it is our view that both of these sources should be made to contribute to a significant reduction of prices; and we can see no possible remedy other than some form of restraint.

123. We have discussed with the companies and carefully considered possible objections to restraints on advertising and promotion, whether voluntary or imposed by the Government, and have taken into account in this connection the reasons given for the ineffectiveness and partial abandonment of restraints which were entered into by voluntary agreement between Unilever and P&G (see paragraphs 33 and 50-53 and appendix 12, paragraphs 124 and 147). The objections to restraint are (a) that if the two companies are restrained they cannot defend themselves against other competitors, including newcomers, (b) that if particular forms of activity are restricted, the companies will spend more on other forms, which will be less effective and, therefore, more expensive, (c) that any such restraint is a restriction on competition, particularly in regard to introducing new products, and (d) that the Unilever group will suffer a particular handicap as a world-wide trader if it is restricted in its own home market, the

United Kingdom, while its principal competitors, including the P&G group, are not restricted in their home market, the United States. As regards (a) we would agree that in the long term any restraint should apply equally to all competitors, subject perhaps to an exemption for those with small sales. On (b) we certainly wish to see an absolute reduction in cost and not a mere transfer of expenditure from one form of activity to another; for this reason we think the restraint should be applied to selling expenses as a whole on the widest possible definition, subject only to the point that any loss of income due to a temporary or selective reduction in the wholesale price (bargain packs etc.) should be regarded as a price reduction and not as an expense. On (c) we do not think that restraint on selling expenditure would hinder the introduction of new products; on the contrary we think that the existence of such restraint would lead manufacturers and the public alike to attach greater importance to real improvements in product performance. As to (d) the Unilever group's scale of operations and level of research expenditure in the home market of its main competitor, the U.S.A., are much the same as in its own home market, the United Kingdom. We doubt, moreover, whether promotional experience gained in one country is readily transferable to another, but in any event would not expect an overall restraint, such as we have in mind, to prevent Unilever from experimenting with particular forms of promotion or gaining acceptance for genuinely new products.

124. In the table below we show the effects on profits (as percentages of capital on the historic cost basis) of various combinations of reductions in average net wholesale prices and in selling expenses, the calculations being made from Unilever's and P&G's latest available trading figures which have been adjusted in each case on the assumption that the quantities sold and all expenses other than selling expenses would have remained unchanged:

Estimated net profits or losses as percentages of capital employed on the basis of variable reductions in (i) net wholesale prices, and (ii) selling expenses				
	Unilever (1964)		P&G (1964/65)	
<i>Actual net profit</i>	25.1 per cent		53.2 per cent	
Estimated net profits (per cent) on the basis of :	Net wholesale prices reduced by :			
Selling expenses reduced by :	10 per cent	20 per cent	10 per cent	20 per cent
30 per cent	24.1	— 4.5	61.2	17.7
40 per cent	31.8	3.2	72.5	29.0
50 per cent	39.5	10.9	83.8	40.3
60 per cent	47.2	18.6	95.1	51.6
70 per cent	55.0	26.4	106.4	62.9

125. The figures in the table above are, of course, projections of past trading results. They do not accurately reflect the effects of reductions in prices and selling expenses that might be made subsequent to this report and do not enable us to make precise recommendations. We therefore recommend that (a) substantial percentage reductions should be made in Unilever's and P&G's wholesale selling prices for household detergents, (b) the appropriate reductions should be decided by the Board of Trade in consultation with the two companies, (c) the Board of Trade should encourage the two companies to agree that at least a 40 per cent reduction in selling expenses* should accompany the price reduction, and (d) in such event, price consultations with the companies might well begin on the basis of an average 20 per cent reduction in price.

*See appendix 10, paragraphs 77 and 83; for the costs to be regarded as included in 'selling expenses' for this purpose.

126. We make this recommendation for the immediate action which we regard as practicable and desirable. So far as the longer term is concerned, while we have no reason to suppose that either company would not honour its undertaking to the Board of Trade, we feel nonetheless that some provision should if possible, be made to guard against a change of circumstances bringing about again the conditions which we have criticised. Although we think that a continuing watch on prices is essential, for many reasons we do not think that permanent detailed price regulation would be desirable. The alternative would be to find some automatic sanction that would discourage any reversion to the practices which we have found to be against the public interest. One such that has been suggested is that selling expenses in excess of an approved percentage of net wholesale turnover should be disallowed as an expense for tax purposes (with an exemption for suppliers with a turnover in reference goods below a specified figure). We do not regard ourselves as qualified to judge the practicability of a proposal of this nature, but we recommend that the Board of Trade should consider the possibility of introducing some form of automatic sanction that would discourage excessive selling expenditure in the field of household detergents, and should also continue to keep a watch on prices.

IV. Summary of conclusions and recommendations

127. Our conclusions and recommendations may be summarised as follows:

- (1) The conditions to which the Act applies prevail as respects the supply of household detergents because more than one-third of all the household detergents supplied in the United Kingdom is supplied by (i) Unilever and (ii) P&G (paragraph 91).
- (2) The policies pursued by Unilever and P&G on advertising and promotion and their price policies are things done by them as a result of or for the purpose of preserving their 'monopoly' positions which operate and may be expected to operate against the public interest (paragraphs 105, 116 and 117;) but neither 'monopoly' position, as such, operates against the public interest nor may either be expected to do so (paragraph 121).
- (3) By way of remedies for the matters which we have found to be against the public interest we make the following recommendations:

For immediate action

- (a) Substantial percentage reductions should be made in Unilever's and P&G's wholesale selling prices for household detergents.
- (b) The appropriate reductions should be decided by the Board of Trade in consultation with the two companies.
- (c) The Board of Trade should encourage the two companies to agree that at least a 40 per cent reduction in selling expenses should accompany the price reduction.
- (d) In such event, price consultations with the companies might well begin on the basis of an average 20 per cent reduction in price (paragraph 125).

For the longer term

- (e) The Board of Trade should consider the possibility of introducing some form of automatic sanction that would discourage excessive selling expenditure in the field of household detergents (e.g. by disallowing it for tax purposes), and should also continue to keep a watch on prices (paragraph 126).

BRIAN DAVIDSON (*Chairman*)

T. BARNA

A. H. BRUCE

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J. M. A. SMITH

LAURENCE WATKINSON

Miss M. DENNEHY (*Secretary*)

26th May 1966