

Conclusions and Recommendations on the Public Interest

145. We are next required to consider whether the restriction imposed on the supply of infant milk foods to retailers, by virtue of which we have found that the conditions to which the 1948 Act applies prevail, together with the things which we have found to be done by the parties concerned in order to enforce that restriction, operate or may be expected to operate against the public interest. Although there are several parties concerned, pharmaceutical wholesalers as well as the two main manufacturers, and although we have found several things to be done in order to preserve the conditions as well as the prevalence of the conditions themselves, nevertheless all these are concerned with the practice of restricting supply to retailers by reference to the nature of the retailer's business and we consider them all together as raising a single public interest issue.

146. We consider first whether the interest of the public, which for this purpose consists of infants and their mothers, suffers in any way as a result of the restriction and whether that public would be better served if the foods were made available without discrimination to any class of retailer that was prepared to handle them on commercially acceptable terms. In the course of our inquiry a great many arguments have been put to us, some in justification of present practice and some tending to show that the restriction is unnecessary. But we have received very little evidence of positive harm resulting from restricted distribution. Several witnesses expressed the view that there was a risk of inconvenience, especially in rural areas, but we have received no spontaneous complaint by members of the public themselves. This in itself is not conclusive, since infant milk foods are not a major item in household purchasing: the total trade is small and each consumer's demand lasts only a few months. We would not expect a large volume of complaint from mothers to be expressed unless it was very difficult or impossible for them to obtain supplies; even then it would come only from a minority capable of expressing and making effective their complaints. Consumers' complaints would be more likely to take the form of grumbling in the shop where supplies had proved unobtainable, followed in some cases by letters to the manufacturers. Glaxo and Cow & Gate, however, have told us that they receive very few complaints direct from the public. Moreover it is significant that despite the widespread enquiries which it made (see paragraph 82) the Consumer Council found little evidence of public dissatisfaction. Since a number of parties have an interest in securing a change in the method of distribution, including the grocers' organisations, one would have expected that they might have brought to light any cases that there were of real inconvenience, and the small extent of such evidence is significant. All cases which were brought to our attention by individual wholesale or retail grocers (see paragraphs 60-65) were investigated by Glaxo and Cow & Gate; in four of them they agreed to make supplies available, but in the remainder they were able to show that supplies were already available much more conveniently than had been alleged.

147. The sample survey commissioned by Glaxo during the course of our inquiry (see paragraph 106) was helpful in showing how customers for infant milk foods were affected by the restriction in rural areas with very low population density, in which any inconvenience might be expected to be at its highest. In general the survey showed that the majority of customers in these remote areas were being reasonably well served, especially as a high proportion of those who had to travel a long way for dried milk had to travel similar distances for their groceries, and about a third of the housewives questioned did their shopping by car. A minority were being put to some inconvenience. Forty-seven per cent. of those buying infant milk foods from a chemist, for instance, said that they would find another shop more convenient, and even 12 per cent. of those buying from a grocer said that they would find another grocer more convenient ; 22 per cent of those within half a mile of a grocer had to travel over three miles for infant milk foods. Although a certain amount of inconvenience in shopping is an inescapable part of life in such areas, the survey did thus confirm that the restriction on the distribution of infant milk foods adds to this inconvenience. However, areas of the type surveyed account for only 3 per cent. of the population, and we would expect that in more populous areas the degree of inconvenience would become proportionately less. There are 15,000 retail chemists, that is one for every 3,000 of the population, and with the several thousand grocers who are also stocking infant milk foods these must provide wide coverage wherever there is substantial population. To some extent the difficulties of rural areas also occur in new housing estates, if there is no retail chemist ; but in general for mothers living in towns it is not, on average, any more difficult to go to a chemist than to a grocer.

148. Thus mothers in towns are unlikely to experience any difficulty in obtaining supplies of infant milk foods, especially as mothers of young babies frequently need to visit chemists' shops for other purposes and can easily buy infant milk foods at the same time. The representatives of the grocers laid emphasis on the convenience of 'one-stop' shopping (see paragraph 60). It is argued that infant milk foods are properly regarded as foods, and they have to be bought as regularly as other foods as long as they are required ; it is therefore an inconvenience for a mother if, although she can buy all the rest of her family's food requirements at the same time, she is forced to go to a different shop for this one food. We accept that there may be occasions when mothers would like to be able to buy infant milk foods at a grocer's shop or supermarket, but there are many other things needed by young babies which are only obtainable from chemists and we do not regard the amount of inconvenience involved as significant.

149. In assessing the degree of inconvenience caused by the present distribution practice, we also have regard to the point stressed by Cow & Gate that it represents a positive convenience to the public that the distribution of infant milk foods is channelled primarily through chemists. Cow & Gate pointed out that only chemists can supply some of the special milk foods and that it is helpful to have the whole range available in the same shop, as well as a large range of other baby requirements which chemists normally stock ; that it makes it easier for a mother to find a supplier, in a strange area for instance, if she knows at least that any chemist will be able to

supply ; and that chemists may be willing to supply infant milk foods outside of normal shop hours when they are open for dispensing. Cow & Gate said that its policy is to seek to ensure that every chemist stocks its products but that if distribution were widened and the turnover in each outlet were reduced as a result, this would become impossible ; many chemists would consider it not worthwhile to continue to stock infant milk foods, with the result that the convenience of supply through chemists would be partly lost.

150. We doubt whether a large number of chemists would cease to supply. Infant milk foods represent an important part of the range of baby requirements which chemists normally carry, and any chemist who failed to stock them could expect to lose trade in other goods which mothers might buy at the same time. It is probable therefore that most chemists would continue to stock infant milk foods, even if this became less profitable than before. However, no doubt some would give up, and to this extent it could not be assumed that a widening of distribution would necessarily lead to greater convenience to the customer ; it could happen that a pattern of distribution would emerge with many more stockists in places which are already adequately served, but even fewer in some places which are only poorly served now.

151. To sum up our views on the adequacy of the present distribution arrangements, we accept that they do not cause anything that could be regarded as hardship to customers, and no more than minor inconvenience. In places which are served by retail chemists the degree of inconvenience is insignificant. But there does appear to be a certain amount of inconvenience in other places resulting from the manufacturers' or wholesalers' refusal to supply other retailers when, in their view, the area is already adequately served. The manufacturers recognised that this must inevitably be so. Nevertheless, before we can decide whether or not this operates or may be expected to operate against the public interest there are other factors to be considered. The manufacturers argued that it is in their own interests to serve the public as well as possible and they would not impose a restriction if they did not consider that, on balance, it was beneficial to the public and therefore to their sales. We must therefore consider whether the restriction does bring the benefit to the public which the manufacturers claim.

152. The manufacturers explained that the main justification for their present practice was economic. Because the total demand was small and inelastic and because the products had a limited shelf life and it was desirable to get them to the consumer as fresh as possible, they considered it necessary to limit the number of retail outlets. This enabled the retail price to be kept low. Wider distribution would increase the costs of distribution without any compensating increase in sales, and they did not consider that the public would think any resulting gain in convenience worth the price. The main points in their argument may be summarised as follows :

- (i) Concentration on a limited number of retail outlets enables each such outlet to have a reasonably remunerative turnover of the products despite the fact that margins are low. Wider distribution with no increase in total sales would reduce the turnover in each outlet and this would lead to pressure from retail chemists for an increase in the retail margin.

- (ii) The companies at present rely for sales promotion mainly on recommendations by chemists, as well as by other qualified persons. If distribution were widened, however, a mother's initial choice of baby food would be more influenced by the promotion methods normal in the grocery trade, namely advertising and shelf display, and it would therefore be necessary to make a substantial increase in advertising expenditure, which is at present relatively low for a food product. Glaxo considered that this might add 1½d. to the price of a packet of Ostermilk.
- (iii) The fact that the bulk of the two main brands can cheaply and conveniently be delivered direct to chemists' premises (by Glaxo because they have an existing direct delivery service for pharmaceuticals and by Cow & Gate because they are able to make use of the service provided by SPD Ltd., which also delivers National Dried Milk to clinics) means that there is an overall saving in distribution costs; the wholesaler's profit is eliminated and the whole, or at least the greater part, of the available trade margin is given to the retail chemist, thus enabling total margins to be kept lower than would otherwise be possible. They could not extend the same service and terms to grocers, and therefore if distribution were widened more of the trade would have to go through wholesalers, with a consequent increase in costs and pressure on margins.
- (iv) Glaxo said that, since the rest of its business lies exclusively in the pharmaceutical trade, if distribution were extended to grocers it would need to set up a new sales organisation to service that trade. This would be partly a defensive measure to protect its share of the market in competition with Cow & Gate, which is already active in the grocery trade. Glaxo provided detailed estimates of the cost of sales staff covering the additional points of sale (wholesalers and the central purchasing organisations of chains and voluntary groups) as well as merchandising staff, whose function would be to visit the larger individual shops to ensure that the Glaxo products were promoted as effectively as those of its competitors. The estimated cost was equivalent to an additional 1½d. on the price of a packet of Ostermilk.
- (v) Wider distribution with a lower turnover in each outlet would lead to greater stocks being held in the distribution chain at any time. Hence the average age of the products on sale to the consumer would be higher and more would probably become out-of-date, which would be an additional cost either to the manufacturers, if they continued to accept returned stocks at cost or to the retailer if they did not.

153. There are some contrary considerations. Although the total trade margins on infant milk foods are lower than some of the margins customary in the chemist trade, they are well up to the average in the grocery trade and similar, for instance, to those allowed on tins of strained baby foods. The grocers' representatives considered that if distribution were widened these margins would be fully adequate for both wholesale and retail grocers and that they might allow scope, in some cases, for price reductions if resale price maintenance were no longer enforced. It is unlikely therefore that any

pressure for higher margins would come from grocers. Furthermore, although chemists would undoubtedly lose part of their trade, they might not, when faced with competition from grocers, be in a position to insist on higher trade margins.

154. The manufacturers would have to assess whether it was to their advantage to increase advertising and merchandising expenditure, and the need to protect their shares of the market might make it seem advisable. But we were told that a mother's initial choice of an infant milk food is usually governed by a recommendation, for instance from a doctor or midwife, and this would continue to be so even if the foods were available in grocers' shops. Advertising therefore would still have only limited value as a method of sales promotion, especially as there is no possibility of increasing the total size of the market. We therefore think that Glaxo's estimates of the additional expenditure needed for sales promotion are too high.

155. Nor is there much force in the argument that a switch to trade mainly through wholesalers would reduce the financial returns to the manufacturers (paragraph 134), since there is nothing to prevent the manufacturers from changing their price structures so as to reflect their actual costs of distribution to different customers and to keep their own realisations constant.

156. However, it is clear that greatly widened distribution would involve some additional cost. The extent of this would depend partly on the increase in the number of retail outlets. This is difficult to forecast. We see no reason to expect the tenfold increase in outlets which would result from all grocers stocking the foods, but on the other hand it might be expected that most substantial urban shops would enter the trade. Some retail chemists might decide to give up stocking infant milk foods but it seems safe to assume that, on balance, the total number of retail outlets would at the very least be doubled. In that event there would be bound to be some increase in costs through the larger number of deliveries of smaller quantities, the greater number of accounts to be serviced, and because a larger total amount of the foods would be in stock in the distributive network at any one time. To some extent these additional costs could be absorbed both by the manufacturers and by the distributive trades within present margins, and it does not necessarily follow that there would be an immediate increase in retail prices. But, even if there were not, the additional cost would undoubtedly reinforce any other pressures towards higher prices.

157. We turn now to a number of considerations special to infant milk foods which, in the view of a large number of knowledgeable and influential witnesses, make it desirable in the public interest that, apart from supplies through hospitals and clinics, their sale to the public should be handled only by chemists. This view was taken by the health departments and by a number, though not all, of the professional bodies whom we consulted (see paragraphs 86-97). The main argument derives from the value of the advice that a qualified pharmacist is said to be able to give. It is argued that mothers of very young babies, at the stage in their lives when they are still wholly dependent on an infant milk food, may well be in need of professional guidance and it is therefore desirable that the advice of a professionally qualified person should always be available at the point of sale.

It was not maintained that pharmacists are themselves qualified to advise on infant feeding problems but it was thought to be of great importance that, when a mother has difficulties with a young baby apparently connected with feeding, she should obtain proper medical advice without delay. Many would do so directly in any case, but some would seek advice from a chemist, thinking that some change of diet might be helpful. In such circumstances a trained pharmacist could be expected to recognise that proper medical advice was required, since the disorder might require one of the special foods or might even be unconnected with feeding, and he could be expected to recommend the mother to go to the clinic or her own doctor. Other retailers could not be expected to follow this line and, if asked, might well merely suggest a change to another brand, which could lead to delay in seeking proper medical treatment. The practice of confining retail distribution to chemists was therefore regarded as a useful safeguard which it would be unwise to discard unless there were strong reasons for doing so. The inquiry conducted by Glaxo (see paragraph 108) confirmed that mothers frequently do in practice seek advice about infant milk foods from their chemist.

158. Professional advice is of course freely available to mothers through the maternal and child welfare service. Clinics, including mobile clinics, are provided throughout the country and are in fact used by the great majority of mothers of young babies; in addition, the health visitors are required to visit every mother within ten days of the birth of her child and they keep a watch on the progress of all the babies within their districts by seeking to persuade the mothers to bring them to the clinic and by making further visits themselves if this seems necessary. They try to ensure at least that every mother knows how to get in touch with the health visitor in case of difficulty. Thus great efforts are already made to make sure that any baby requiring it receives medical attention or advice. The safeguard provided by the chemist is therefore likely to be relevant in only a small number of cases, but it is one which cannot lightly be discarded and it must be regarded as a significant factor to weigh against any disadvantages arising from the confining of distribution to chemists.

159. In speaking about the value of professional advice, the representatives of the retail chemists themselves drew attention to the wider advisory service which many of them provide for mothers. Most of them carry a very wide range of things which mothers need for the care as well as the feeding of young babies (see foot-note to paragraph 129) and many of these goods are slow moving and bring little profit, so that they would be unlikely to be stocked by any other class of retailer. Some chemists go farther and maintain a separate baby department with, for instance, provision for weighing babies. They said that mothers look to chemists for advice on many questions of baby care not necessarily connected with the use of infant milk foods, questions too trivial to put to a doctor but on which guidance or reassurance from a pharmacist is of real value. But they argued that the sale of infant milk foods is the staple item in the trade of a chemist's baby department and, if a large part of it were lost to them through distribution being thrown open to grocers, some chemists would find it no longer economic to provide such a service.

160. In view particularly of the advisory service provided through the welfare clinics, we would not regard the maintenance of such a general advisory service by some chemists as an important public interest concern. Whether or not a particular chemist should continue to provide it can reasonably be decided by normal commercial considerations and, if there proves to be insufficient demand to justify it, then there is no reason to preserve it artificially. On the other hand, if the distribution of infant milk foods were widened, chemists might well find that the provision of such an advisory service puts them in a strong position to compete with grocers.

161. Another argument put to us in favour of confining distribution to chemists was that they are accustomed to handling pharmaceuticals which are subject to deterioration, and they can therefore be relied upon to ensure that infant milk foods reach the customer in good condition. This relates both to the fact that infant milk foods must be stored in proper conditions (a cool dry place away from other goods with strong odours) and that they have a limited shelf life, which means that stocks must be properly rotated and care must be taken to ensure that out-dated stocks are not sold to the public. The manufacturers consider that with unrestricted distribution there would be a danger both that their products would be kept in unsuitable conditions and that retailers other than chemists, finding themselves left with out-dated stocks, would be tempted to try to sell them to the public. The grocers on the other hand argued that they are accustomed to handling many foods which deteriorate much more quickly than infant milk foods; moreover, even with goods that are not perishable, it is for commercial reasons the practice in the grocery trade to turn over stocks in a period much shorter than the safe shelf life of infant milk foods, so that it is unlikely that a grocer would stock them if he was not reasonably assured of turning them over rapidly. We accept that for the most part the grocery trade could be expected to handle infant milk foods with proper care, but with unrestricted distribution there would no longer be any control on the nature of the outlets and there would be a risk that, particularly through wholesalers' cash-and-carry departments, the foods would find their way into unsuitable premises. We understand from the manufacturers that the stated shelf life of their products allows a reasonable margin and, moreover, that some deterioration could take place without there necessarily being any danger to health. But it has been explained to us that the consumers of these products are highly susceptible to even a slight degree of deterioration and since they are unable to discriminate as would adult purchasers of foods we think it doubly important that the products should reach the public in perfect condition.

162. It was also suggested that the application to infant milk foods of the sales promotion methods common in the grocery trade might have harmful results. One possibility was that special promotions and cut price offers (including unprofitable sales designed to attract customers for other lines) might tempt mothers to switch from one brand to another. This would be undesirable since, although the initial choice of a brand of baby food does not usually make any difference to the health of a normal baby, changing unnecessarily from one feed to another could cause upsets. This danger does not seem to be very great, however. Infant milk foods would not be a very suitable subject for intensive sales promotion, in view of the inelasticity of

the market, and most mothers whose babies were thriving on one food would hesitate before changing to another and running the risk of causing unnecessary feeding difficulties. The choice of a food is usually made on the recommendation of some qualified or experienced person and mothers are not likely to depart from it lightly. In general relative prices seem to play a smaller part in governing the choice than in most foodstuffs, as shown by the growing sales of SMA, which is substantially dearer than the leading brands, and the declining sales of the cheaper National Dried Milk.

163. It was also suggested that the wider availability of infant milk foods in grocers' shops might reduce attendance at the welfare clinics. But we were told by the Ministry of Health that in practice the availability of infant milk foods at favourable prices does not appear to be an important factor in inducing mothers to attend the clinics; some clinics have given up stocking proprietary brands of infant milk foods but have suffered no fall in attendance as a result.

164. To summarise our views on the various special reasons advanced for confining infant milk foods to chemists, we do not think that they are of such weight that it would be seriously detrimental to the public interest to widen distribution if there were substantial advantages to be gained from doing so. But on the other hand there are distinct advantages in channelling infant milk foods through chemists and, if there are no strong reasons for wanting wider distribution, then they deserve consideration. Moreover if, as the manufacturers have argued, there are economic reasons for limiting the number of retail outlets (and we accept that there are), these advantages provide a substantial reason for selecting retail chemists rather than any other class of retailer.

Conclusion

165. Thus in assessing the effect on the public interest of the practice of confining distribution to retail chemists we have to strike a balance between three factors: on the one hand the inconvenience which it causes to some customers, and on the other hand the economic justification for limited distribution together with the special qualifications of chemists. For the reasons given above, and because of the limited scale of the trade, we do not regard any of these factors as having a very important effect on the public interest. We accept that the manufacturers have made a good case for limiting the number of retail outlets and for giving effect to this by choosing retail chemists as the primary outlet. In most cases this provides adequate distribution and has given rise to no complaint of inconvenience from the public. Nevertheless, we are concerned about the position in places where there is no retail chemist. By contrast with their deliberate policy of persuading chemists to stock their products, the manufacturers take no positive steps to arrange adequate distribution in such places, but merely wait until evidence of demand comes to light either through a complaint from a customer or through a request from a retailer. Even then it does not follow that a supply will be made available; it depends on an assessment either by the manufacturers or by wholesalers acting on their behalf of whether the place is sufficiently remote from an existing outlet to justify it. The criteria

followed in making this assessment appear to vary and, especially in the remoter rural areas, a significant degree of inconvenience results. Where there is in any case no retail chemist the special arguments about the qualifications of retail chemists do not apply, and it is doubtful whether the refusal to supply additional retailers in these marginal places makes any appreciable difference to the total costs of distribution. We conclude therefore that the practice of restricting the supply of infant milk foods to persons who sell or intend to sell to the general public by retail by reference to the character of the business carried on by those persons operates and may be expected to operate against the public interest, in that inconvenience to the public results in places where there is no retail chemist. We similarly conclude that the things done by the parties concerned for the purpose of enforcing this restriction (see paragraph 144) also operate and may be expected to operate against the public interest.

Recommendation

166. As explained in the previous paragraph, the mischief which we consider to result from the practice is confined to places which are not served by retail chemists, that is to say, mainly rural areas containing only a small proportion of the population, but also certain urban areas, such as new housing estates. We do not consider that, in order to remedy this mischief, we should be justified in recommending that the manufacturers should throw open distribution to any class of retailer in all areas; this would mean that the public in places which are already adequately served might suffer by higher prices and might lose the benefits offered by the use of retail chemists. Moreover, if many chemists ceased to supply, there could even be greater inconvenience to the public in some places. Action should therefore be limited to the areas which suffer inconvenience at present. In such terms we consider it undesirable that the manufacturers or wholesalers should, in the light of their own assessment of inconvenience, decide that one retailer rather than another should handle their products. We therefore recommend that, in places where there is no retail chemist, the manufacturers should supply, or should authorise wholesalers to supply, infant milk foods to any retailer wishing to stock them, except that they should not be obliged to supply if there are normal commercial grounds, such as poor credit worthiness or unsuitability of premises, for refusing to supply a particular retailer.

J. M. A. SMITH (*Chairman*)

A. R. BARROWCLOUGH

BRIAN DAVIDSON

ALIX MEYNELL

E. L. RICHARDS

S. A. ROBINSON

The following member of the group dissented from the conclusions and recommendation for the reasons set out in the note of dissent included in this report.

T. BARNA

MISS M. DENNEHY (*Secretary*)

14 December 1966.

Note of Dissent

By PROFESSOR T. BARNA

167. I do not agree with my colleagues that confining sales of infant milk foods, mainly to clinics and chemists, operates against the public interest only insofar as it causes inconvenience to consumers in certain areas, mainly in sparsely populated rural districts. In fact I feel that my colleagues have exaggerated the problem of remote rural areas: the proportion of the population living in such areas is extremely small, shopping for everything is more difficult than in towns, and the economies of large-scale production and distribution which are characteristic of our age are bound to make the distribution of manufactured goods less economical there than in centres of population. The more significant mischief resulting from the practice of confining is, in my opinion, not in the villages but in the towns—its most important aspect is the restriction on freedom of entry into the trade. The two principal manufacturers have a monopoly of supply, as defined under the Act, and chemists between them have a monopoly of retailing. Not only is freedom of entry into retailing denied to other than chemists but the interaction of the two monopolies results in hindrances to the entry of new manufacturers; this is especially so if the new manufacturer is unwilling to impose restrictions on distribution. Restrictions on freedom of entry are, in my view, per se against the public interest unless it can be shown that there are significant reasons against freedom of entry, such as danger to public health or inflation of costs. In my view this is not the case here and I cannot find reasons why infant milk foods should be treated differently from the general run of commodities.

Comparison with colour film

168. My own conclusion on infant milk foods is similar to the Commission's conclusion that confining the retail distribution of colour films to certain outlets, mainly chemists, is against the public interest¹. In my view the two cases are almost exactly identical as far as considerations of the public interest are concerned; the case for freedom of entry is, if anything, stronger in the infant milk foods trade.

169. The manufacturers' arguments in favour of confining the product, mainly to chemists, are strikingly similar in the two cases. In the case of colour film, Kodak attempted to justify confining by saying (i) that its dealers give expert advice, (ii) that the product deteriorates after a certain date, and (iii) 'if you spread your trade too thinly no one will be making reasonable profits and you will have a demand for increased margins'; the Commission rejected the validity of this justification. In the present case, however, the Commission has accepted the corresponding three arguments.

170. As regards the manufacturers' arguments, the Commission was influenced in coming to its conclusion by taking into account the 'limited scale of the trade' and the 'relatively stable' demand for the product. In my view these two considerations are not sufficient to justify treating infant milk foods differently from colour film or other products. There are of course

¹ *Colour Film: A report on the Supply and Processing of Colour Film*, para. 274. (Session 1966-67, HCP 1. HMSO, 9s. 6d.)

plenty of unimportant commodities for which demand is static or declining but which are nevertheless economically distributed without restrictions. I show later in this note that, even if the market is limited, wider distribution need not be expected to lead to higher prices.

171. Apart from this it seems to me doubtful whether the infant milk food trade is in fact 'limited in scale' with a 'relatively stable' demand compared with the general run of commodities. Total sales of colour film in the United Kingdom came to £5.6 million in 1964 whereas those of infant milk foods came to £8.4 million in 1965¹. Such information as we have received from the manufacturers about sales indicates a substantial growth over the last ten years, and there was some increase in consumption in 1965 despite the fall in the number of births to which attention has been called. In the context of the present report one ought perhaps to look at sales through retail outlets (i.e. excluding clinics, etc.): there is evidence to suggest that these increased in terms of quantity by over 10 per cent. per annum in the last ten years and 7 per cent. per annum in the last five years. Nor is there any justification for sharing the companies' pessimism concerning the future: the fall in the number of births in 1965-66 is likely to be temporary and the rising trend in births is likely to be resumed as women born in the post-war years, when the number of births increased, themselves reach child-bearing age². In addition there is a hitherto untapped market and the trend away from giving babies fresh or tinned milk is likely to continue; making infant milk foods more freely available is likely to reinforce these trends.

172. In my view the case for freeing the distribution of infant milk foods is even stronger than the case for freeing colour film because the inconvenience caused by restricting the number of outlets is greater. Infant milk food is more bulky than colour film and mothers with small babies are less mobile than amateur photographers. Moreover, the problem of selling infant milk foods in a large number of outlets is made easier by the fact that demand is fairly steady and predictable whilst sales of colour film are highly seasonal; amateur photography depends on the vagaries of the British climate much more than the production of babies does.

The issue of convenience

173. In this particular instance the Commission has devoted a great deal of attention to the question of convenience in obtaining the product and has considered the fact that very little complaint has reached it from the public, either directly or indirectly. There is little reason for surprise since individual members of the public hardly ever lodge complaints in connection with products referred to the Commission. It is possible to put several interpretations on this, such as (i) that there is nothing to complain about, (ii) that consumers are ignorant, (iii) that consumers are not organised, or (iv) that consumers do not think it does much good to complain. On general grounds one would expect complaints to reach the Commission when a few consumers feel greatly injured rather than when a large number of consumers are each aware of only slight inconvenience. But in any case, the Consumer Council,

¹ *ibid.* para. 232 and this report para. 11 above.

² cf. *Economic Trends*, November 1966 (HMSO, 6s.).

a body which was set up to look after the interests of consumers, expressed a view categorically against restrictions on sale. I fully agree with the Council's view that restrictions on outlets are per se inconvenient to the public.

174. One way to assess the amount of inconvenience would be to de-restrict selling and then to observe the extent to which the public prefers to buy elsewhere than at chemists. If baby foods, other than infant milk foods, can be regarded as a precedent, or if the American market is an example, it would not be surprising if chemists were to lose one-half of the trade to other outlets. This would be a measure of the present inconvenience.

175. On general grounds one would consider that de-restriction increases consumers' convenience on three counts. First, an increase in the number of outlets increases consumers' convenience. Admittedly, some chemists may cease to stock infant milk foods but these are likely to be precisely in those neighbourhoods where a more convenient supplier is available. (The Pharmaceutical Association did not show that the consumer was inconvenienced when supermarkets started selling products which were previously reserved for chemists.) Second, most consumers, if they could choose, would find supermarkets and grocers more convenient than chemists since normally they shop at chemists less frequently¹. Many consumers find one-stop shopping of great benefit and it is a nuisance to be able to buy a whole range of food stuffs in one place including baby foods, except those brands of infant milk foods which are confined. Third, many grocers deliver to the home but few chemists do so.

The medical issue

176. The medical issue concerns the advice given by chemists and the dangers arising from the perishable nature of the product. My colleagues attached small weight to it, and did not regard it in itself as sufficient justification for confining distribution. I would myself attach no weight to the issue at all. For instance, 7,000 grocers are already selling infant milk foods but there is no evidence of any harm resulting. On the contrary, I see reason for widening sales on these grounds. Medical witnesses have told us that from a health point of view infant milk foods are superior to fresh or tinned milk and there must be mothers who would buy infant milk foods instead of other milk if the former were more widely distributed. In my view, if there are medical reasons for confining sales to chemists, there should be legislation to this effect, especially as not all brands are so confined.

The issue of the retail price

177. Since there is no medical consideration, the main interest of the consumer is the lowest possible retail price consistent with good service. I do not think that there is the slightest likelihood that in a free market 'the public in places which are already adequately served might suffer by higher prices' (paragraph 166) as my colleagues fear. On the contrary, in my

¹ In 1957, before supermarkets became important, the average household paid an estimated 7.6 visits to grocers per week, but only 1.0 to chemists. About 60 per cent. of housewives visit grocers at least twice a week and 98 per cent. at least once a week. cf. W. G. McClelland *Studies in retailing* (Blackwell, 1963), pp. 38-39.

opinion retail prices are likely to fall, at any rate in some outlets, if manufacturers were to allow supermarkets and grocers to sell and also allow them to fix their own prices.

178. I base this view on evidence relating to the relative efficiency of chemists and grocers, and on evidence relating to their respective pricing policies¹. In the last twelve years or so there has been a distinct improvement in efficiency of distribution in this country. But the revolution of retailing has centred on the grocery trade and led to the rise of supermarkets which are based largely on groceries. It is apparent that the chemists' trade was much less affected by these changes. There is also every evidence to indicate that price competition in the chemist's trade is practically non-existent, whilst the opposite is true for groceries. It is especially noticeable that price competition at the retail end has increased each time supermarkets have entered a new line of goods. When supermarkets have entered toiletries and other household goods they have reduced prices on the average by 7 per cent., more or less in line with reductions in grocery prices². And Glaxo told us that grocers stocking infant milk foods sometimes try to reduce prices but they had no such 'difficulty' with chemists.

179. The manufacturers argue that selling through a larger number of outlets leads to higher unit costs of distribution. This is necessarily so if (i) an increase in the number of outlets does not lead to higher sales, (ii) there are economies to be derived from concentrating a given volume of sales into fewer outlets, and (iii) given the number of outlets, the existing set is more efficient than any other set. While I do think that sales will increase somewhat with the number of outlets, especially as there is competition with substitutes, I accept that the increase in sales will not be enough to prevent a fall in the volume of sales per outlet. I shall, however, discuss assumptions (ii) and (iii) in the next three paragraphs.

180. I doubt whether any variation of costs according to sales per outlet could be important because the greater part of the output of reference goods is distributed alongside other products; retail sales of course invariably take place in establishments which sell many different products. Glaxo says that it would have to create a parallel selling organisation to service grocers; but the scale of the effort needed appears greatly exaggerated. Although the Glaxo group is geared to the pharmaceutical trade, total group sales are variable and the group's own distributive and selling organisation should be able to adapt itself to the transfer of some of its infant milk food trade to grocery wholesalers. On the other hand Cow & Gate, which at present distributes through a Unilever subsidiary (SPD Ltd.), could probably with equal ease distribute to grocers, since the Unilever group itself distributes soap, detergents or toothpaste to both chemists and grocers with equal efficiency. Cow & Gate is of course part of the Unigate group and thus would in any case have easy access to food retailing.

181. It is difficult to believe that the present retail outlets, numbering at least 22,000, are the most efficient, Glaxo for instance delivers infant milk food directly to 10,000 chemists whose average order, according to an analysis

¹ cf. especially McClelland, *op. cit.*, and J. F. Pickering, *Resale price maintenance in practice* (Allen & Unwin, 1966) *passim*.

² Pickering, *op. cit.*, p. 156.

specially made for us, is only £14; and Glaxo is willing to deliver quite small quantities. Glaxo's average revenue on the bulk of this trade was 36s. 6d. per dozen (from which a small deduction ought to be made for the free return of packets after the expiry date) giving a distributive margin of 24 per cent. This is on the low side for the chemist's trade, although there are lower margins still, but would be distinctly on the high side for the food trade. According to Dr. Pickering the gross margin on branded groceries in supermarkets may have fallen to 14–15 per cent.¹

182. In any given area there is likely to be some transfer of sales from chemists to grocers. But the grocers who enter the trade are likely to be the supermarkets and the lowest-cost grocery outlets in the area, and the chemists leaving the trade, if any, are likely to be among the highest-cost chemists. Hence a transfer of sales from chemists to grocers can bring about a cost reduction which is likely to outweigh the diseconomies, if any, arising from distribution through a larger number of outlets. All in all, costs per unit of sales are more likely to fall than to rise.

183. It is indeed doubtful if the two main manufacturers have been greatly concerned with finding the most economical method of distributing their goods to the public; their policies of confining goods have been influenced rather by a desire not to offend their traditional retailers². The two companies established the approximate number of grocers who are permitted to sell their products only during the Commission's inquiry, and it was only then that attempts have been made to ascertain the inconvenience caused to consumers by the policy of confining.

184. It is not even evident that the two main manufacturers achieve the greatest internal economy in distribution. Glaxo, for instance, told us that the price differential between deliveries to wholesalers and direct deliveries to chemists³ goes back to the 1930's; Glaxo could no doubt achieve greater economies, and give incentives to a more efficient pattern of distribution, by a more up-to-date price structure. Cow & Gate is reluctant to use the Unigate group's distribution network and its retail foodshops; and of course an efficient and convenient method of distribution could be through the Unigate group's dairy roundsmen.

185. With a wider distribution the responsibility for packets unsold at the expiry date would probably pass to the retailer, as is the custom in most other trades. There is no difference from the consumer's point of view whether the manufacturer or the retailer bears the loss, and the retailer would have a greater incentive not to over-stock.

186. Glaxo's assertion that it would have to increase advertising and sales promotion outlays greatly if retailing were widened is at variance with the evidence given by a number of experts that the choice of brand is based on tradition—brand loyalty being handed down from grandmother to mother and from mother to daughter—or on medical advice; we were told that sudden changes in brand may be associated with the arrival of a

¹ *op. cit.*, p. 131.

² cf. *Colour Film*, paragraphs 266 and 273.

³ Glaxo receives only 36s. 7d. per dozen for direct delivery to retail chemists in minimum quantities of four dozen, compared with 38s. 0d. for delivery to wholesalers in minimum quantities of twelve dozen (see Appendix 3, paragraph 2).

new doctor at the local maternity hospital. Glaxo probably had in mind that if distribution were to be widened it would face greater competition from small manufacturers and new entrants. But a change in the market may have already occurred with the introduction by Wyeth of selling techniques hitherto not used. They have broken with tradition by advertising their product on television and Glaxo themselves have already followed suit. In other words, advertising expenditures are already increasing because of the arrival of an aggressive newcomer and not because of a widening in distribution. But in this trade advertising is unlikely to become disproportionately large.

187. Altogether there may not be much scope for passing cost increases, if any, on to the consumer. A comparison with other baby foods which are already freely sold by grocers suggests that the margins are similar and that they have not increased since chemists have lost their exclusive rights¹. Also, close substitutes exist. The price of the main brands of infant milk foods works out at 8½d. per reconstituted pint, a little below the price of fresh milk; in fact in fixing the price the manufacturers must have kept an eye on the retail price of fresh milk. Then there is National Dried Milk which, according to the Ministry of Health, is with the vitamins provided in other welfare foods, at least as good as the branded products; its price is 38·4d. per lb.², compared to 39d. to 42d. for the branded products in the clinics and 48d. in chemists.

188. My conclusion therefore is that if retailing were freed the public would benefit by greater convenience and, if prices were no longer maintained, by lower prices; and grocers (who are also members of the public) would benefit by freedom to trade. An even more important consideration is that in the longer run there would be no brake on progress. The Act of 1948, in defining the public interest, enjoins inter alia that "regard shall be had to the need . . . to achieve . . . the organisation of industry and trade in such a way that their efficiency is progressively increased and new enterprise is encouraged . . ." (section 14). In this trade confining sales to chemists may well have been justified at the beginning of the century when the product was first introduced. But in the lifetime of two generations there have been important changes in conditions, of which four are relevant. First, the general education of mothers has greatly improved and the paternalistic attitude of the companies is no longer warranted. Second, with the spread of welfare clinics and the National Health Service mothers can obtain expert medical advice freely. Third, the nature of the chemist's trade has also changed; today a greater proportion of his sales consists of cosmetics, photographic goods and patent medicines than of "ethical" preparations and prescriptions. Fourth, there has been a revolution in distribution, particularly in the grocery trade. Restrictions on entry into the infant milk foods trade prevent or hinder a progressively increased efficiency from being achieved through making full use of newly developed channels of distribution.

189. I therefore recommend that Glaxo and Cow & Gate should permit their infant milk foods to be stocked and sold by any retailer who wishes

¹ *The Grocer*. Buff List, 5th November to 3rd December 1966.

² In fixing the price, the Ministry takes account of the price of liquid milk. The cost of National Dried Milk is about 29d. per lb.

to deal in them, subject only to such normal commercial considerations as credit-worthiness, and in so far as the companies may need to differentiate between retailers in regard to direct purchases from themselves such differentiation should not be based otherwise than upon the quantities purchased.