

- (f) BICC should not use its monopoly power to the unfair advantage of its own electrical contracting subsidiary and should not discriminate unfairly against its electrical contracting competitors in price, service or continuity of supply either nationally or regionally.
- (g) BICC and Pyrotenax should continue to market mineral insulated cable in competition with each other.
- (h) The continued independence of Glynwed as an alternative source of supply should be assured.
- (i) Patent licences (if any) and know-how should be freely available to anyone wishing to manufacture mineral insulated cable.

## **CHAPTER 7**

### **Conclusions**

#### **The facts**

131. Paragraph 2 of our reference instructed us, when investigating and reporting upon the facts, not to consider whether the provisions of sections 6(1)(b)(ii) of the 1965 Act were satisfied. Our first duty under section 6(2) of the Act, therefore, is to report whether arrangements in progress or contemplation for the merger of British Insulated Callender's Cables Ltd. and Pyrotenax Ltd. would result in section 6(1)(a) and 6(1)(b)(i) of the Act being satisfied.

132. The Board of Trade did not exercise their power under section 6(11) of the 1965 Act to stay the proposed merger, the arrangements for which were completed shortly after the date of the reference (see paragraph 102) with the result that the two enterprises referred to in the reference have ceased to be distinct enterprises. Section 6(1)(a) of the 1965 Act is, therefore, satisfied.

133. Section 6(1)(b)(i) of the Act is satisfied if certain conditions are found to prevail, or to prevail to a greater extent, as a result of the merger. The two companies' sales of mineral insulated cable in the United Kingdom in the latest periods for which figures are available are given in paragraph 68. Each of the companies separately supplied more than one-third of the mineral insulated cable which was supplied in the United Kingdom in these periods, and their combined share of the supply was over 90 per cent. We conclude, therefore, that the conditions specified in section 6(1)(b)(i) of the 1965 Act prevail to a greater extent as a result of the merger.

#### **The public interest**

134. We are next required to report whether the fact of the enterprises having ceased, in the circumstances of the case, to be distinct enterprises operates or may be expected to operate against the public interest and, if so, whether any and if so what action should be taken to remedy or prevent any mischiefs which result or may be expected to result.

135. One of the circumstances of the case which appears to us to be significant is the immediate cause of the merger. This was not, on the one hand, that Pyrotenax's prospects as an independent company were poor, so

that it was driven to seek association with a large group. As the figures given in paragraphs 90 and 91 demonstrate, it had been for many years and still was at the time of the merger a highly profitable company; its record for commercial and technical initiative appears to have been excellent and its future was not threatened. Up to the end of 1965 the Mineral Insulated Cables Division of BICC had been less profitable. This may be explained by the shorter time it had been in existence, but at least it does not suggest that being in a large group had given it any overriding advantage which might have induced Pyrotanax to seek a similar link. Nor, on the other hand, was the reason for the merger that there were great improvements in efficiency to be gained by a radical change in the structure of the industry, by which the two companies were impelled to come together. Economies and other benefits are claimed (we consider their value in paragraphs 158-160), but they appear to have been almost an afterthought. The truth is that the merger was prompted entirely by ICI's decision to sell its shareholding (17.3 per cent.) in Pyrotanax to anyone who would give it a satisfactory price (see paragraph 98). Before that neither BICC nor Pyrotanax had had the possibility in mind, and the offer of the shares to BICC created a new situation. BICC was given the opportunity of taking over a company which was both a formidable competitor in mineral insulated cable and at the same time a profitable investment, and it is understandable that this opportunity was taken up with alacrity. For Pyrotanax, on the other hand, the acquisition of a substantial shareholding by its main competitor made a fundamental change in its prospects of survival as an independent company, and it effectively had little choice but to acquiesce in a complete merger. Against this background the main immediate consequence of the merger appears to be a sharp reduction in competition, and we first consider the possible implications of this.

### **Competition**

136. On the face of it the merger appears to have reduced competition in the supply of mineral insulated cable in the United Kingdom almost to nothing. Previously the market was divided about equally between two companies (apart from the very small share taken by Glynwed), whereas following the merger BICC has an almost complete monopoly. A number of our witnesses expected this to have an unfavourable effect on prices and some thought that service might also deteriorate (see paragraph 128). BICC, however, argued (see paragraph 116) that it was misleading to consider the supply of mineral insulated cable in isolation, since it did not serve a distinct market of its own in which it was indispensable but was everywhere fully in competition with alternative systems using various different types of cable. The relevant market, in BICC's view, was that for mineral insulated cable combined with the other types of cable which could be substituted for it; BICC's share of the market so defined following the merger was only a little over one-third. However, a number of our witnesses did not share this view and, since the extent to which competition will be reduced by the merger is fundamental to a conclusion on the public interest, we thought it desirable to investigate how competition operated before the merger.

137. A number of witnesses described mineral insulated cable as essential for certain uses because no other cable combined its qualities to the same degree, especially its heat resistance, safety in inflammable surroundings,

resistance to mechanical damage and its longevity (see paragraphs 119-123). Nevertheless discussion with these witnesses did not reveal any situation in which electrical wiring would be impossible without mineral insulated cable. Nor did it appear that there are any circumstances in which, in practice, nothing but mineral insulated cable is ever used. We were for instance told by some shipbuilders that they regarded mineral insulated cable as essential where it is exposed to heat, but it appeared that some ships are still built without the use of mineral insulated cable. The low usage of mineral insulated cable in industrialised countries where more might have been expected, such as the United States and Germany, also supports the contention that mineral insulated cable is not technically essential. We therefore accept the explanation given to us by both BICC and Pyrotenax that cable users have been induced to adopt mineral insulated cable in place of other systems only as a result of vigorous promotion by the manufacturers ; its qualities make it technically attractive in certain situations, but resistance to its use has had to be overcome (and still has to be overcome in many foreign countries where sales have so far been small). Even where its merits are fully accepted, it does not follow that it will be used regardless of price ; the choice of a cable system depends on the balance of advantages between alternatives, taking into account both technical advantages and the cost of buying and installing.

138. There is thus some force in the argument that the main competition affecting the supply of mineral insulated cable is that afforded by alternative cable systems. Pyrotenax told us that its prices had originally been fixed mainly by reference to the prices of alternative systems, that is to say at the level at which it would be possible to compete in the markets which Pyrotenax intended to exploit. Both companies said that it was to avoid putting mineral insulated cable at a competitive disadvantage with other types of cable that they had absorbed some of the increased cost of copper in recent years and had not fully recovered it in increased net selling prices (see paragraph 72). Pyrotenax also said that it was partly because high copper prices were making mineral insulated copper covered cable more difficult to sell that it had established a separate manufacturing unit for aluminium covered cable (see paragraph 25). In the light of these points we accept that the competition of alternative cable systems sets a ceiling to mineral insulated cable prices.

139. Nevertheless we do not consider that it follows that no importance should be attached to competition between manufacturers of mineral insulated cable itself. This would be so only if the various types of cable were virtually identical in characteristics, so that the choice between them was simply a question of cost. But it was clear from the evidence of many of our witnesses who were experienced in supplying or installing cables of all kinds that they did not regard the choice in this way. They were convinced that for certain uses mineral insulated cable was virtually essential, if not literally so, and they considered that it would be a seriously retrograde step if they had to make do with an alternative system. It may be that this conviction demonstrates the effectiveness with which mineral insulated cable has been promoted over the years, but we are satisfied from what we have heard that it has real technical advantages which make its use at least highly desirable in certain situations. Whatever the reason, the importance which some users attach to mineral insulated cable does mean that the market for it is to some

extent differentiated from that of the other systems which BICC says are interchangeable with it ; over a part of the market in which it is now sold in the United Kingdom relative costs do not appear to be the principal factor governing its use. Moreover, although the price of mineral insulated cable has to be related broadly to that of the competing systems, in that the price level may roughly determine the size of the market in which it can be successfully promoted, nevertheless when installation costs are taken into account the actual relationship may vary greatly in different situations. We were told that in some uses where other cables would be technically just as satisfactory mineral insulated cable might be as much as 25 per cent. cheaper because it is simpler to install ; in such a situation the price of mineral insulated cable cannot be closely affected by that of the alternative cables. It seems to us therefore that there is a field in which mineral insulated cable has such an advantage, either because of its technical merits or because of its low installed cost, that the effect of competition from other systems is greatly reduced. Thus, although the competition of other systems does impose a limit on the price at which mineral insulated cable can be sold for particular uses, it is not a precise limit and the level of profit earned by Pyrotex (and more recently by the Mineral Insulated Cables Division) suggests that such competition has not operated to restrain mineral insulated cable prices at all severely. Below the ceiling in fact there is scope for varying the price of mineral insulated cable. There is, moreover, a choice between reducing prices in order to widen the market for it and selling at a higher price in a restricted market. Competition between suppliers of mineral insulated cable could have an effect, therefore, even if other systems do provide the main competition. If the loss of that competition led to higher prices it would mean that in situations where mineral insulated cable is wanted for its technical superiority consumers would have to pay more, and in other situations where the choice is determined by relative installed costs consumers might be deprived of a cheaper alternative to conventional systems.

140. The evidence confirms that the supply of mineral insulated cable has in fact been affected by competition between the two main producers. First, although BICC and Pyrotex said that price competition came mainly from alternative cable systems, we consider that there has also been price competition between the suppliers of mineral insulated cable, both in list prices and in net prices. As regards list prices, Pyrotex told us that, shortly before BICC entered the market, it reduced its list prices in anticipation of the competition which would follow the expiry of its patents (see paragraph 71). No price cutting followed BICC's entry, and the list prices of the two companies have remained close together ; BICC explained that initially it had been its deliberate policy to follow Pyrotex prices because of the latter's greater experience of the market. But it is reasonable to assume that the potential competition from the other has exercised a restraining influence on the list prices of each company. Some support for this assumption is given by the changes in BICC's list prices in early 1966, when prices were first raised, but later on were reduced when Pyrotex did not raise its prices to the same extent (see paragraph 74).

141. Competition has been more active in net prices, i.e. in the discounts given off the list prices, particularly in the special rates given to users and contractors (see paragraphs 81 and 84). Pyrotex told us that it had had to

introduce larger discounts in order to counter competition from BICC, and witnesses told us of cases in which customers had changed from one manufacturer to the other in order to take advantage of better discounts. Resale prices are not maintained and we were assured that competition, both that between distributors and that between distributors and the manufacturers' direct selling organisations, had resulted in some of the benefits of greater discounts being passed on to users. Effectively, therefore, there has been competition in net prices right through the distributive chain. Although BICC and Pyrotenax argued that it was the pressure of competition from other cables which had been holding down mineral insulated cable prices, the indices of net prices given in paragraph 72 show that in 1965 and 1966 the prices of other cables were rising markedly faster. This suggests that, in that period at least, competition between suppliers of mineral insulated cable may have been a more important restraining factor. Price competition has moreover been increased to some extent by the entry of Glynwed. Although its list prices have been the same as those of BICC, Sterling Cables (formerly sole distributor for Glynwed cables) won customers by offering larger discounts than the other manufacturers. So far, however, this appears to have benefited only a few users (see paragraph 125) and we were told that it had not made any impact on the prices or discounts offered by Pyrotenax and BICC.

142. Secondly, competition between the manufacturers of mineral insulated cable has been apparent in other ways as well as in price competition. Pyrotenax told us that competition from BICC had affected the service which it gave to its customers. Originally, when Pyrotenax was the sole supplier, it had been sufficient to convince users of the merits of mineral insulated cable, since they then had no choice but to buy from Pyrotenax; but the entry of BICC, with its large sales and distribution network, had led Pyrotenax to improve its own supply arrangements by setting up its own cable depots in a number of industrial centres. Competition had also led to technical developments. When BICC took a share of the market for standard mineral insulated cable, Pyrotenax reacted by introducing over a period of years new developments such as heating cable, thermo-couples and aluminium covered mineral insulated cable. Improvements were made in accessories in order to obtain a competitive advantage by reducing installation costs, and Pyrotenax said that there had also been competition in quality and techniques in thermo-couples and wiring units.

#### **Possible effect of reduced competition on the supply of mineral insulated cable**

143. Although therefore we accept that it would be misleading to regard the merger as creating a water-tight monopoly, in view of the continuance of competition with other cable systems, nevertheless we consider that it has resulted in a reduction in competition which, potentially at least, could have undesirable consequences. Some of our witnesses expressed apprehensions in this respect. One possibility is that, within the limits set by the competition of other systems, the prices paid by users will be higher than they would otherwise have been. In other words BICC might be able, if it chose, to take monopoly profits within those limits. There could at the same time be a deterioration in service in other respects. Another, and possibly more serious, possibility is that the potentialities of mineral insulated cable might not be exploited to the full. As explained in paragraph 142, competition between the two companies stimulated technical developments and

improvements. In addition, it is important to recognise that Pyrotenax was a company whose fortunes depended entirely on mineral insulated cable and this itself has been a stimulus to its development. Pyrotenax told us that the main reason why mineral insulated cable had not been developed in certain other industrialised countries to the same extent as it had in Britain was that the original manufacturing rights were sold to companies already manufacturing other types of cable ; such companies had little incentive to promote the use of mineral insulated cable at the expense of their existing interests. Following the merger the position in Britain is that most of the manufacture of mineral insulated cable is in the hands of one group, and that group is one with very large interests in other types of cable. Thus the incentive to exploit mineral insulated cable may be reduced in two respects. This could mean that less effort will be put into promoting its use, where this might conflict with other BICC interests, and that there will be less interest in improving and developing the cable and accessories (although there has been no suggestion that quality might deteriorate as a result of the merger).

144. In commenting on this possibility, BICC stressed the value of its policy of giving its operating divisions and subsidiaries a high degree of autonomy (see paragraphs 46 and 116). In accordance with this policy, the Mineral Insulated Cables Division had from the start been given a free hand to compete with BICC's other divisions ; in fixing its prices and determining its sales and production policy its sole object had been to achieve the best results with mineral insulated cable, and it had been free to disregard any consequences for the divisions making competing types of cable. Pyrotenax told us that it too attached importance to this policy of BICC's ; because of it a merger with BICC was more acceptable than one with any other cable manufacturer, where there might have been a greater danger that mineral insulated cable would not be permitted to encroach upon other cable interests. Bearing in mind that the two constituent companies of BICC (British Insulated Cables Ltd. and Callender's Cables and Construction Co. Ltd.) declined the offer of an interest in the manufacture of mineral insulated cable that was made to them before the war (see paragraph 53), one might infer that the decision to start manufacture of mineral insulated cable and to give the Mineral Insulated Cables Division a relatively free hand was a defensive response to the success of Pyrotenax, which was threatening the interests of BICC (and of other cable companies—see paragraph 54) in competing cable systems. Since this threat from an independent company with no other cable interests has now been removed, it might be thought that it therefore could not be assumed that BICC would always follow the same policy towards its Mineral Insulated Cables Division as it had done in the past. Circumstances could arise in which it would be seen to be in the best interests of the group as a whole to allow mineral insulated cable to decline, or at least not to press its development, while continuing to take a good rate of profit in the limited markets in which it had a substantial cost advantage. But we are satisfied that BICC's decentralised management policy, although it is not equivalent to free competition between separate companies, does nevertheless offer a measure of assurance that the potentialities of mineral insulated cable will be adequately exploited.

145. In this connection BICC also emphasised its intention to retain Pyrotenax and the Mineral Insulated Cables Division as separate entities

competing with each other (see paragraph 105). Since BICC intends the two units to sell at common prices and discounts there will be less reality in this competition than in that between the Mineral Insulated Cables Division and the other BICC divisions. Rivalry between the two factories may provide an incentive to technical innovation. There may also be rivalry in selling, and the maintenance of the two existing sales forces in parallel may help to ensure that the service to customers does not deteriorate. But apart from this we do not attach value to the separation of Pyrotenax within BICC as a safeguard for the public interest, and in particular it does not alter the fact that the main price competition between suppliers of mineral insulated cable has been lost.

146. In addition to BICC's management policy there are, however, other factors which may be expected to operate as safeguards against the dangers referred to in paragraph 143. The first, and perhaps the most important, is that mineral insulated cable is very profitable. In 1965 the profit on capital employed made by the Mineral Insulated Cables Division was 23 per cent., as compared with 15 per cent. made by BICC as a whole in the same year (see paragraph 91). Pyrotenax, despite the high price which it was paying for copper tubes, achieved even better results (although BICC caught up to the same level in the first half of 1966). The profit on capital employed made by the Pyrotenax group in the financial year 1965-66 was 30 per cent. If the same results were achieved by the combined mineral insulated cable interests of BICC following the merger we estimate that this would produce a profit on capital employed of 27 per cent., or 34 per cent. if all the cost savings which it is claimed that the merger will produce were retained as profit (see paragraph 115). Moreover it appears to us that, as Pyrotenax has been a highly successful and efficient company, its specialist qualities combined with BICC's expertise in the general cables field may produce even better results. This suggests, therefore, that BICC will have a strong interest in promoting mineral insulated cable as long as it continues to yield satisfactory profits. Such promotion may, of course, be at the expense of other cables. But BICC is only one of several manufacturers of the alternative cables, and it is likely, therefore, that BICC's gains on mineral insulated cable would outweigh any resulting loss of sales by its other divisions. It would therefore be surprising if BICC, which now has over £10m. invested in mineral insulated cable, did not seek to take the maximum advantage of the possibilities of mineral insulated cable, even if its policy towards its operating divisions were not such as has been described. Furthermore, BICC gave us an assurance that the future commercial development (including the necessary research) and exploitation of mineral insulated cable in the United Kingdom and overseas would not be hampered by other BICC interests. (It is understood of course that this does not imply that restraints should be placed on the development of new and improved types of cable that might supersede mineral insulated cable.)

147. The existence of an incentive to exploit mineral insulated cable, however, does not of itself preclude the possibility of taking monopoly profits. The main safeguard against this is the possibility of increased competition from other manufacturers of mineral insulated cable. The only other such manufacturer at present is Glynwed. Glynwed's sales so far have been disappointing and its share of the market is scarcely significant. Competition

from Glynwed cannot be said to have had an appreciable impact, and some of our witnesses considered that its chances of survival as a manufacturer of mineral insulated cable in competition with BICC were doubtful. Glynwed itself is optimistic about its prospects, however, (see paragraph 15) and it is possible that the merger may, if anything, assist it. Some users, for example the National Coal Board, are reluctant to become wholly reliant upon a single supplier and may be expected to do their best to keep an alternative source of supply in being. Glynwed has the capacity for a very much higher level of production than it has so far achieved and, as a vertically integrated company experienced in the production of copper tubes, should be in a reasonably strong position if it once succeeds in improving its sales performance.

148. Another possibility in theory is that if BICC were to make extremely high profits as a result of its near monopoly in mineral insulated cable some other company, such as one of the other large cable manufacturers, might be tempted to start production. This would not be a simple or inexpensive undertaking, and none of the companies with whom we discussed it was at present intending to attempt it (see paragraph 126). BICC told us that the minimum economic scale for a new mineral insulated cable production unit in Britain would probably require an investment of at least £1m., (see footnote to paragraph 126) and the experience both of BICC and of Glynwed suggests that there are many difficulties to be overcome in the early stages of manufacture. Another company might not meet so many difficulties, since BICC had to devise production methods which did not infringe the patents which were then effective, while Glynwed suffered from the disadvantage that it was new to the cable industry. We understand that patents would no longer present a problem (see paragraph 41), and it should be within the capabilities of one of the other large cable companies to find the necessary capital and to overcome the production difficulties. Moreover they have selling organisations already in being which are used to selling mineral insulated cable. But any new entrant could expect to meet fierce competition from BICC and might have to wait several years before a reasonable return on the capital invested was obtained; there would be a time lag of some years between a company's deciding to enter the field and its being able to offer significant competition. Thus there are substantial barriers to entry, but the high profits earned by Pyrotex were sufficient to induce Glynwed, a newcomer to cables, to enter the market despite the difficulties (see paragraph 14). The possibility that, if the prospects were attractive enough, some other company might decide to intervene cannot in our view be entirely disregarded, but it is probably no more than a long-stop and it is unlikely that BICC would be greatly inhibited by the threat of potential competition.

149. The various factors outlined in paragraphs 144-48 do not, in our view, guarantee that the merger could bring no general consequences for the supply of mineral insulated cable that would be against the public interest. In particular there remains a possibility that prices will be higher than they would otherwise have been. The most satisfactory safeguard for the public interest would undoubtedly be the continuance of competition between two producers of comparable stature. But BICC has assured us that it intends to develop mineral insulated cable to the full (see paragraph 146), and this

will not be possible if prices are inflated. Moreover BICC has given us an assurance that the cost reductions achieved as a result of the merger (see paragraph 111) will be used to promote the use of and expand the sale of mineral insulated cable and to reduce net selling prices to customers (or to avoid increases that would otherwise have been necessary).

150. Although competition between existing manufacturers of mineral insulated cable has been virtually eliminated, we think that it is still important in the public interest to preserve the competition between distributors which has existed in the past (see paragraph 141). This should ensure that any price reductions are passed on to the user and may also impose some restraint on the monopoly supplier. We therefore sought, and were given, an assurance that BICC would continue to supply wholesale distributors with mineral insulated cable on normal commercial terms\*, by which was meant terms broadly in line with those applying to other classes of cables.

#### **Possible consequences for competitors**

151. We next consider the possibility that the monopoly power given to BICC by the merger might be used in ways that would affect other sections of the trade adversely, with consequences detrimental to the public interest. Apprehensions about this were expressed to us by customers of Pyrotanax and BICC, including in particular other cable manufacturers, wholesale distributors and electrical contractors. These apprehensions are described in paragraph 129.

152. Several of these witnesses were mainly anxious not to lose the favourable discounts which they had been receiving before the merger. In general, however, we do not consider that the public interest requires that any particular scale of discounts should be preserved in detail, and changes are certainly to be expected. Pyrotanax told us that over the years its discount structure had become irrational for various reasons. As a result of competition specially large discounts, for instance, had been offered in order to win particular customers. The rise in the price of copper had also enabled customers to qualify for higher discount rates even though the volume of their purchases was no greater than before. Pyrotanax had therefore been hoping to introduce a revised discount structure when a favourable opportunity appeared (i.e. when copper prices were no longer rising). This may also be BICC's intention following the merger. Furthermore BICC told us that Pyrotanax and the Mineral Insulated Cables Division would not be able to continue selling identical products on different terms; a common scale of prices and discounts would have to be introduced on whatever basis was considered to be best for sales. It is to be expected that in this process some customers may suffer a reduction in discounts, as they fear. We do not consider that this is necessarily against the public interest. Although high discounts may have benefited the public, to the extent that distributors passed them on to users, a reduction in some or even all discounts would not, on balance, be harmful provided that it was matched by a reduction in list prices, so that the average of BICC's net realised prices did not rise. The pattern of distribution could change as a result, but we see no reason why this pattern should necessarily be preserved entirely unchanged. It is true that if

\* The word ' terms ' here includes terms and conditions as to discounts, rebates and credit.

discounts were to be reduced to such an extent that wholesalers were effectively excluded from the trade, the service to users would suffer and there would be a loss of price competition. But in the light of the assurance recorded in paragraph 150 we do not consider this to be a serious risk. Moreover the electrical wholesalers are themselves in a strong position. A large proportion of BICC's trade in all kinds of cables is handled by wholesalers, and wholesalers could, if they thought it worth while, retaliate against what they considered to be unfair treatment by switching their business in other cables to other cable manufacturers.

153. Small users of mineral insulated cable who have been accustomed to deal direct with Pyrotanax on favourable terms are in a weaker position, but since it is intended that the Pyrotanax distribution system should be kept in being independently of BICC's arrangements there is no reason to think that they will no longer be able to deal direct. They have in any case the alternative of buying mineral insulated cable from wholesalers, and they cannot expect to retain particularly favourable discounts indefinitely if the manufacturer finds them to be uneconomic.

154. There is somewhat more ground for concern about the position of companies which are both customers and competitors of BICC but which do not have the bargaining strength towards BICC that is available to the wholesalers. The sections of the trade particularly affected are the other large cable manufacturers and the electrical contractors (see paragraph 129). Clearly the merger puts substantial monopoly power into the hands of BICC, since both these sections of the trade need mineral insulated cable in order to be able to meet the requirements of their customers and they would be seriously handicapped if they were unable to supply it. They are apprehensive about the prospect of being dependent in this respect on the terms which such a formidable competitor as BICC is prepared to allow them. The position is worse for them than it was when Pyrotanax was the monopoly supplier of mineral insulated cable, and when the cable manufacturers, presumably to reduce their dependence on a single source of supply, agreed among themselves that BICC should start manufacture of mineral insulated cable (see paragraphs 54-56). Now the monopoly supplier is also their strongest competitor. It is not, of course, a complete monopoly and the alternative source of supply provided by Glynwed is some safeguard. Any gross misuse of monopoly power might induce one of the other cable companies to start manufacture (see paragraph 148). Nevertheless the power is there, and the temptation to misuse it could occur.

155. The particular fear of the cable manufacturers was that BICC might be tempted to use its position in mineral insulated cable to obtain an advantage in competing for the supply of other cables. This could happen if BICC withheld supplies of mineral insulated cable from them, or supplied it only on relatively unfavourable terms compared with those given to other classes of customer, so that the cable manufacturers would be put at a disadvantage in competing with BICC for cable business whenever customers' requirements included mineral insulated cable. Alternatively BICC salesmen might be tempted to offer particular customers favourable terms, even uneconomic terms, for mineral insulated cable as a means of winning orders for other cables. We consider that such a distortion of competition in the market for

cables generally would be contrary to the public interest. Furthermore, although this was not put to us by witnesses, we see some danger that the same technique of offering special prices to selected customers could be used to drive Glynwed out of the business of supplying mineral insulated cable, thus giving BICC a complete monopoly.

156. The fears expressed by the electrical contractors were basically the same. BICC, as well as manufacturing and supplying cables, has an electrical contracting subsidiary, British Insulated Callender's Construction Co., which in certain fields is a strong competitor for other electrical contractors (see paragraph 45). BICC told us that this subsidiary did not at present compete for wiring business generally (in domestic or commercial premises for example) but that it had recently undertaken certain wiring contracts in a limited field which included the installation of mineral insulated cable. The electrical contractors feared that it might extend its activities more generally into the installation of mineral insulated cable, and that the BICC monopoly in mineral insulated cable might then give it an unfair advantage over them. The contractors' position is to some extent safeguarded by the availability of mineral insulated cable from wholesalers, and we would expect this to continue. They were nevertheless concerned that the BICC contracting organisation might benefit from better service and continuity of supply and might be supplied with mineral insulated cable on such favourable terms that it would be able to undercut other contractors whenever a job included mineral insulated cable. BICC told us that a discount of 25 per cent. had recently been fixed for any supplies of mineral insulated cable to British Insulated Callender's Construction Co. (see paragraph 87).

157. We considered that there was substance in the apprehensions both of the other cable makers and of the electrical contractors. We therefore sought and were given the following assurances :

- (i) that BICC will continue to supply other cable makers with mineral insulated cable and will do so at prices and on terms\*, and with service and continuity of supply, which will make it commercially practicable for them to participate in sales of mineral insulated cable ;
- (ii) that BICC will not give its own electrical contracting organisation more favourable prices, terms\*, service or continuity of supply for mineral insulated cable than it gives to other comparable electrical contractors ;
- (iii) that BICC will not offer specially favourable prices or terms\* for mineral insulated cable to customers for the purpose of winning business in other types of cable ;
- (iv) that BICC will not offer uneconomic prices or terms\* for mineral insulated cable to customers calculated to drive competitors out of the business of supplying mineral insulated cable ;
- (v) that BICC will publish its list prices and will make available to each category of customer its terms\* for mineral insulated cable appropriate to that category.

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\* The word ' terms ' here includes terms and conditions as to discounts, rebates and credit.

In addition, although it does not appear at present that patents would obstruct the entry of new manufacturers of mineral insulated cable, we thought it desirable to seek to ensure that patents would not be an obstacle if at any time in the future the government should decide that it was desirable in the public interest to encourage new competition. Accordingly BICC gave us the following assurance :

- (vi) that, if at any time the Board of Trade should so request, BICC will grant licences under any patents relating to mineral insulated cable, including accessories, on reasonable terms.

### **The benefits of the merger**

158. The benefits which BICC expects the merger to produce are described in paragraphs 109-113. We would expect that a certain amount of cost saving would be practicable in any merger of this kind as a result of the planning of production, leading to specialisation, longer production runs and reduced stocks ; the exchange of technical experience should also bring greater efficiency. The two companies have not forecast substantial benefits in this respect, however, and there is no prospect of an outstanding improvement as a result of the increased scale of manufacture, since both factories will continue to operate and will moreover be under separate management. Useful economies might have been expected from combining the two distribution organisations, which must substantially duplicate each other over much of the country, but BICC's intention is that the two existing sales organisations should continue to operate separately. The principal cost benefit from the merger appears to be the reduction in the price which Pyrotenax has had to pay for copper tubes (see paragraph 109). The magnitude of this reduction is surprising, and we have therefore examined BICC's estimates with care, but we accept that they are correct. We also accept BICC's rough estimate that the total cost savings will lie somewhere between £300,000 and £400,000 a year. This is a useful saving. We have shown in paragraphs 114 and 115 what effect it might have on profits if it were all retained. If alternatively it were to be wholly passed on to BICC's customers we calculate that it would represent an average reduction of the order of 4 per cent. in the selling prices of the whole mineral insulated cable output of the two companies.

159. On the other hand, although it is difficult to foresee what might have happened if there had been no merger, it is possible that at least some of the savings might have been secured by other means. Pyrotenax told us that it had been dissatisfied for some time with the price which it had to pay to Yorkshire Imperial Metals for the conversion of copper into tubes, and had been seeking a reduction or an alternative source of supply. We consider it likely that Pyrotenax would ultimately have found another supplier able to offer prices more comparable with those of BICC, or might even have decided to establish its own tube mill in the same way as BICC has done. This would have required an investment of some £250,000 (see paragraph 58), and there appears to be no particular reason why Pyrotenax could not have undertaken it.

160. It may turn out that the most valuable result of the merger for the public interest will be that it will make possible a more rapid increase in exports. The measures proposed by BICC for this purpose are described in

paragraph 112. The development of mineral insulated cable and of its use for many purposes has been very largely British ; apart from those Commonwealth countries in which sales and manufacture have been successfully promoted, overseas markets for it are still relatively undeveloped. Clearly if the use of mineral insulated cable could be promoted as successfully in all other industrialised countries as it has been in Britain, the potential sales could be very great. As the figures show (see paragraphs 39 and 63), Pyrotenax has been tackling overseas markets energetically and more recently BICC has also had some success. But the difficulties are considerable. The cable can be sold fairly easily for a few special purposes, but in most overseas markets users are not accustomed to its more general use ; for wider promotion, therefore, it is necessary to educate and convert users on a large scale, and this is very expensive in both money and manpower. Its high profits enabled Pyrotenax to finance the rapid growth of mineral insulated cable in this country, but it could not readily find the money to mount the effort required for intensive promotion in more than a few overseas markets. The need for skilled technical salesmen has also set a limit to both companies' efforts. Since therefore the resources available prevent an adequate effort being made by the two companies separately in all the markets that appear ripe for development, it seems to make better sense for them to combine and co-ordinate their resources, rather than to continue to compete with each other in the same markets, as had been happening before the merger. Thus for example the cancellation of BICC's plans to start manufacture in Australia and Canada frees money and men to be used in other markets ; similarly Pyrotenax will no longer need to tackle the Japanese market, where BICC is more firmly established. BICC has ample resources and plenty of experience of overseas markets generally, but Pyrotenax can contribute greater experience of the special problems of selling mineral insulated cable. We consider that the combination of the two should have a better chance of achieving successful results quickly than they would have had as separate companies. Moreover the reduced production costs resulting from the merger should also increase their competitive strength abroad, and BICC told us that it intended to devote some of the production cost savings directly to export promotion. We considered whether there was a risk that the loss of competition between the two companies would reduce the incentive to promote sales overseas, especially where they might compete with other BICC cables ; but the factors referred to in paragraphs 144-146 would act as a safeguard with respect to overseas sales promotion as well as in the home market and we are satisfied that the loss of competition need not be expected to lead to any adverse results in this respect.

### **Conclusion**

161. The economic benefits which are expected to result from this merger as regards the supply of mineral insulated cable in the United Kingdom are not of sufficient importance to suggest that the public interest would suffer very much if the merger had not taken place. This is not surprising since, as we have noted in paragraph 135, it was not the prospect of any such outstanding economic benefits which led the two companies to seek a merger. The benefits expected are certainly not negligible but, in view of the success and resourcefulness of Pyrotenax over the years, it cannot be assumed that continued competition in the production and supply of mineral insulated

cable would not have produced equally good results. We think that it is regrettable that competition in this field has been reduced but for the reasons given in paragraphs 144–149 we do not expect users of mineral insulated cable to suffer as a result of this. On the other hand, as noted in paragraph 160, the improved prospects for exporting mineral insulated cable could prove to be valuable. We have had to set against this the accretion of monopoly power in one type of cable to a company which is already dominant in the cables industry. This has aroused apprehensions in some sections of the trade, and these apprehensions seem to us to have been justified. But we consider that the various assurances given to us by BICC, which are repeated in Appendix 5, provide a reasonable safeguard.

162. We conclude that the fact of British Insulated Callender's Cables Ltd. and Pyrotenax Ltd. having ceased, in the circumstances of the case, to be distinct enterprises does not operate, and may be expected not to operate, against the public interest.

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20th April 1967.

