

Conclusions

A. The anti-competitive practice

6.1. Under the terms of the Reference and section 6(5) of the Competition Act 1980 we are required to report whether TI Raleigh Industries Limited and TI Raleigh Limited (Raleigh) at any time in the twelve months ending on 21 April 1981 pursued the course of conduct specified in the Reference—that is whether Raleigh applied the criteria specified in the Reference for determining whether to supply bicycles to retail outlets. The criteria are those which concern:

- geographical location,
- loss leading (other than in the circumstances specified in section 13 of the Resale Prices Act 1976),
- non-availability of technical advice,
- servicing facilities,
- stocks of spare parts,
- or—when it is applied in a discriminatory fashion—commitment.

These criteria are all among those described in paragraphs 4.12 to 4.23 of the Director General's report as representing Raleigh's current distribution policy, but it is not now suggested that the commitment criterion is in fact applied in a discriminatory fashion. Raleigh told us at the beginning of our inquiry that it agreed with the facts contained in sections 1 to 6 of that report. We therefore conclude, and Raleigh does not dispute, that Raleigh pursued the specified course of conduct during the relevant period.

6.2. We are also required to report whether by pursuing the specified course of conduct Raleigh was at any time in the relevant period engaging in an anti-competitive practice. At the beginning of our inquiry Raleigh informed us that it did not believe its practices to be anti-competitive.

6.3. Raleigh's arguments concerning competition in connection with its bicycle distribution policy are set out in Chapter 3. Raleigh maintained that it was not practicable or sensible to attempt to answer the question whether the course of conduct was an anti-competitive practice without at the same time considering its effect on the public interest. The first of these two matters could be considered realistically only in conjunction with the second.

6.4. Raleigh maintained that its distribution policy had beneficial effects on competition. Selling through selected retail outlets was its chosen method of competing with other bicycle manufacturers, and an enforced change of policy would reduce its ability to compete and might even put it out of business and thus eliminate it as a competitor. Moreover, competition at retail level, which results from Raleigh's present distribution policy, would in its view be reduced by an enforced change because some retailers would go out of business and

some others would cease selling Raleigh bicycles. Raleigh argued that, because any restriction of competition inherent in the fact that its distribution policy is selective must in its view be considered together with the beneficial effects on competition, its distribution methods should not be held to be an anti-competitive practice.

6.5. Section 2 of the Competition Act states that 'a person engages in an anti-competitive practice if, in the course of business, that person pursues a course of conduct which, of itself or when taken together with a course of conduct pursued by persons associated with him, has or is intended to have or is likely to have the effect of restricting, distorting or preventing competition in connection with the production, supply or acquisition of goods in the United Kingdom or any part of it . . .'. The application of Raleigh's criteria not only involves the withholding of supplies of its bicycles from some retailers but involves in particular the withholding of supplies from a class of retailers (discount stores) whose normal method of competing with other retailers is on price and who have assumed considerable importance in retailing generally in recent years. One present effect of Raleigh's distribution policy is therefore certain. By refusing to supply discount stores Raleigh prevents them from amplifying competition by competing with existing retailers of Raleigh bicycles. Against this Raleigh sought to set the conjectural effect of a change of its policy, which might (so Raleigh argued) lead some retailers to give up selling its bicycles. We do not consider that this policy, which is undoubtedly excluding from this market some would-be competitors, can be judged not to be anti-competitive because its removal might possibly lead some retailers now competing in the market to withdraw.

6.6. Raleigh's policy of withholding supplies from some retailers therefore had, or was likely to have, the effect of restricting competition in the retailing of Raleigh bicycles. We consider the restriction material since Raleigh has throughout been the leading supplier of bicycles in the United Kingdom and since Raleigh's criteria were being applied against a particular class of retailers—namely discount stores. We therefore conclude that the course of conduct pursued by Raleigh, as specified in the Reference, is an anti-competitive practice.

6.7. We use the expression 'Raleigh bicycles' in the preceding paragraph and in subsequent paragraphs to include any bicycles made by Raleigh for sale in the United Kingdom except those supplied to catalogue mail order houses under the brand names BSA, Phillips and Sunbeam (see paragraph 2.16), though we note that in some mail order catalogues these brands are in fact shown in conjunction with the name 'Raleigh'.

B. The public interest

6.8. Having concluded that the specified course of conduct is an anti-competitive practice, we are required to state our conclusions on whether the practice operated or might be expected to operate against the public interest and, if so, what are, or are likely to be, the effects adverse to the public interest.

6.9. The course of conduct referred to us consists of the application by Raleigh of six criteria for determining whether to supply bicycles to retailers. It is clear that Raleigh does not always apply all these criteria in a systematic way to every application, and Raleigh told the Director General that 'a refusal to supply is an exercise of judgment' and that 'there is a degree of flexibility in the interpretation of its criteria' (OFT report, paragraph 4.26). Nevertheless, the six criteria, however they may be applied, do represent a distribution policy with two clearly discernible features. The criterion concerned with geographical location leads to a policy of limiting the numbers of specialist dealers in any particular area, while the five remaining criteria (those concerned with loss leading, with the availability of technical advice, servicing facilities and spare parts, and with commitment to bicycle retailing) are all, both collectively and individually, seen by Raleigh as reasons for distributing bicycles principally through specialist retailers and for not supplying discount stores. We consider first the geographical location criterion.

6.10. As applied, this criterion is potentially anti-competitive, since limiting the number of retail outlets in a particular area might restrict competition in the retailing of Raleigh bicycles in the area or even lead to a local retailing monopoly. We understand Raleigh's reasons for limiting the number of retailers in any area, and we accept that some limitation may be necessary if Raleigh is to retain the loyalty of its existing retailers and to preserve a network of dealers able to maintain a profitable business and willing to provide the levels of stocks and service which Raleigh considers necessary.

6.11. We received no complaints about this criterion from the public and only three from specialist retailers who had been refused supplies from Raleigh. There is no evidence that Raleigh does in fact refuse supplies on the basis of geographical location in a way which materially restricts competition or leads to local retailing monopolies. We therefore regard this criterion as applied by Raleigh as justifiable.

6.12. The remaining five criteria—those which lead Raleigh to distribute bicycles principally through specialist retailers and not through discount stores—appear to be more controversial and have led to a substantial body of complaint from non-specialist retailers refused supplies.

6.13. During the course of our inquiry it was pointed out to us that policies of selective distribution, such as Raleigh's, are adopted by other bicycle manufacturers in this country, are common in the bicycle industry in other countries, and are widespread in other industries. We were also asked to accept that a manufacturer has a right to determine how his goods shall be distributed, and to adopt whatever method of distribution is best suited to the particular nature of the goods and is most advantageous to himself. We do not accept that this is an entirely unfettered right that can be upheld in all circumstances. Some examples of necessary limitations were given in our report on Refusal to Supply,¹ in which we concluded (paragraph 37) that 'the main scope for damage to the public interest [from refusal to supply] occurs in three situations. The first of these is where supplies are refused in order to avoid supplying a

¹ Refusal to Supply—Cmnd 4372, July 1970.

known or suspected price cutter. The second is where supplies are refused because the supplier's existing distributors threaten to boycott him. The third is where the supplier is not operating under reasonably competitive conditions'. The case for some restriction of the right is particularly strong where a manufacturer is a dominant supplier and his goods are differentiated, or are perceived by distributors and the public to be differentiated, from other manufacturers' goods of the same kind.

6.14. Under section 11 of the Resale Prices Act 1976 it is unlawful for a supplier to withhold supplies of goods on the ground that the person refused is, broadly, a known or likely price cutter. However, section 13 of the Act provides that it is not unlawful by virtue of section 11 to withhold supplies on the ground that the person refused has been using the same or similar goods as loss leaders. Using goods as loss leaders is defined as resale of the goods not for the purpose of making a profit on their sale but for the purpose of attracting customers likely to purchase other goods or of advertising the business of the dealer. However, the kind of pricing behaviour that Raleigh objects to is not loss leading as defined in the Act. It is clear that Raleigh is not prepared to supply bicycles to the type of retailers who in its view, because they compete mainly on price, are likely to adopt general pricing levels lower than those which specialist dealers can afford. Raleigh argued that the large number of specialist retailers on whom it considers that it must rely need protection from such pricing.

6.15. We accept that at present specialist dealers experience price competition both among themselves in the retailing of Raleigh and other bicycles and from some discount stores in the sale of bicycles other than Raleigh's. In our view Raleigh's refusal to supply discount stores must nevertheless prevent that competition from being even keener than it is and so impose some restriction on price competition. We think it inherently likely that it has the effect of maintaining a generally higher price for Raleigh bicycles than would otherwise be the case. Indeed Raleigh's refusal is based on precisely this assumption and is aimed specifically at preventing a lower general level of retail prices for Raleigh bicycles which could be expected to result from their being sold in substantial numbers by discount stores.

6.16. We recognise that price competition is not the only possible form of competition in the retailing of bicycles and that the provision of service by retailers may also be regarded as important. We do not know how many retail customers would, if they were adequately informed of the risks, choose to buy a fully prepared bicycle from a specialist retailer at a higher price rather than to buy an incompletely prepared or not fully assembled bicycle at a somewhat lower price. Nevertheless, we consider that consumers should not be deprived of the opportunity to buy Raleigh bicycles more cheaply with a reduced level of preparation or assembly, and that Raleigh's distribution policy detracts from consumer choice in this respect.

6.17. For these reasons we regard Raleigh's distribution policy as *prima facie* against the public interest, and we therefore need to consider whether there are any advantages of sufficient importance to outweigh its detriments or whether a change of policy might itself be detrimental in other ways.

6.18. Raleigh argued that one of the adverse consequences of allowing its bicycles to be sold through discount stores would be that its brand image and reputation for high quality bicycles would be undermined. We cannot judge whether it can reliably be asserted that Raleigh's brand image and reputation would be damaged, given their existing strength and the important part that discount stores now play in the retailing of a wide variety of branded goods; but we accept that Raleigh's brand image and reputation constitute a valuable asset which Raleigh has a legitimate commercial interest in preserving.

6.19. Of more relevance to the public interest is the argument, in defence of a system of selective distribution, that the retailing of the goods concerned requires some degree of particular expertise or the provision by the retailer of some service which he will be able to provide only if he is assured of a level of retail price which he considers adequate. At one extreme the goods may be so specialised that distribution is impracticable except through a severely limited number of technically qualified dealers and restriction of competition inherent in such a system of distribution may have to be accepted. At the other extreme the goods may be such that, since no special expertise, service or premises are required of the retailer, any restriction of distribution, and hence of competition, would be unjustified. Bicycles appear to us to come somewhere between these two extremes; they do not require an exceptional degree of technical knowledge and skill in the retailer, but there is a risk that bicycles will not reach users in proper condition if they are sold by retailers who lack or fail to apply the relevant experience or skill. Raleigh has a justifiable commercial interest in ensuring that its bicycles are retailed in a condition that satisfies the user, and in addition it is in the public interest that new bicycles should start life in a safe and roadworthy condition.

6.20. Raleigh accordingly attaches importance to the availability of pre-delivery preparation and servicing facilities in the selection of its retail outlets. This means mainly the carrying out of a pre-sale inspection, final assembly and the making of all adjustments necessary to put the bicycle in a roadworthy condition.

6.21. A considerable amount of emphasis was placed by Raleigh and by specialist bicycle retailers on the contribution to bicycle safety from a proper pre-sale inspection by a specialist bicycle dealer; and for our part we should be reluctant to do anything which might have an adverse effect on safety. However, although there is plenty of evidence that a substantial proportion of bicycles on the road are in a faulty and unsafe condition, we were unable to find any statistical evidence which relates accidents involving new bicycles to the type of retail outlet from which they were bought, and we are thus unable to assess how much greater risk is involved if bicycles are sold through non-specialist retailers. Whatever the strength of Raleigh's arguments regarding safety may be, we consider that Raleigh's distribution policy does not in practice ensure safety even for its own bicycles since they can be bought from some outlets not fully assembled and without the full pre-sale check having been done; indeed 19 per cent of Raleigh's bicycle sales are through mail order houses, which do not assemble or provide pre-sale service at all. On the other hand we see no reason to doubt that at any rate some discount stores would

carry out assembly and a satisfactory pre-delivery check if the customer wanted it and if Raleigh required it as a condition of their being supplied.

6.22. In addition to the concern with pre-sale checks, there is the further argument in connection with safety that there would be a general deterioration in the condition of bicycles on the road since, if Raleigh were to supply discount stores, specialist retailers would either go out of business or no longer be able to afford to undertake repairs and maintenance which at present are generally provided at less than their true cost. However, we believe that as long as there is a demand on the part of the public for skilled repairs and maintenance the demand will, broadly, be met; and if the price to be paid has to be based on the true cost of providing the service we should not regard this as against the public interest. If the consequence were to be general deterioration of the condition of bicycles on the road the appropriate remedy would not in our view be a restrictive distribution policy on the part of Raleigh, but effective regulation by law of the safety of bicycles on the road (see paragraph 6.31).

6.23. Apart from concern for the safety of the public, we understand Raleigh's anxiety to ensure that its bicycles reach the users in proper serviceable condition, because this also contributes to the preservation of Raleigh's reputation for high quality bicycles. However, many bicycles known to be made by Raleigh are supplied now by non-specialist retailers, including department stores and mail order houses, and Raleigh's existing good reputation is self-evidently consistent with this system of distribution. Some of the discount stores claim that they could provide adequate pre-delivery and post-delivery service, and we see no reason to doubt that they could make arrangements at least as good as those of many retailers whom Raleigh already supplies. We do not think that Raleigh's reputation for high quality need suffer from the supply of Raleigh bicycles to discount stores providing such service.

6.24. Raleigh's distribution policy is based on the proposition that distribution through specialist retailers is incompatible with distribution also through those non-specialist retailers who sell principally on price and who do not assemble or provide servicing facilities, spare parts and technical advice. The argument is that the specialist retailer will, if faced with this kind of competition, no longer provide specialist services, and will either cease dealing in Raleigh bicycles and switch to other makes (mainly imported) or go out of business. This is one of the main reasons why Raleigh will not supply bicycles to discount stores.

6.25. Raleigh told us that if it were to supply discount stores it would lose a substantial volume of sales through other outlets and that the loss would greatly exceed sales through the new outlets; on the basis of Raleigh's sales in 1980 the loss might be up to 200,000 bicycles and the gain no more than 40,000 (see paragraph 3.52). Raleigh said that the resulting loss of market share would be seriously damaging to Raleigh itself and would lead to an adverse effect on employment and on Raleigh's ability to export, and to increased imports of bicycles.

6.26. It is not possible to predict precisely what the effect of a change in Raleigh's distribution policy would be, particularly on existing retailers. We

note that Raleigh has, with its existing distribution policy, suffered a considerable loss of market share to increased imports (see paragraph 2.6 and Table 2.2). However, the evidence is that Raleigh is still widely regarded as the leader in the United Kingdom bicycle market and that there is a continuing demand for Raleigh bicycles. Therefore, although some retailers might, at any rate in the short term, handle fewer Raleigh bicycles or give up selling them and switch to other brands (including imports), we think it unlikely that the loss of sales would be on the scale that Raleigh suggests. Moreover, the increase in imports which has taken place at Raleigh's expense may be to some extent attributable to its existing distribution policy rather than have occurred in spite of it. If Raleigh had adopted a different attitude towards modern retailing methods and had been more disposed to deal with some of the retailing chains to whom it has hitherto refused supplies, we wonder whether it might be trading more successfully now.

6.27. In our view the advantages claimed for Raleigh's existing policy of restricted distribution are not such as to outweigh the detriments which we have described in paragraphs 6.15 and 6.16. Our conclusion therefore is that the anti-competitive practice referred to us (that is the application by Raleigh of criteria specified in the Reference for determining whether to supply bicycles to retail outlets) has operated and may be expected to operate against the public interest insofar as it results in Raleigh refusing to supply discount stores. The effects adverse to the public interest are that the development of the type of retailing that relies mainly on keen price competition is being frustrated as far as Raleigh bicycles are concerned, that the general level of retail prices for Raleigh bicycles tends to be higher than it would otherwise be, and that consumer choice is restricted in that the purchaser of a Raleigh bicycle is prevented from opting for lower prices at the expense of service.

6.28. Having reached the conclusion that the practice referred to us operates against the public interest, we think that there are a number of factors we should take into account in considering whether there is any appropriate remedy that should be adopted. We recognise that Raleigh, in order both to preserve its reputation for high quality bicycles sold under certain brand names and to assist in its retention of a network of specialist dealers, has a legitimate commercial interest in making bicycles under those brand names available only to certain types of retailer. To require Raleigh to make those brands available to all types of outlet might put Raleigh at a competitive disadvantage as against other manufacturers (some of them powerful companies) who had not been the subject of an inquiry under the Competition Act and so would not be placed under the same obligation. In considering what remedy might be appropriate we have also borne in mind that for some years Raleigh's dominance has been diminishing as it has lost market share to other brands.

6.29. We think that Raleigh should widen its distribution policy by selling to discount stores in certain circumstances. If Raleigh were to sell through discount stores which observed the same standards of pre-sale inspection and other technical service requirements as do comparable outlets (for example some department stores) already supplied by Raleigh, and if Raleigh were to supply bicycles to such discount stores under brand names other than Raleigh (in the same way as it now supplies catalogue mail order houses), we believe

that any risk of damage to Raleigh's reputation and brand image would be substantially eliminated.

6.30. We recommend that Raleigh should be required not to refuse to supply bicycles on the ground of the criteria listed in the Reference (with the exception of the geographical location criterion) to any retailer who applies for them and who is prepared to make arrangements for the provision of a reasonable level of service (including adequate pre-delivery inspection and assembly) and of technical advice and stocks, including stocks of spares, nor to pursue any course of conduct which is similar in form and effect to the practice specified in the Reference. We do not, however, consider that Raleigh should be required to supply all bicycles made by it to all such outlets; in particular Raleigh may withhold from any particular category of retailers supplies of bicycles carrying the Raleigh brand name provided that it offers, under alternative brand names, bicycles which are of the same or equivalent specifications, and does not prevent the retailers concerned from indicating in advertising and promotional material that the bicycles under those names are supplied to them by Raleigh. We emphasise this last point because of the use made by the Raleigh name in some mail order catalogues in connection with the brands supplied by Raleigh for mail order business.

6.31. During our inquiry our attention was drawn to the large number of bicycles being used on the roads in an unsafe condition and to the inadequacy of legislation concerning the safety of bicycles. We think there is a strong case for prescribing by law minimum safety standards for all bicycles and for making it an offence to ride or supply any bicycle which does not conform to them. It appears that this could be done by Regulations made under section 66 of the Road Traffic Act 1972 and that under section 66(4) the Regulations could extend to the sale or supply of bicycles. At present the only legal requirements appear to be those applying to brakes (Brakes on Pedal Cycles Regulations 1954) and to lamps and reflectors (sections 68 to 74 of the Act).

J G Le Quesne (*Chairman*)

P Goldman

D G Goyder

H H Hunt

N L Salmon

R Stephen
(*Subject to note of dissent*)

J Gill (*Consultant*)

14 October 1981

Note of dissent by Miss R Stephen

In paragraph 6.18 we accept that Raleigh's brand image and reputation constitute a valuable asset which Raleigh has a legitimate commercial interest in preserving.

We continue to recognise this in our recommendation, with which I agree, that Raleigh should not refuse to supply retailers (who satisfy certain acceptable criteria) with bicycles *under brand names other than Raleigh*.

However, I believe it to be inconsistent with Raleigh's legitimate interest to go on to *require* Raleigh not to prevent such retailers, for example discount stores, from using the Raleigh name in promotion and advertising material for bicycles not of the Raleigh marque.

I have in mind not only that the advertising and promotion thus required to be permitted might take a form significantly different from that practised now in some mail order catalogues, presumably with Raleigh's consent, but that a direction about advertising and promotion is not appropriate where the supplier and retailer would otherwise both have an interest in agreeing a successful way of promoting the goods, given that they are on offer.

Raleigh should in my view have available to it the usual range of marketing and promotion options in responding to current and future changes, whether imposed through this report or by the market; whilst sustaining its image, if that is its strategy, in the sector where competition is met from other suppliers which are part of large international businesses.

For example, our recommendation allows Raleigh to distinguish its output for sale partly assembled from its other models, if it wishes, by reserving the latter for types of outlet most likely to present them fully prepared at the point of sale. Reserving, thus, a 'superior' marque and with it the promotion of the Raleigh name by its retailers is equally legitimate as an option in my view, and not a practice to be forbidden.

I therefore dissent from my colleagues' recommendation that there be a requirement upon Raleigh not to prevent the retailers to whom it supplies bicycles not of that marque from using the name Raleigh in advertising and in promoting them.