

Conclusions

The merger situation

7.1. Under the terms of the reference and section 69(1) of the Fair Trading Act 1973 we are required to investigate and report whether a merger situation qualifying for investigation has been created. Under section 64(4) and (8) of the Act such a situation is created if two or more enterprises have ceased to be distinct enterprises not earlier than six months before the date of the reference and, under section 64(1)(b) as amended, if the value of assets taken over exceeds £15 million. We are required by the reference to exclude from consideration section 64(1)(a). Under section 65 enterprises are to be regarded as ceasing to be distinct if they are brought under common ownership or control.

7.2. In September 1981 BTR began a series of purchases of Serck shares, and by the middle of October 1981 had increased its holding from less than 1 per cent to 50.2 per cent. BTR therefore acquired control of Serck less than six months before 6 November 1981, the date on which the reference was made. By 8 November BTR had increased its holding to over 90 per cent. The value of assets taken over is £77.2 million. A merger situation qualifying for investigation has therefore been created.

The method of acquisition

7.3. In paragraphs 5.1 to 5.3 we have described the way in which BTR acquired over 90 per cent of Serck's shares, and in particular the way in which it acquired effective control in a single day and a controlling interest a week later. We are aware that some concern exists about the possible consequences of rapid acquisitions of companies, and that, as we have explained in paragraph 5.38, the Council for the Securities Industry has recently taken steps to prevent a person obtaining effective control of a company prior to the first closing date of an offer for its shares. Whether these steps are appropriate for the protection of all interests that may need protecting is a matter which is outside the scope of this inquiry, and in our assessment, which follows, of the effect on the public interest of this particular merger we do not take into consideration the methods by which shares were acquired.

The public interest

7.4. We consider first the disadvantages or possible detriments that may be thought to arise from the type of merger which adds to the size and complexity of an already large, diversified group of companies producing a wide range of products and supplying many different markets. In doing so we bear in mind that under section 72(2) of the Act, if we find that the acquisition of Serck by BTR is against the public interest, we are required to specify the 'particular effects', adverse to the public interest, which it has or may be expected to have.

7.5. BTR is a substantial organisation already active in a number of fields and this merger widens the range of activities over which BTR will need to exercise control. However, given the way in which BTR has been successful in managing the group, we see no reason to suppose either that the increased range of activity of the enlarged group will be too diversified, or that the absolute size of the group is nearing a point at which it becomes too great, for BTR to exercise effective control over its affairs. A point may be reached at which the rapid expansion of BTR will, if it is continued, become incompatible with effective control and efficient use of increased resources; but we do not think this point has been reached with the acquisition of Serck. Indeed, we consider that, with access to the financial resources of BTR, Serck's industrial valve production may well be better able to meet increasing foreign competition both in home and export markets (see also paragraphs 7.20 and 7.21 below).

7.6. Mergers which increase the number of markets in which a group operates may be thought to have possible effects on competition in that a diversified group may be able to use profits from some of its activities to adopt pricing policies which put pressure on competitors in other markets or at least enable its own branches or subsidiaries to withstand difficult market conditions better or longer than competitors—even efficient competitors—who are wholly reliant on one particular product market. In this instance BTR was operating in a number of different markets before its acquisition of Serck, and we do not think that the merger materially changes the situation in this respect. Moreover, it was put to us by BTR, and we accept, that cross-subsidisation between the group's various activities is against company policy, which puts great emphasis on securing a satisfactory rate of return on turnover from all activities in the group. While it was not denied that the desired rate of return could not in practice be achieved for every activity all the time, nevertheless the management of each profit centre is expected to keep the aim in view and there is no policy of 'buying' or retaining market share at the cost of low rates of return.

7.7. We have noted that a result of further acquisitions by diversified groups of companies may be that competitors and potential competitors as well as other interested parties like employees, shareholders and creditors find that consolidated group accounts may not reveal very much about the performance of particular businesses in which they are interested. This is a wider issue involving the question of what standards of disclosure provision may be appropriate for groups of companies generally and it cannot be said that this particular merger is to be specially criticised in this respect.

7.8. We turn now to consider possible effects of the merger on competition in the markets for industrial valves and actuators and on their prices, on exports of valves, and on employment.

Competition in valves and actuators

7.9. Because the activities of BTR are largely different from those of Serck the merger is unlikely to have any material effect on competition in most of the markets which the two companies supply. However, we need to consider

the effect on competition in the supply of industrial valves and actuators, which both companies make, and especially the effect in connection with particular types of valve made by either or both of them. For this purpose it is relevant to take account of the two companies' market shares and of any increase in market share which results from the merger; but in doing so it is necessary also to take account of the extent to which various types of valves are substitutes for one another.

7.10. The total United Kingdom market for industrial valves in 1980 was worth about £269 million, the combined share of BTR and Serck being about 7 per cent. But there are some types of industrial valves which are outside the range produced by BTR and Serck, and the widest category of valves that we need to consider is that of industrial on/off valves which consists principally of quarter-turn, gate, globe and diaphragm valves. Although all these have different technical characteristics, there appear to be some applications in which there is some degree of substitutability between them. The merged companies' share of this category is no more than about 8 per cent. However, this share consists entirely of quarter-turn valves, of which Serck's share is about 13 per cent and BTR's about 8 per cent, giving the merged companies a share of about 21 per cent of a market which is worth about £71 million.

7.11. Quarter-turn valves consist of plug valves (including cocks), butterfly valves and ball valves. Although there are applications in which these valves can be used as substitutes for one another, technical and price differences between them are sufficient to justify their being regarded as separate categories. The relevance of this is that, although the merger results in an increased market share of quarter-turn valves as a whole, it does not result in any increase in the shares of plug valves or of butterfly valves, both of which are made by Serck but not by BTR. In the remaining category, ball valves, BTR has a market share of about * per cent (£* million) which is increased as a result of the merger by Serck's share of about * per cent (£* million) to about * per cent, the total United Kingdom market for ball valves in 1980 being estimated at £38.8 million.

7.12. It might be expected that the addition of Serck's share of the ball valve market would confer enhanced market power on the merged companies and thus have a significant effect on competition. However, even within the ball valve category there are different types of valves which cannot be regarded as close substitutes for one another and which therefore need to be considered separately.

7.13. More than half of BTR's sales of ball valves in 1980 were of general purpose three-piece valves (£* million) and, although this accounted for over half the total United Kingdom sales of this type of valve, BTR's share is increased by the merger to only a negligible extent by Serck's sales of £* million. Moreover, before the merger Serck was intending to abandon production of these valves.

* Details omitted. See note on page iv.

7.14. Both companies make high specification one-piece and two-piece valves, but as we have explained in paragraph 4.12 the extent of overlap is not clearly defined because the valves of this type made by the two companies tend to be differentiated in respect of their design specifications, the materials of which they are made, their applications and the industries in which they are used. In any case the value of the two companies' sales of these valves is small, as is the total sub-market concerned.

7.15. In the process of ascertaining the likely effects of the merger, particularly the effects on competition, we approached a large number of competing valve manufacturers as well as companies and organisations representative of users of the relevant types of valves, inviting them to comment on the merger. Although a small number of respondents had some apprehensions of possible adverse effects (see Chapter 6), about half of those approached did not reply and of those who did reply the great majority did not see any objection to the merger. The reason for this appears to be largely that, since the market for industrial valves is international in character, valve users generally have adequate actual or potential alternative sources of supply in this country or overseas. There are substantial international companies among the competing valve manufacturers. Moreover, many of the users of the more specialised types of valves are professional buyers accustomed to buying in an international market. Bearing in mind the wide coverage of our invitation to comment, we consider that the nature and level of response on the part of competitors and users confirm our view that the effects of the merger on competition in industrial valves are unlikely to be significant.

7.16. A reliable figure of the total supply of valve actuators in the United Kingdom is not readily available, but we believe that the merged companies' share is less than 10 per cent. However, our concern is with actuators for quarter-turn valves. The United Kingdom sales of these actuators, amount to about £16 million, the merged companies' share being about 19 per cent; but this share consists almost entirely of pneumatic actuators, which compete to only a very limited extent with electric, hydraulic and gas-operated actuators. The market for pneumatic actuators for quarter-turn valves is worth about £11 million, and BTR's share of about 16 per cent (£1.8 million in 1981) is increased to about 26 per cent by the addition of Serck's share which, including Hytork's, was about £1.1 million in 1981. However, before the merger took place Serck had been contemplating disposing of Hytork to its original proprietors; and towards the end of our inquiry we were informed that agreement had been reached between BTR and the original proprietors and that Hytork was in fact being sold to them. Hytork thus ceases to be a part of the BTR group and becomes an independent manufacturer of actuators, and the merged companies' share of the market for pneumatic actuators for quarter-turn valves falls to about 22 per cent.

7.17. Although this is a significant share in percentage terms, the share itself is small (around £2.5 million). The sub-market concerned is also small and there are numerous other suppliers some of whom also have substantial shares in percentage terms. We consider therefore that the merger is unlikely to have any important effect on competition in the supply of actuators.

Prices

7.18. It was suggested to us by a competing valve manufacturer that BTR might use its position as a leading supplier of actuators to promote the sales of its valves by charging higher prices for actuators sold to competing valve manufacturers than for actuators supplied for use with its own valves. As a result of the merger BTR's scope for doing this would be extended to plug and butterfly valves, which Serck makes but BTR has not hitherto made. If BTR were to a significant extent to use its position to discriminate in price in this way, this might amount to an anti-competitive practice which could be investigated under the relevant provisions of the Competition Act 1980.

7.19. A few users of industrial valves expressed the fear that the merger might lead to increases in the prices of the merged companies' valves, and it was represented to us that this might lead to an increase in imports of valves. We do not know what the effect of the merger is likely to be on the prices of Serck's valves in the short term; but we consider that in the longer term there is the likelihood that improvements in manufacturing efficiency, comparable to those which have taken place in Worcester since its acquisition by BTR, will result in Serck's costs being lower than they would be otherwise, and we are satisfied that the existence of adequate competition from alternative suppliers is a sufficient safeguard of the public interest in respect of prices.

Exports

7.20. BTR claimed that the merger would lead to a significant increase in exports of industrial valves from the United Kingdom. The company said that its increased strength would enhance its ability to compete in an industry characterised by international competition, and more particularly that its ability, as a result of the merger, to quote for a more comprehensive range of valves would make it more attractive to some potential customers and thus strengthen its competitive position both in export markets and *vis-à-vis* foreign competitors in the United Kingdom market. We note, however, that Serck has in fact been successful in export markets, since its export sales of plug, butterfly and ball valves amounted in 1980 to as much as 47 per cent of its total sales of such valves. Moreover, in the light of views expressed to us by some valve users we think that the ability to quote for a wider range of valves may be only a limited advantage to BTR since many users of valves prefer not to rely on a single supplier. Nevertheless there may be some gain in this respect.

7.21. BTR claimed that its export business would benefit additionally because Worcester's presence in the United States of America could be expected to facilitate the sale of Serck valves there while Serck's presence in Europe would give greater access to West Germany and France for Worcester ball valves. We consider that any increase in BTR's exports in this respect would have to be worked for and would not be an automatic consequence of the merger; but we accept that in this way, and to a limited extent because of the merged companies' wider range, there is as a result of the merger at least the possibility, and indeed some probability, of increased valve exports and consequently some gain to the United Kingdom balance of payments.

Effect on employment

7.22. As we have recorded in Chapter 6, some apprehension was expressed to us that the merger might have an adverse effect on employment. We think it is indeed possible that there will be reductions in the numbers of employees in some of the Serck activities, and we note that, while BTR has given an assurance that 'the Board of BTR will ensure that the interests of the present Serck employees and their rights, including pension entitlements, are safeguarded', it has not given any assurance that there will be no redundancies. However, such reductions as there have been, and may be, in the number of employees following the merger would not necessarily be as a result of it, and the matter has to be looked at against the background of the current economic climate and of the fact that Serck already had in mind the closing down or disposal of certain of its activities and was already implementing plans for substantial redundancies. At the time of our inquiry BTR had not yet been able to formulate detailed plans for all parts of Serck's operations; but we were given an outline of BTR's plans for the main Serck activities and we are satisfied that this is consistent with BTR's stated philosophy of developing and expanding its acquisitions rather than of closing or disposing of them.

7.23. It is possible that there may be some redundancies in the interests of increased efficiency and productivity and as a result of rationalisation of the activities of the two companies; but it seems unlikely that the numbers involved could be substantially greater than would have been the case if the merger had not taken place. We believe that, overall, the merger is unlikely to have any significant adverse effect on employment. On the other hand it is possible that as parts of a larger and financially stronger group, the Serck activities might in the long run offer better and more secure employment prospects. We note that the two Trade Unions that expressed views on the merger did not oppose it, and that one of them considered that now that the merger had taken place, it would be positively disadvantageous to try to undo it (see paragraph 6.4).

Conclusion

7.24. We have considered the possibility of adverse effects of the merger on the public interest in connection with the increased size of BTR, the wider scope of its activities and the ability to manage them effectively, with the effects on competition and particularly on competition and prices in the market for industrial valves and actuators, and with employment prospects in the merged companies. We have not found that the merger is likely to have any material adverse effects on the public interest.

7.25. In the absence of adverse effects, the likelihood or otherwise of beneficial effects is not crucial to our conclusions. However, we believe that the merger may in fact have some advantage to the public interest in that the greater strength of BTR as a manufacturer of industrial valves and actuators may enable it to compete more effectively in this field both in export markets and against foreign competition in this country.

7.26. We conclude that the merger situation created by the acquisition of Serck Limited by BTR Limited does not operate, and is not a situation which may be expected to operate, against the public interest.

J D ECCLES (*Chairman*)

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N E D BURTON (*Secretary*)

14 April 1982