

CHAPTER 8

Conclusions

A. The merger situation

8.1. Under the terms of the reference and the provisions of section 69(1) and of section 75 of the Fair Trading Act 1973 we are required to investigate and report whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a merger situation in which section 64(1)(a) or 64(1)(b) will be satisfied. The reference requires us to exclude from consideration one of the paragraphs of section 64(1) if we find the other satisfied.

8.2. Section 64(1)(b) is satisfied if the value of assets taken over exceeds £15 million on the making of the reference to the Commission. In their published accounts for the year ended 31 March 1982 the assets of Arthur Holden & Sons PLC were shown as £16·857 million at that date, and we consider it reasonable to assume in the light of this that at the date of the reference (only 15 days earlier) the value of assets exceeded £15 million.

8.3. By virtue of section 64(8) a merger situation qualifying for investigation exists if two or more enterprises have ceased to be distinct enterprises in the circumstances described in section 64(1). Under section 75(2) we are required to proceed in relation to a prospective merger as we could proceed if it had taken place immediately before the reference.

8.4. On 16 February 1982 an offer was made on behalf of ICI to acquire the whole of the share capital of Holden. The offer lapsed on reference being made to the Commission, but ICI informed us in April that it remained firmly committed to the merger with Holden and that it had signalled that commitment by purchasing in the market 14·9 per cent of the total issued share capital of Holden. It is clear therefore that arrangements for the merger are in contemplation.

8.5. We conclude that a merger situation qualifying for investigation will be created if the arrangements in contemplation for the acquisition of Arthur Holden & Sons PLC by Imperial Chemical Industries PLC are carried into effect.

B. The public interest

Competition and market shares

8.6. It was represented to us that it was a matter of concern to the public interest that ICI not only had a substantial share of the United Kingdom paint market as a whole, which would be increased by the acquisition of Holden, but also that it had substantial shares, and was the market leader, in sectors of the paint market where barriers to entry were said to be high—namely decorative and vehicle paints. The merger would make it the market leader in yet another sector where barriers to entry were high—namely coatings for metal containers and closures.

8.7. As regards the United Kingdom paint market as a whole the acquisition of Holden would increase ICI's share to only a negligible extent; but we consider that the paint market is too wide a category, consisting as it does of a number of separate markets, to be relevant in considering the effects of the merger. Nor do we consider ICI's shares of the decorative and vehicle paint markets to be relevant to this merger. We do not find that its strength in these markets would confer on it any undue or unfair competitive advantage in the new markets it would enter through the acquisition of Holden or that its entry into additional markets through that acquisition would materially add to its competitive strength in other sections of the paint market.

8.8. With regard to the effects of the merger on the market for coatings for metal containers, both ICI and Holden emphasised, as we have explained in paragraphs 6.9 and 6.21, that the markets for drum coatings and can coatings should be regarded as separate markets. Drums and cans themselves are distinguished from one another mainly by size, drums being bigger than cans; and although there may be no wholly satisfactory definitions which distinguish them in all cases, the important point is not the distinction between drums and cans but the fact that there are clear-cut differences between those products which are used as drum coatings and those used as can coatings. Can coatings are highly specialised products made to stringent specifications to meet the requirements of can manufacturers for application mainly to the inside of cans. Coatings for closures are similar and may be regarded as coming within the category of can coatings. Drum coatings are mainly for external application, are much less specialised, and in general are forms of ordinary industrial paint. Some drum coatings are internal coatings but these are not usually made to the stringent specifications required for can coatings. The technology and production processes for drum coatings are different from those for can and closure coatings and the users of drum coatings and of can and closure coatings are in general different types of businesses, though some companies require both.

8.9. We accept that, for the purpose of considering the effects of the merger on competition and market shares, drum coatings and can and closure coatings should be regarded as separate categories of goods.

8.10. The main business of Holden is can and closure coatings. Drum coatings represent less than 1 per cent of its total United Kingdom sales and probably under 2 per cent of the United Kingdom market for drum coatings. ICI on the other hand makes drum coatings but does not make or supply can and closure coatings in the United Kingdom. ICI's German subsidiary, Wiederhold, makes can coatings, but these are not supplied in the United Kingdom. Any overlap between ICI and Holden is small and the merger would not therefore have any material effect on United Kingdom market shares in the supply of drum coatings or of can and closure coatings or any direct adverse effect on competition in the supply of these products.

8.11. A small part of Holden's business is the manufacture of coil coatings, which are also made by ICI. The merger would give the merged companies a substantial share of this market, but the market itself is small and there are competitors with significant shares. In any case the coil

coatings made by ICI and by Holden are to some extent different. We consider that the merger would have no materially adverse effect on competition in the supply of coil coatings.

8.12. Holden's other principal products—coatings and adhesives for flexible packages, powder coatings, and printing inks—are not made by ICI.

Potential competition

8.13. We considered whether there might be some elimination of potential competition as a result of ICI entering the can and closure coatings market by acquiring Holden rather than by becoming an additional competitor in the market. It appeared that this might be a realistic possibility in view of ICI's existing involvement with can coatings through its subsidiary, Wiederhold, in Germany. ICI, however, told us that in its view it was increasingly necessary for a can coatings business to be on an international scale. ICI would not regard it as practicable to achieve an effective position in the United Kingdom or other markets other than by acquisition. ICI also considered that if at any stage Holden was acquired by a competitor, its own chances of developing a viable business in can coatings throughout Europe would be greatly reduced. We accept that in the absence of the merger it is unlikely that ICI would enter the can coatings market as an additional competitor.

Distortion of competition

8.14. It was represented to us that, because of ICI's position as a supplier of materials for coating manufacture and also as a substantial buyer of cans, the merger would give scope for some distortion of competition. It was suggested that Holden, as part of the ICI group, might be enabled to buy ICI materials at favourable prices and thus gain an unfair competitive advantage over other manufacturers of can coatings, or alternatively that ICI might require Holden to buy ICI materials to the unfair competitive disadvantage of other suppliers of materials. We recognise that conduct of this kind would be possible as a result of the merger. However, ICI stated that it was the group's settled policy that all intra-group trading should be on an arm's-length basis and that subsidiaries and divisions, although expected to buy within the group, were free to buy from other suppliers if more favourable quality, price or service indicated that they should do so. ICI gave us examples of subsidiaries that had in fact bought from other suppliers in such circumstances, and no firm evidence was presented to us of examples of ICI departing from its stated policy. Holden told us that ICI was not in fact a supplier of some of its principal requirements for making can coatings and that, as a subsidiary of ICI, it would not expect to be constrained as regards choice of raw materials.

8.15. It was also suggested that the merger would enable ICI, as a large user of cans, to put pressure on its suppliers of cans to use Holden coatings in their manufacture, to the unfair competitive disadvantage of competing manufacturers of coatings. We recognise that this would be a potential detriment of the merger, but ICI told us that there were numerous situations in which its customers were also large suppliers of its needs and that in these situations it did not in fact operate in this way. We had some

confirmation of this from suppliers of cans to ICI who had no evidence of this kind of pressure. It seemed to us in any case that, given the existence of competing suppliers of coatings, the bargaining strength would not be all on one side and the Chairman of Metal Box put it to us that he would strongly disapprove of this kind of 'contra-trading' and would not expect it to arise.

The likely effects on Holden

8.16. Holden is a relatively small successful company whose success has depended substantially on its ability to develop and manufacture products in close co-operation with its customers to meet their stringent and specialised requirements. The continuing independent operation of small and medium-sized companies like Holden is often held to be a matter of concern to the public interest, and it has been argued not only that there may be disadvantages in their becoming absorbed into larger groups but that the supposed advantages often do not materialise in the event.

8.17. We recognise that there may be disadvantages in small and medium-sized companies losing their independence and identity. In principle their elimination may be a specific detriment produced by a merger and an effect to be weighed against any offsetting advantages. One effect of the operation of mergers legislation may be to enable such companies to resist being taken over when they are convinced that they should continue to be independent. In this instance however we feel bound to attach importance to the fact that Holden itself now sees a clear balance of advantage in relinquishing its independence (see paragraphs 2.3 and 6.16). Holden's objective is to maintain and develop its business and particularly to become a world-wide supplier of can and closure coatings. The company has taken the view that, because of the scale of business needed to support essential research, and because some of its customers for can coatings are large international companies, it is essential for Holden to look beyond European markets and to supply its products world-wide. In view of the need to provide technical services direct to customers, it is necessary to manufacture extensively overseas as well as exporting from the United Kingdom. In all these respects Holden considers that to operate in association with ICI's strong presence in overseas markets and with access to its research and other capabilities would be more effective in future than attempting to go it alone.

8.18. The principal risks involved in Holden's losing its independence would be that, if it were also to lose its identity, its valuable close relations with its customers and the quality of its service to them might be impaired, and also that the requirements of its important research and development function might become submerged or be accorded inadequate priority among the conflicting demands on the resources of a large organisation.

8.19. The intention, however, is that, while Holden would lose its independence, it would not lose its identity. Although ICI is organised on a divisional basis, there are subsidiaries within the group which retain their identity and operate under their own management. ICI appeared to be well aware of the necessity of doing nothing which might impair the reputation

that Holden has with its customers and the very close relations that it maintains with them, and it was ICI's intention that, although Holden would become part of ICI's Paints Division, it would continue to operate as it does now under its own board of directors and executive management, and thus with no changes in its relations with its customers. We see no reason why this intention should not be satisfactorily realised.

8.20. ICI was also well aware of the importance of research in the can coatings industry and considered that it would be well within the authority delegated to the Paints Division to provide finance for research on the scale that it might be needed by Holden. Some indication of the importance which ICI attaches to research by Holden is given by the fact that after the merger ICI's centre for can coating research throughout the world would be transferred from Wiederhold to Holden. We consider that the risk of Holden's existing research effort being impaired as a result of conflicting claims on resources in a larger organisation is not serious. In any case if Holden were not to become part of a larger organisation its ability to sustain an adequate level of R & D might in the long term be threatened by its inability to retain its position in an increasingly international market.

8.21. We do not think therefore that the kind of disadvantages which might arise from Holden becoming part of a large group would in practice be material as a result of acquisition by ICI. However, we still need to consider how far the claimed advantages for Holden would be likely to be realised, particularly in view of the fact that, as ICI itself emphasised, ICI in Europe is not (except through Wiederhold in Germany) in the can coatings business.

8.22. We have already referred to the need for a can coating business to be world-wide and for the need for this to be achieved by overseas manufacture rather than by exports from the United Kingdom. Holden believed that in some cases this had to be done by granting licences to existing manufacturers overseas to produce Holden can and closure coatings rather than by itself attempting to establish new manufacturing facilities overseas. However, there were problems in operating through licensees, and both ICI and Holden were confident that the expansion of Holden business overseas, particularly outside Europe, through local manufacture would be materially facilitated by the merger. ICI has paint manufacturing companies in a number of countries, which, though lacking the expertise of Holden in can and closure coatings, both companies believed would be capable of producing and marketing Holden products satisfactorily. In addition ICI has far wider contacts than Holden has with paint companies throughout the world, including numerous licensing arrangements.

8.23. ICI believed that the development of a world-wide can coating business would be helped by the fact that in some countries particularly in Europe, where Holden has little business Wiederhold was already strong, and *vice versa*.

8.24. ICI told us that the precise ways in which expansion overseas would take place still required further discussion, and we consider that in view of this there must be some doubt about how far the general intention would

be capable of being realised when detailed plans come to be drawn up and implemented. Moreover, the expected benefits would not accrue automatically and conscious effort would have to be made to achieve them. On balance, we accept that the merger could offer scope for Holden to maintain and expand its business in Europe and in other parts of the world, and that it provides a sound opportunity for Holden to compete world-wide with major foreign manufacturers for the business of large customers operating internationally.

8.25. The extent to which research and development in can and closure coatings would benefit from the merger would depend on how far ICI's own research is, or could be, relevant to the specialised field of can and closure coatings. There is some specialised research being undertaken by Wiederhold in Germany that would be valuable; in addition both ICI and Holden believe that there are areas of basic research being done in Slough by ICI's Paints Division which would be of advantage to Holden, and it was thought that Holden research staff would benefit from being able to contact and consult ICI staff.

The likely effects on employment

8.26. The employees of Holden have been informed about the merger proposals and we understand that generally they support them. Both ICI and Holden told us that no redundancies were to be expected as a direct result of the merger, and since there is practically no overlap in the activities of the two companies and the intention is to maintain and expand Holden's business we have no difficulty in concluding that none would be likely. In the offer document dated 16 February ICI stated that it had assured the board of Holden that the rights of all employees of Holden, including existing pension rights, would be fully safeguarded.

8.27. Holden has been free from industrial disputes and has enjoyed good relations with its employees both in the coatings establishments in Birmingham and at Marsden in Hull where it recognises the appropriate printing trade union. Since the business of Holden would continue as before and under the same executive management we see no reason why this situation should change as a result of the merger. In our view the merger would have no adverse effects on the employees of either company or on their job security and prospects.

Conclusion

8.28. We have considered the likely effects of the merger on competition and market shares, on the well-being of Holden's business, and in particular its ability to compete against major foreign competitors both in home and overseas markets, and on employment. In our view the merger would not be likely to result in any materially adverse effects on the public interest. There would be scope for some distortion of competition in the ways we have referred to in paragraphs 8.14 and 8.15, but we consider that the risk of detriment to the public interest in this connection is not great. There are on the other hand some advantages to the public interest which we think might be expected. It is in the public interest that the British can coating

industry should be strong enough to compete effectively with major foreign companies for the business of multi-national customers both in the United Kingdom and in overseas markets, and we think that by strengthening Holden the merger should contribute to this end.

8.29. We conclude that the merger situation which will be created if arrangements in contemplation for the acquisition of Arthur Holden & Sons PLC by Imperial Chemical Industries PLC are carried into effect may be expected not to operate against the public interest.

ALAN NEALE (*Chairman*)

R M GOODE

M S LIPWORTH

S R LYONS

R STEPHEN

N E D BURTON (*Secretary*)

29 July 1982

