

CHAPTER 9

Conclusions

A. The merger situation

9.1. 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)(b) will be satisfied.

9.2. Section 64(1)(b) is satisfied if the value of the assets taken over exceeds £15 million on the making of the reference to the Commission. In the published accounts for the year ended 31 March 1982 the group assets of Anderson Strathclyde PLC were shown as £75 million at that date.

9.3. On 13 May 1982 an offer was made on behalf of Charter to acquire that part of the share capital of Anderson Strathclyde which it did not already hold. The offer lapsed on reference being made to the Commission; but Charter informed us that it would proceed with an offer if not prevented from doing so. It is clear therefore that arrangements for the merger are in contemplation.

9.4. We conclude that a merger situation qualifying for investigation will be created if the arrangements in contemplation for the acquisition of Anderson Strathclyde PLC by Charter Consolidated PLC are carried into effect. 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.

B. The public interest

Competition

9.5. The proposed merger would not in itself have a direct effect upon competition between persons supplying goods in the United Kingdom. The only one of Charter's present subsidiaries which supplies mining equipment is Perard Torque Tension, and that company's product lines are almost entirely distinct from those of Anderson Strathclyde. The only significant overlap is in respect of chainless haulage gear; and the gear which PTT makes is typically supplied for the modernisation of coal face equipment whereas Anderson Strathclyde supplies gear as an integral part of its power loaders.

9.6. It has been suggested that there may be an anti-competitive effect arising from bringing Anderson Strathclyde into the same group as Shand, in that the latter's competitors might be unwilling to buy products from the former. However, Anderson Strathclyde is not important as a supplier of equipment for opencast mining; and there is no suggestion that it would be

unwilling to supply Shand's competitors. We do not believe that the latter would deny themselves the use of Anderson Strathclyde's products if they would suffer inconvenience by such self-denial.

9.7. We have considered whether Charter might attain its objective of becoming a supplier of underground coal mining machinery by setting up as a manufacturer itself, thus enhancing competition between persons supplying such goods in the United Kingdom. The market would not be easy to enter; and there are already three such manufacturers of power loaders in this country. The prospect of competition being enhanced by Charter's direct entry as a manufacturer seems to us so remote that the proposed merger cannot reasonably be expected to operate against the public interest merely because it precludes such a development.

Possible adverse effects of the merger

9.8. A number of witnesses have suggested that the merger may be expected to operate against the public interest by jeopardising industry and employment in Scotland, especially in the Strathclyde region. In these representations there are two strands which need to be distinguished. One is that loss of independence by Anderson Strathclyde would adversely affect its efficiency and commercial success, which would not only be bad for the places where its factories are situated, but would affect its export prospects, would be damaging to its principal domestic customer, and might lead eventually to more import penetration. Another strand is that, even if Anderson Strathclyde's efficiency and commercial success were not adversely affected by acquisition, nevertheless the merger would have detrimental effects upon Anderson Strathclyde's suppliers, on career opportunities and on the potential contribution of Anderson Strathclyde to the regional economy in the future. This would be inconsistent with the desirability of 'maintaining and promoting the balanced distribution of industry and employment in the United Kingdom' (section 84(1)(d) of the Fair Trading Act 1973). We consider first whether the proposed merger may be expected to have an adverse effect upon the business taken over.

(a) Effects on Anderson Strathclyde

9.9. Charter and Anderson Strathclyde are companies of different types, both successful in their particular contexts. Charter, despite its policy of building up or acquiring subsidiary industrial companies, is still to a large extent a financially-oriented investment company. Anderson Strathclyde is a specialised engineering company, with a strong technological bent, whose principal product is critically dependent on the company's ability to remain in the forefront of its technology. Anderson Strathclyde argued that for the good of the company those who hold the ultimate responsibility should be thoroughly conversant with the technological aspects of its business. These are skills which Charter's senior management do not claim to possess. This difference in outlook seems to us a major factor accounting for the opposition to the proposed merger by the directors and senior management of Anderson Strathclyde. If Anderson Strathclyde remains independent the next chairman, whether appointed from within the company or from outside, will be acceptable to the present senior management, whereas if the merger takes place the present chairman will retire at once and, in our judgment, will be replaced by an

executive director of Charter. A further factor affecting Anderson Strathclyde's management is the possibility of conflict between Charter's corporate objectives and those of Anderson Strathclyde, particularly with regard to the action to be taken to reduce the latter's dependence on its principal product and customer.

9.10. We conclude that the management of Anderson Strathclyde and Charter may not mix well and that the acquisition would be likely to lead in the short run to a diminution in the effectiveness of the former company's management. If the acquisition takes place, it is probable that there will be a loss of morale and motivation amongst the present executive directors and senior management sufficient to have an adverse effect on the company's performance. This would be particularly damaging at a time when there has been a substantial improvement in the company's record, as demonstrated by its profitability, its recent introduction of new products, its improved delivery and service performance for the NCB, and its continued success in winning overseas business against international competition. In the longer-term there is a significant risk that the company would suffer further serious and lasting damage as a result of conflicts of personality or policy.

9.11. Anderson Strathclyde laid stress upon the effects which were described in paragraph 9.19 of the Commission's report on the Enserch/Davy merger case.¹ This dealt with the lengthening of the chain of management command. While it is true that there are features in common between the two cases, the chain of command in the present case would not be as long as that envisaged in the case of Davy, where divisional headquarters would have been in New York and corporate headquarters in Dallas. Nor do we consider that the nature of Anderson Strathclyde's business would be as likely to create occasions on which it would be felt necessary to refer to group headquarters a question arising on a commercial opportunity.

9.12. We received evidence that labour relations were likely to be adversely affected by the proposed merger, in particular that the good understanding which had made it possible for the management and unions to agree upon the introduction of a flexible manufacturing system would be jeopardised. We can understand that such fears may naturally be aroused by the prospect of a change of ownership, especially in a company where many of the employees have long service and are acquainted with the top management. Whether ill effects will arise seems to us generally to depend very much on whether there are changes in management personnel or style; and Charter was emphatic that its policy for its manufacturing subsidiaries is one of decentralisation, and that it has no central labour relations function or policy. However, in this case we need to take account of the serious misgivings of the labour force about the prospects of control by a distant company with a strong financial orientation. (These misgivings are also connected in some measure with the regional considerations which we deal with later.) At present labour relations in Anderson Strathclyde are good, with an unusually high degree of flexibility and willingness to accept technological change among

¹ Enserch Corporation and Davy Corporation Limited, a report on the proposed merger, Cmnd 8360.

the labour force. The trust which has been established in recent years has made it possible to reach agreement with the relevant union on the introduction of a flexible manufacturing system at Motherwell, which will change working practices and reduce the number employed. An opposed takeover by Charter can be expected to place this situation in some jeopardy. Initial suspicions might be overcome in the course of time, if experience showed that Charter's commitment to the long-term interests of each plant was as strong as that of the existing management. However, it seems to us that the merger would create conditions in which the present degree of co-operation of the labour force would not be forthcoming. This would be particularly damaging to a company which needs to maintain its position in overseas markets where competition is growing more intense and satisfactory service to customers is vital.

9.13. Charter's largest shareholder is Minorco, a company controlled by the Anglo American group of South Africa. It was suggested that because of this the merger could prove damaging to Anderson Strathclyde's business prospects in a number of countries, especially although not exclusively in the 'third world'. Charter pointed out that its South African connection did not prevent it and its subsidiaries from doing a great deal of business in other African countries; and that Anderson Strathclyde has a South African subsidiary. Although this is an effective answer in present circumstances, we need also to have regard to possible future developments in South Africa, and the effects which these may have upon attitudes to the companies. It could be argued that it would be easier for Anderson Strathclyde to dispose of a South African subsidiary than for Charter to disconnect itself from Anglo American. Thus in the event of a deterioration of conditions relating to South Africa, Anderson Strathclyde might be worse placed for trading in some overseas markets if the merger took place than if it did not. This is a detriment, however, which is so hypothetical that we do not give great weight to it.

9.14. We have considered suggestions that Charter's involvement in litigation in the United States arising out of the use of asbestos supplied by Cape Industries could prove harmful to Anderson Strathclyde if it became a subsidiary of Charter. After examining the submissions made by the parties on this point, we do not believe that Charter is likely to suffer material ill effects from such litigation, or that the business of Anderson Strathclyde would suffer at all from this cause.

(b) Effects on the region

9.15. Many of the witnesses drew our attention to the conclusions of the Commission in the recent merger cases involving the Royal Bank of Scotland Group, and argued that similar considerations applied to Anderson Strathclyde. There are substantial differences between the two cases. The Royal Bank of Scotland plays a pervasive role in the affairs of Scotland, and is connected with all sorts of businesses throughout the country. Loss of independence for such a company is a different matter from the loss of independence of a manufacturing company, however large it may be, and however important its role in engineering development.

9.16. Nevertheless Anderson Strathclyde is an important company, which plays a leading role in the modernisation and development of the engineering industry of Scotland. It has given leadership in such matters as training. Its recent commercial success stands out against a background of decline in many less advanced companies. If the proposed merger were to have adverse effects upon the efficiency and commercial success of Anderson Strathclyde, we could expect that to diminish employment not only at its own works, but also at those of its suppliers and sub-contractors. Even if the merger were to have no such adverse effect on the company, it might still have an adverse effect upon the region.

9.17. We see no reason to believe that Charter would interfere with the local procurement of supplies, or with sub-contracting. We do, however, foresee that the merger could lead to some change in the supply of services to Anderson Strathclyde. The scope of banking services would be reduced and insurance broking would be transferred to the centre. Charter normally provides certain high level services to its subsidiaries, and we think it likely that Anderson Strathclyde would avail itself of some of these services. The loss of employment would not be large, but would nevertheless involve a category of employment with which Scotland is none too well endowed.

9.18. There is also the more important question whether in the long run the proposed merger would have less favourable effects for maintenance of employment and generation of wealth in the region than continued independence. There is some evidence from the studies referred to in Chapter 7 that a company such as Anderson Strathclyde with a strong base in a relatively depressed region is less likely than a diversified company based in a more prosperous region to shift projects away from the depressed region, and more likely to add to manufacturing capacity within that region. Anderson Strathclyde at present has a strategy of making itself less dependent upon the power loader as a product and the National Coal Board as a customer. If it became a subsidiary of Charter, plans for diversification would be less likely to be carried out, or might be carried out through other subsidiaries in more prosperous parts of the country. Thus the region would have a reduced opportunity of gaining new industrial activities. Moreover, the senior management of Anderson Strathclyde would, if it ceased to be independent, carry less authority in their relations with other enterprises in the region and might consequently be less inclined to take a leading role in the economic life of Scotland. Charter has a decentralised system of management for industrial subsidiaries, and Anderson Strathclyde would form the main part of Charter's mining machinery activities; consequently the probability of such effects is lower than it might be in some other merger cases; but we consider that adverse effects upon the region are to be expected from the change of status from an independent to a subsidiary company, even if Charter maintains its present policies and practices concerning industrial subsidiaries.

9.19. It has also been argued that a diversified company is bound to assess the performance of various subsidiaries in financial terms, and to give particular attention to such indicators as return on capital employed, whereas a company with a fairly homogeneous business takes a longer view of its prospects and is more likely to persevere with even peripheral parts of its business

during a period of depressed activity. Thus it is suggested that Charter would be less patient than Anderson Strathclyde in trying to restore the fortunes of a loss-making operating unit, such as the Kirkintilloch factory. On the other hand, Charter has shown considerable patience and persistence with some of its industrial subsidiaries which have been suffering from the recession of the last few years. If the merger took place Charter would have made a large investment with a view to entering a market with growth prospects, and therefore we do not believe that it would be less committed to the development of Anderson Strathclyde's core business than are the present proprietors and directors, though there might be some difference of attitude towards Anderson Strathclyde's other activities. Nevertheless, it is evident that no well-managed company can long tolerate losses or poor returns in operating units, since they will drain resources from other units, so the difference between a company concentrated in a particular industry and a diversified group can be only a matter of degree, and we do not expect the proposed merger to have adverse effects in this respect simply by reason of Charter's diversified nature.

Summary of adverse effects

9.20. We conclude that the proposed merger may be expected to have an adverse effect upon the management effectiveness and labour relations of Anderson Strathclyde, and that this would tend to diminish effective competition in the supply of goods, would be contrary to the interests of purchasers of goods in the United Kingdom and would not promote competitive activity by Anderson Strathclyde in markets outside the United Kingdom. We also conclude that both because it would affect employment within Anderson Strathclyde and because it would detract from the dynamism of business in the region, it may be expected to have an adverse effect upon employment in a relatively depressed part of the United Kingdom. These effects may be expected to operate against the public interest unless offset by some advantages.

Possible benefits of the proposed merger

9.21. Benefits which Charter claimed could be expected from the merger were a stimulus to management to remedy weaknesses in Anderson Strathclyde's performance, assistance in developing markets overseas, and greater financial resources for development. As indicated in paragraph 9.10, we consider that on balance the merger would have a detrimental effect upon management. The directors of Anderson Strathclyde are aware of weaknesses in product development and marketing during recent years, and have adopted plans designed to remedy those weaknesses.

9.22. Charter has been able to assist some of its subsidiaries to enter overseas markets. Anderson Strathclyde stated that its present association with Charter, which has included the presence of an executive director of Charter on its board since September 1980, had not brought any additional business. This does not show that Charter could not assist in future; but, on balance, we do not perceive any real advantage on this score.

9.23. Charter claimed that with its greater financial resources it would be in a position to enable Anderson Strathclyde to increase its investment and, if necessary, research and development expenditure. Within a larger group these important forms of expenditure would be less vulnerable to a down-turn in profits than if Anderson Strathclyde continued as an independent company. Charter explained to us how it finances its subsidiaries and how it could raise up to £150 million within the next two years for the development of its businesses. This is clearly a large sum in relation to its existing industrial activities, though less substantial if it were to become involved in any major new mining development. Charter explained to us that in its view the level of investment in a company should be influenced by that company's ability to generate profits. We are satisfied that the facilities available to Anderson Strathclyde at present, together with its expected cash flow, are sufficient for foreseen needs. The company can also, so long as it remains profitable, expand its equity base through a 'rights' issue. We cannot therefore attach much weight to the advantage which Charter's resources would confer.

Recommendation

9.24. The adverse effects which we set out in paragraph 9.20 are not offset by any advantages which the proposed merger would confer. Therefore on balance we consider that the merger may be expected to operate against the public interest. The adverse effects arise directly from the proposed merger, and we cannot devise any action which could be taken for the purpose of remedying or preventing them if the merger took place. We therefore recommend that the merger should not be permitted.

9.25. The possibility of a merger situation arising from the present holding by Charter of 28.4 per cent of the shares of Anderson Strathclyde was not referred to us, and is therefore outside our terms of reference.

A D BAIN

D G GOYDER

E A B HAMMOND

H H HUNT

Sir Godfray Le Quesne and Mr S R Lyons, being members of the group, dissent from the conclusions for the reasons set out in the note of dissent included in this report.

N E D BURTON (*Secretary*)

22 November 1982

Note of Dissent

9.26. We dissent from the conclusion that the proposed merger may be expected to operate against the public interest. Our colleagues base their conclusion on their expectation that the merger would have adverse effects upon the management effectiveness of Anderson Strathclyde, upon Anderson Strathclyde's labour relations and upon employment, and 'would detract from the dynamism of business in the region', ie, in Scotland. There is in our judgment no reason to expect that it would produce any of these adverse effects.

9.27. The argument starts by drawing a comparison between the two companies:

Charter and Anderson Strathclyde are companies of different types, both successful in their particular contexts. Charter, despite its policy of building up or acquiring subsidiary industrial companies, is still to a large extent a financially-oriented investment company. Anderson Strathclyde is a specialised engineering company . . . (paragraph 9.9).

We do not dissent from this description of the companies, but we do not consider that any inference is to be drawn from it adverse to the proposed merger. Charter, as a result of 'its policy of building up or acquiring subsidiary industrial companies', already owns and controls specialised engineering companies. There seems no reason to suppose that any evil consequence would flow from the addition to Charter's subsidiaries of another company different in type from Charter itself, but of the same type as those specialised engineering companies already forming part of Charter's 'particular context'. We have neither heard nor seen anything to suggest to us that the proposed merger would impair the success of either company.

9.28. The argument is recorded that, for the good of Anderson Strathclyde, 'those who hold the ultimate responsibility should be thoroughly conversant with the technological aspects of its business' (paragraph 9.9). We do not agree. What is important for Anderson Strathclyde is that those with ultimate responsibility for it either should understand the technical aspects of its business, or, if they do not, should delegate those aspects of the business to others who do. This seems to be the attitude of those carrying the ultimate responsibility now. Among them there are some who would hardly claim to be 'thoroughly conversant with the technological aspects' of the business; they presumably entrust these aspects to their colleagues. This, we believe, would also be the attitude of Charter to Anderson Strathclyde, just as it is the attitude of Charter to the engineering and manufacturing companies which it controls now. Charter described this attitude in these words:

As far as Charter's United Kingdom wholly-owned industrial subsidiaries are concerned, Charter's policy is one of devolved responsibility and decentralisation . . . Charter aims to provide for its wholly-owned industrial subsidiaries support, encouragement and financial discipline; but the responsibility for efficient and profitable operation is theirs.

9.29. It is true that, if the merger takes place, the next chairman of Anderson Strathclyde will in all probability be an executive director of Charter. Charter told us, however, that, as one would expect, it would listen to any representations the management of Anderson Strathclyde might wish to make. We

see no justification for supposing that Charter would be so ill advised as to impose a chairman whom senior management regarded for sound reasons as unsuitable.

9.30. The last suggestion in paragraph 9.9 is that there is a 'possibility of conflict between Charter's corporate objectives and those of Anderson Strathclyde, particularly with regard to the action to be taken to reduce the latter's dependence on its principal product and customer'. We see no grounds for this suggestion. Charter itself told us that it thought Anderson Strathclyde was vulnerable because of its dependence on one product line (shearers) and one major customer (NCB). It submitted that, with Charter's backing, Anderson Strathclyde would be able to reduce the risks resulting from this situation.

9.31. When the ownership and control of a company change, there is always a possibility of disturbance of the management. Such disturbance, if it occurs, may be only small and temporary. Nothing in the evidence suggests to us that it would be any greater in this case. Certainly we see no justification for expecting that the merger would lead to diminution of the effectiveness of the management or loss of morale or motivation. Our colleagues, looking to the longer term, see 'a significant risk that the company would suffer serious and lasting damage as a result of conflicts of personality or policy' (paragraph 9.10). Nobody can deny the possibility of such misfortunes 'in the longer term', with or without a merger; but here, in our judgement, they are matters purely of speculation. Neither the circumstances nor the evidence provide any warrant for expecting that the merger would produce such results.

9.32. Our colleagues refer in this connection to 'a substantial improvement in [Anderson Strathclyde's] record, as demonstrated by', among other things, 'its recent introduction of new products'. In spite of Anderson Strathclyde's improved financial performance, we must observe that we have been less impressed than our colleagues by the responsiveness and technical development of a company which failed over a number of years to develop an in-web shearer in response to the requirement of its principal customer—the NCB. Eickhoff introduced an in-web shearer in 1973; it was not until 1981 that Anderson Strathclyde had an in-web shearer ready for introduction on trial. The result has been to allow the German manufacturer entry into the British market for machines of this type.

9.33. In paragraph 9.12 the view is expressed that the merger 'would create conditions in which the co-operation of the labour force would be less readily obtained', so placing the agreement for the introduction of a flexible manufacturing system at Motherwell 'in some jeopardy'. We agree that it is necessary to take account of the serious misgivings of the employees of Anderson Strathclyde about the proposed merger. Our colleagues allow that these 'initial suspicions might be overcome in the course of time'. We believe that indeed they would. The unions would find that they were dealing with the same management after the merger as before, and that management had after the merger the same autonomy as before in negotiations with them. We do not think it would take very long in these circumstances to restore the confidence established in recent years, nor do we expect that the agreement for introducing a flexible manufacturing system would be lost. It is to be noted that an

unusually high degree of flexibility has also been achieved among the members of the TGWU employed at Cape Insulation's factory at Stirling. Control of Cape Industries by Charter has not prevented this.

9.34. Our colleagues apprehend certain adverse consequences for the region, ie, for Scotland. In the first place, they 'foresee that the merger could lead to some change in the supply of services to Anderson Strathclyde'. It is necessary to recall exactly what the evidence is on this point. Charter makes various high level financial and administrative services available to their subsidiaries, and each year each subsidiary is asked to state to what extent it wishes to use them. The decision is left to the subsidiary, with the qualification that Charter does ask its subsidiaries to use Charter as bankers for the purpose of obtaining loans (but not for other banking services) and to have their insurances arranged through Charter. Even in these two fields the system seems not to be obligatory, for Charter told us that one subsidiary continues to arrange its own insurance.

9.35. This evidence does not seem to us to make it likely that there would be any change in the supply of services to Anderson Strathclyde, except the provision of loans and the arrangement of insurance. Even if these two changes were to occur, there is no evidence that the resulting reduction of demand for these services in Scotland would be large enough to cause any loss of employment at all.

9.36. The second regional consequence suggested is that 'the region would have a reduced opportunity of gaining new industrial activities' (paragraph 9.18). In part this is said to be based on 'evidence from the studies referred to in Chapter 7'. We do not consider that any inference in this case should be drawn from these studies. They deal with certain acquisitions and other developments which have taken place in the past, some in this country and some elsewhere. The details and circumstances of particular mergers vary in so many ways that the likely results of one proposed merger cannot safely be judged by reference to the results of other mergers in the past.

9.37. It is also suggested in paragraph 9.18 that, if the merger were to take place, 'plans for diversification would be less likely to be carried out, or might be carried out through other subsidiaries in more prosperous parts of the country'. In our judgment the evidence gives (to say the least) no support to this suggestion. As we have already pointed out in paragraph 9.30 above, Charter referred expressly in its evidence to the desirability of diversifying the business of Anderson Strathclyde. We believe that Charter would encourage this, as it appears to have encouraged diversification in its existing subsidiaries. Charter told us that in one of them in particular (Pandrol) the diversification has been very successful.

9.38. Furthermore, we see no reason to expect that the merger would affect the location of any diversified activities. Anderson Strathclyde already has three factories in England (one in Sheffield, one in Saunderton and one in Princes Risborough). Diversification would take place, merger or no merger, at whatever place Anderson Strathclyde considered the most suitable whether in England, Scotland or overseas. There is nothing in the record known to

us of Charter's decentralised system of management to suggest that, if the management of Anderson Strathclyde were to submit plans for diversification in one place, Charter would insist that it be carried out in another. The chief executive of Charter put the position to us in these words:

'... it is not our role, as we see it, to look for new products. It is the role of the management of the [subsidiary] company, in terms of its annual development plans, to come forward with proposals for new products. It is our job to stimulate growth and support wherever we can'.

9.39. We do not agree that 'the senior management of Anderson Strathclyde would, if it ceased to be independent, carry less authority in their relations with other enterprises in the region'. The position of senior managers in such relations must depend upon the authority which in fact they enjoy in the conduct of their businesses. It is quite clear to us that under Charter's decentralised system the managers of its industrial subsidiaries exercise authority of a very high degree.

9.40. We have certain comments upon the 'Summary of adverse effects' contained in paragraph 9.20. First, even if the merger were to prejudice 'the management effectiveness and labour relations of Anderson Strathclyde' (and in our view it would not), it seems to us an exaggeration to suggest that this would involve the catalogue of consequences set out in the first sentence of paragraph 9.20. Secondly, the suggestion that the merger 'would affect employment within Anderson Strathclyde' seems to be entirely speculative. Thirdly, we are not sure what particular apprehensions are indicated by the suggestion that the merger 'would detract from the dynamism of business in the region'. We believe, however, that any dynamism displayed now by Anderson Strathclyde would continue after the merger undiminished.

9.41. In the foregoing paragraphs we have referred to the various matters adduced in support of our colleagues' conclusion, and have explained why, in our view, the evidence does not support any of them. There is a further consideration relevant to all of these points. At no stage is the argument cast in terms of definitely foreseen results. It is all in terms of possibility, likelihood and risk. We do not dispute that the creation of a risk may amount to a particular effect adverse to the public interest; but this is an area in which we think it necessary to move with caution. We refer to the statement contained in paragraph 9.40 of the *Report of the Commission on the proposed merger between S & W Berisford, Ltd and British Sugar Corporation Ltd* (1981, HC 241):

'The question we have to consider is not merely whether there is a possibility that the merger will operate against the public interest. If only a possibility were required, hardly any merger could ever be allowed to proceed, for it is very rarely that such a possibility can be quite excluded. The question is whether the evidence creates an expectation that the merger will operate against the public interest. To put the matter colloquially, the required conclusion is not, "This may happen", but "We expect that this will happen'.'

9.42. In our judgement, the evidence does not justify such a conclusion on any point in this inquiry. The Fair Trading Act confers upon the Secretary of State far reaching powers, exercisable in case of a report of the Commission that a proposed merger may be expected to operate against the public interest. The Commission is required to base such a report upon 'particular effects, adverse to the public interest, which in the opinion of the Commission (the proposed merger) may be expected to have' (s.73(1)(b)). If the intention of Parliament is judged, as it must be, from the language of the Fair Trading Act, we do not consider that the general possibilities and risks upon which the recommendation in this case is based amount to such material as Parliament intended should lead to ministerial intervention.

J G LEQUESNE

S R LYONS

22 November 1982