

## CHAPTER 8

### Conclusions

#### The merger situation

8.1. Under the terms of the reference and the provisions of sections 69 and 75 of the Fair Trading Act 1973 we are required to investigate and report whether merger situations qualifying for investigation have been created or will be created, by reason of arrangements already made or in contemplation, resulting in enterprises carried on by or under the control of Mr Alan J Lewis ceasing to be distinct from enterprises carried on by or under the control of Illingworth, Morris PLC (IM). The preliminary condition set out in section 64(i)(b), that the value of IM's assets exceed £15 million, is satisfied. We are required to exclude from consideration the alternative condition in section 64(i)(a), relating to market share. The issued Ordinary stock capital of IM at all material times comprised 10,000,000 Ordinary voting stock units of 20p each and 30,024,733 'A' Ordinary non-voting stock units of 20p each.

8.2. The circumstances in which Abele Ltd (Abele), a company registered in the Isle of Man and wholly owned by Mr Alan J Lewis, acquired stock in IM are explained in detail in Chapter 5.

8.3. For many years IM had been dominated by two brothers, Isidore and Maurice Ostrer. Isidore Ostrer held 19 per cent of the issued Ordinary stock directly. A further 27 per cent, together with holdings in the 'A' Ordinary stock units, were held by the two brothers indirectly through two family investment companies, Lothbury and LOG. These two companies were owned, as to 60 per cent of their respective Ordinary capital by Isidore Ostrer, and as to the remaining 40 per cent by Maurice Ostrer. The brothers died within a few months of each other in 1975. The stockholdings in the Isidore Ostrer estate were not distributed, and his executrix, his daughter Mrs Mason, by virtue of the stock which she controlled both directly and through the estate's shareholding in Lothbury and LOG, was able to exercise a significant degree of control over the Board of IM.

8.4. On 15 October 1981 Abele agreed to purchase from Mrs Mason the 19 per cent of the Ordinary voting stock of IM which she held as executrix of the Isidore Ostrer estate. Abele was also granted an option to purchase that estate's 60 per cent interest in Lothbury and LOG. The remaining 40 per cent of Lothbury and LOG was controlled by the executors of the Maurice Ostrer estate, no distribution of these shares having taken place in that estate.

8.5. Mrs Mason's conduct as executrix of the Isidore Ostrer estate had, prior to 15 October 1981, been the subject of court proceedings by one of the residuary legatees, and the executors of the Maurice Ostrer estate had applied under the Companies Act 1948 for the winding-up of Lothbury. The executors of the Maurice Ostrer estate also applied for an injunction to prevent Mrs Mason exercising the voting rights of the Ordinary stock in IM which were held by Lothbury.

8.6. Abele was able to complete the transaction with Mrs Mason in relation to the 19 per cent of the Ordinary capital in IM, but the court actions prevented it from exercising its options to acquire the shares in Lothbury and LOG. Mrs Mason was replaced as the executrix of the Isidore Ostrer estate in January 1982 by a Judicial Trustee who was appointed to complete the administration. After further court hearings the Judicial Trustee, with the approval of the court, entered into an agreement with Abele in September 1982 for the sale of the 60 per cent interest in the Lothbury and LOG shares held by the Isidore Ostrer estate. The executors of the Maurice Ostrer estate then dropped their court actions and agreed to sell that estate's 40 per cent interest in Lothbury and LOG to Abele. Abele, after consultation with the City Panel on Take-overs and Mergers on the appropriate price, then made an offer on 13 November 1982 for all the Ordinary and 'A' Ordinary capital of IM which it did not already own either directly or indirectly.

8.7. By virtue of section 64(8) of the 1973 Act 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. The offer by Abele lapsed when the reference was made to the Commission, but it is clear that the acquisition of IM is still in contemplation by Mr Lewis.

8.8. We conclude that a merger situation qualifying for investigation will be created if the arrangements in contemplation for the acquisition of IM by an enterprise controlled by Mr Lewis, are carried into effect.

8.9. This finding is sufficient to provide a basis for our investigation of the effect of the merger upon the public interest. Arguments, however, have also been addressed to us on the questions whether merger situations were created in October 1981 and the autumn of 1982 and whether, if they were, the merger situation of October 1981 is open to investigation in this inquiry, in spite of the terms of section 64(4)(a) of the Fair Trading Act 1973.

8.10. IM submitted that a merger situation was created in the autumn of 1982, because the transactions of that time (see paragraph 8.6) gave Abele ability to control the policy of IM. As to October 1981, IM submitted originally that no merger situation was created then, because the acquisition of 19 per cent of the Ordinary stock capital did not give Abele ability even materially to influence the policy of IM, and section 66(5) of the Fair Trading Act required that the option then granted to Abele be disregarded. IM then submitted, in the alternative, that the acquisition of 19 per cent of the Ordinary stock did give Abele ability materially to influence the policy of IM, and the merger situation thus created in October 1981 (ie more than six months before the date of the reference) had, by virtue of section 66(1)(2) of the Fair Trading Act and the terms of the reference, to be treated as having occurred simultaneously with the transactions of the autumn of 1982. The conclusion of this argument was that both the merger situation of October 1981 and that of the autumn of 1982 were open to investigation.

8.11. Mr Lewis submitted that a merger situation was created in October 1981 because Abele became able then materially to influence the policy of IM; no further merger situation was created in the autumn of 1982 because Abele did not then become able to control the policy of IM. The reason he offered for this latter submission was that immediately Abele acquired the 27 per cent of the Ordinary stock of IM owned by Lothbury and LOG it became, by virtue of the City Code on Take-overs and Mergers, obliged to make an offer to acquire the rest of the Ordinary stock and so, according to Mr Lewis' submission, unable to use its existing holding of 46 per cent to obtain representation on the Board. Mr Lewis submitted further that even if a merger situation was created in the autumn of 1982 it was impossible to treat the transaction of October 1981 as having occurred simultaneously with the transactions of the autumn of 1982 because, while the 1981 transaction was between Abele and the estate of Isidore Ostrer, the 1982 transactions were in part between Abele and the estate of Maurice Ostrer and so not 'between the same parties or interests' as required by section 66(1) of the Act. The merger situation of October 1981 therefore was not, according to this argument, open to investigation.

8.12. We do not find it necessary to reach any conclusion on the arguments set out in paragraphs 8.10 and 8.11. We have to reach a conclusion about the effect on the public interest of the merger situation undoubtedly now in prospect (see paragraph 8.8). If our conclusion about that merger situation had been such as to give rise to the possibility of the exercise by the Secretary of State of his powers under the eighth schedule to the Act, it might have been important to decide whether merger situations had been created in 1981 and 1982 and were open to investigation in this reference, because that might have affected the extent of the Secretary of State's power to compel Abele to dispose of its IM stock. In fact, our conclusion about the effect upon the public interest of the merger situation now in prospect does not give rise to the possibility of any exercise of these powers. If any merger situation now open to investigation was created in 1981 or 1982, our conclusion about the effect upon the public interest of either of those merger situations would inevitably be the same. We have therefore decided, in the unusual circumstances of this reference, that it is unnecessary for us to pursue the question whether those merger situations were in fact created.

#### **The circumstances surrounding the acquisition of Mr Lewis' interest in IM**

8.13. IM expressed concern to us about the manner in which, and the reasons why, Mr Lewis acquired his interest in the company. We have therefore examined the background to the transactions which were involved. After the death of the Ostrer brothers in 1975, neither Mrs Mason as executrix of the Isidore Ostrer estate nor the executors of the Maurice Ostrer estate were, partly because of considerable claims by the Inland Revenue, able to complete the administration of the estates. Mrs Mason, who as Isidore Ostrer's executrix held 19 per cent of IM's Ordinary capital directly and was at that time also able to vote the stock held by Lothbury and LOG, appears in particular to have been in no hurry to bring matters to a conclusion. It is no part of our inquiry to apportion blame for the deterioration of relations between

Mrs Mason, the directors of IM and certain members of the Ostrer family. By the summer of 1981, however, it had become apparent that a crisis was approaching in the autumn. Mrs Mason was facing one court action in respect of her conduct as executrix and another to prevent her from continuing to control Lothbury. At the same time she was attempting to remove the Chairman of IM, Mr Hanson, and the joint Chief Executive, Mr Hardy. In an attempt to settle this public dispute, Hill Samuel, IM's merchant bankers, arranged in August 1981 for a number of institutions to offer to purchase the Ostrer family holdings in IM from the estates of Isidore and Maurice Ostrer. Mrs Mason's lawyers in the United Kingdom were informed on 13 August 1981 of the possibility of the offer (see paragraphs 5.10 and 5.11).

8.14. Hill Samuel arranged for the letter with an offer of 18.75p per Ordinary voting stock unit and 17.75p per 'A' Ordinary stock unit to be delivered to Mrs Mason in Los Angeles on the morning of Thursday 3 September 1981. The offer was open for acceptance only until Monday 7 September. That Monday was a public holiday in the United States. Hill Samuel was, however, prepared to extend the period of the offer for a couple of days. Because there was difficulty in contacting Mrs Mason, Hill Samuel said that it told Mrs Mason's sister on Tuesday 8 September that the offer would be increased by 1p per stock unit to 19.75p for the Ordinary voting stock and 18.75p for the 'A' Ordinary stock. However, Mrs Mason did not accept the offer within the very short time allowed and it lapsed on Friday 11 September. Acceptance of Hill Samuel's offer, at either price, would have been advantageous to the estates of both Isidore and Maurice Ostrer, as it would probably have enabled the debts of the Isidore Ostrer estate to have been met in full and have left something for the residuary legatees.

8.15. Mr Lewis told us that he decided in 1980 that the major area of expansion for his enterprises in the 1980s would be the United Kingdom textile manufacturing industry. He had been particularly interested in IM since 1979 when he had approached Mrs Mason's United Kingdom solicitors but had been rebuffed. However, while in the United States of America in September 1981 he was approached by a business broker and subsequently introduced to Mrs Mason as a potential purchaser of stock in IM. We have described in Chapter 5 the negotiations that led to the eventual agreement between Mr Lewis and Mrs Mason and the litigation that followed.

8.16. The prices that Mr Lewis eventually paid were 14.75p for the Ordinary voting stock and 10.25p for the 'A' Ordinary stock. These prices were significantly lower than those offered by Hill Samuel and, at these prices, the Isidore Ostrer estate was insolvent and nothing was available for the residuary legatees. Moreover, the Maurice Ostrer estate obtained for its shares in Lothbury and LOG a price much lower than the value attributable to those shares had the Hill Samuel offer been accepted.

8.17. In 1982 during the course of the litigation involving Abele and the Judicial Trustee of the Isidore Ostrer estate, a third party made an offer to the Judicial Trustee for the estate's holdings in Lothbury and LOG. The offer was for a larger sum than that offered by Abele to the Judicial Trustee and

would have been advantageous to the Maurice Ostrer estate and possibly, in due course, to the other stockholders in IM if the third party went on to make an offer for their stock. However, having regard to the costs and speculative nature of the litigation that would have followed if the higher offer had been accepted, the court supervising the administration of the Isidore Ostrer estate decided that the offer by Abele should be accepted (see paragraphs 5.34 and 5.36).

8.18. It is difficult to understand why Mrs Mason having failed to take up the Hill Samuel offer accepted, after a very short interval, such a significantly lower price for the IM stock from Mr Lewis. Moreover, the offer that is mentioned in the preceding paragraph also suggests that it might have been possible in September 1981 to sell the stock at a higher figure. However, Mr Lewis has said that there was no other agreement between him and Mrs Mason in this matter, and no evidence has been put before us that there was.

8.19. We do not therefore consider that the arrangements by which Mr Lewis acquired his present stockholding in IM from the estates of Isidore and Maurice Ostrer have been shown to give rise to any public interest questions in relation to the proposed merger.

### **The public interest**

#### **The industry and Illingworth, Morris**

8.20. The United Kingdom textile industry remains, despite considerable contraction during the last decade, a major industry. In February 1983 it employed about 290,000 people which is 5 per cent of those in manufacturing employment, approximately the same number as in motor vehicle manufacturing. Textile exports in 1982 of £1,732 million amounted to some 4 per cent of those for manufacturing industry as a whole. The woollen and worsted textile sector of the industry, after dominating the international wool industry for many years, has suffered substantial erosion from overseas competition in recent years. The number of employees in this sector has fallen from about 140,000 in 1968 to about 48,000 in 1982. Nevertheless, the production of woollen and worsted materials remains an important part of the textile industry and the sector is a major employer in regions of high unemployment where it is concentrated.

8.21. Many companies in the woollen and worsted sector confine their activities to a single process, but others are vertically integrated and combine a number of processes such as combing, spinning, weaving, dyeing and finishing. IM is such an integrated company. We have been told that it is the largest United Kingdom wool textile company, that it exports a particularly high proportion of its turnover, and employs nearly 4,000 people in its manufacturing units mainly in Yorkshire, Scotland and the West Country.

8.22. The way in which, under the direction of the Ostrer family, IM was expanded by indiscriminate acquisitions financed largely by means of bank borrowings, together with the problems that arose between its Board and

Mrs Mason, has exacerbated its difficulties in recent years. This expansion financed by borrowing caused it to be particularly vulnerable to the decline in demand that the United Kingdom wool textile trade experienced from 1979 to 1981, and the company suffered a serious decline in its profitability. The present management of IM has reduced the bank borrowings and embarked on a programme of retrenchment which has significantly reduced its capacity and the number of its operating units and of its employees. However, IM has not yet returned to an established profitable position.

8.23. IM is still, however, a major exporter and employer with many of its manufacturing units in areas of high unemployment. Furthermore, the company's facilities, particularly in the initial processes of combing and scouring, provide essential services to other companies in the wool trade. Any merger that jeopardised IM's future efficiency and prosperity would therefore be against the public interest. In the following paragraphs we consider those effects of the merger which it has been suggested to us might be detrimental to IM's future.

#### **Control by a single shareholder**

8.24. The direct, or indirect, consequences of the control of IM by a single shareholder were a common factor in most of the possible public interest detriments that it was suggested might ensue from the merger. IM's directors told us that they did not regard the concept of a single ownership as satisfactory, and that IM, and the woollen and worsted industry generally, would be better served if IM's stock was spread amongst a number of institutional investors. The company could then be spared the effects of impulsive and sometimes irrational interventions in management that it had suffered in the past and at the same time could benefit from the resources that would be available from such institutional investors. We doubt the relevance of this argument in relation to the public interest. Even if the merger were not to be permitted and Mr Lewis could be obliged to sell his stock there is no means by which it could be ensured that this would be to any particular purchaser or purchasers. This argument also ignores the beneficial effects, particularly in the field of tighter financial control, that may result from a proprietorial style of management. We should hesitate to express any general view on the relative advantages of control by a single dominant shareholder, on the one hand, and, on the other hand, corporate management by a Board of directors subject to the more remote type of control likely to be exercised by institutional and other investors.

#### **The enterprises controlled by Mr Lewis**

8.25. IM and others who opposed the merger were also concerned about certain aspects of the future management of IM if Mr Lewis were to acquire control, and suggested various public interest detriments that might result if the merger took place. This concern appears to be due, in part, to misgivings about Mr Lewis' business experience, and to the record of the enterprises with which he has been concerned. We therefore examined the histories of Mr Lewis' principal business enterprises in detail, and have provided a summary in Chapter 4 of this report.

8.26. We concentrated our enquiries on the enterprises that Mr Lewis currently controls. He has built these up since 1968 after earlier companies principally engaged in the motor trade ceased trading, leaving some unsatisfied creditors (see paragraph 8.32). Mr Lewis' present businesses appear to be controlled through two wholly-owned holding companies, Alcraftfield Ltd and Kingsbridge Advances Ltd. The activities of the various companies under Mr Lewis' control are divided by him into three operating sectors: a finance and overseas division, a property division and an industrial division.

8.27. The finance and overseas division includes the Anglo Manx Bank, which is registered and situated in the Isle of Man, a reinsurance company registered in Bermuda, a number of consumer finance companies, and three bureaux de change which have recently been set up in London. These activities so far have been profitable, and we were told by Mr Lewis that they have good prospects for the future.

8.28. In the 1970s the property division pursued a policy of acquiring the freeholds of existing industrial and commercial premises, refurbishing them, and letting them on full repairing leases. Since 1980, however, Mr Lewis has taken the view that property of this type may have achieved its maximum growth potential for the time being, and has therefore disposed of a number of property investments on a profitable basis. The profits were earned mainly by Hartley Industrial Trust PLC in which Alcraftfield held a 93 per cent interest on 31 March 1982.

8.29. The industrial division made losses of nearly £0.5 million in the five years to March 1982 on a turnover of some £2.6 million. These results took account of the three main activities carried out by the division, textile manufacturing, retailing of menswear and the establishment of a small export company which Mr Lewis has told us has good prospects (see paragraph 4.59).

8.30. We have set out in some detail in Chapter 4 an account of Mr Lewis' activities in the textile trade during the 1970s. He purchased and successfully combined two cotton processing companies and subsequently sold them, at a profit, to Courtaulds Ltd. A third company, Bury Ring Mill Ltd (Bury), was acquired in 1971. At that time Bury was engaged in the cotton spinning trade, but soon after its acquisition it moved into the spinning of coloured acrylic yarn. Bury was offered to Courtaulds in 1974 with the other companies, but Mr Lewis told us that Courtaulds was not prepared to acquire the acrylic spinning business. Bury was profitable for a while after it changed to the spinning of coloured acrylic yarn. This company was subsequently offered to a number of prospective purchasers, including in March 1977 a quoted investment company in which Mr Lewis had a controlling interest (see paragraph 4.38). Bury started to incur losses in 1978 and it went into liquidation in 1981, leaving £361,000 outstanding to creditors. These creditors included large and small commercial creditors and the Department of Employment which had to pay the greater part of the redundancy monies and holiday pay due to the workforce. We questioned Mr Lewis on the circumstances in which Bury went into liquidation, and he has explained that it was maintained in the group for a number of years after a fall in demand for coloured

acrylic yarn in 1976, but eventually failed at a time of general business decline, which was particularly severe in the trade in which Bury was engaged.

8.31. The involvement of some of Mr Lewis' companies in the retail menswear trade is fairly recent. It arose from the purchase of assets from the receiver of John Michael (Savile Row) Ltd and its subsidiaries. It was initially intended to continue the operations of this group in partnership with the original proprietor and management, but this did not prove possible. Although a few of the shops continue to trade under franchise arrangements and the Savile Row premises are used by another enterprise associated with Mr Lewis, he disposed of most of the shops after less than a year. Amounts due to the Customs and Excise and the Inland Revenue from a trading subsidiary remain unpaid in respect of trading during the period when the businesses were controlled by Mr Lewis (see paragraph 4.55).

8.32. We asked Mr Lewis about the occasions when creditors had suffered losses as enterprises controlled by him had gone into liquidation or ceased to trade. Mr Lewis has told us that he does not sign personal guarantees. He also said that Alcraft's policy, as an investment holding company, is not to guarantee its subsidiaries' liabilities. In spite of these policies there have been occasions when Mr Lewis has arranged to make payments to creditors of insolvent enterprises he controlled directly or indirectly. He told us he had arranged in the 1970s for one of his companies, Kingsbridge, to make certain payments to ensure that creditors of the motor car distribution companies, previously controlled by him, were paid. The payments amounted to over £186,000. In the more recent case of the companies engaged in the retail menswear trade, Mr Lewis explained that he felt that there had been a moral obligation to pay the trade creditors, in respect of the period when the business had been controlled by Alcraft, as the previous management might have represented that Alcraft would do so. The trade creditors had therefore been paid. He did not, however, regard himself as having the same obligation to the Customs and Excise or the Inland Revenue, and he had been advised by his solicitors that there was no legal or moral liability to pay these debts as they were effectively unsecured claims against a company which had been unable to pay its debts. Alcraft took responsibility for monies outstanding to Bury's bankers as it had given the bank certain assurances, but no payment was made by Alcraft to other creditors of Bury. Mr Lewis told us that Alcraft had made no representations to any creditors that it was supporting Bury and had, in fact, told a major creditor of the company, while Bury was trading, that Alcraft did not look upon itself as having any obligation to Bury.

8.33. We asked Mr Lewis how this policy of Alcraft's towards the creditors of subsidiaries would be applied to creditors of IM's subsidiaries if the merger took place. He said that it was proper to distinguish between, on the one hand, a group such as IM, which is a commercial trading group where the holding company acts as a manager and banker, and, on the other hand, a group where the trading company is simply an investment of the holding company. Mr Lewis told us that potential creditors of IM's subsidiaries would be in no worse a position after the merger than before because

IM under his control, after a merger, would feel obliged to see that its subsidiaries' creditors were paid.

8.34. We asked Mr Lewis about the absence, prior to the purchase of his stock in IM, of any current involvement by him in manufacturing industry. Mr Lewis said in answer, 'Anybody with any common sense, I would suggest, from 1975 onwards would not have looked at industry as an immediate investment'. He said it was his intention to invest where there was growth potential and profits. He now foresaw increased opportunities for United Kingdom textile manufacture in view of the significant contraction in capacity in recent years and the anticipated upturn in demand for British manufactured products.

8.35. In the light of our enquiries and Mr Lewis' answers to the specific matters put to him, we find that he has built up a group of enterprises which, given its small beginnings and the amount of capital invested, is now possessed of relatively substantial assets. The group includes some successful enterprises, notably those concerned with property, and some not so successful, but, on balance, it is clear that the activities of the group up to the present have been profitable. Mr Lewis has not maintained consistent involvement in manufacturing industry, and at no stage in his career has he controlled or managed an enterprise approaching the size of IM. We have taken these considerations into account in considering the representations on the public interest implications of the merger that have been put to us. Our conclusions on these matters are set out in paragraphs 8.52 to 8.56.

#### **The possibility of asset stripping**

8.36. It has been suggested to us that Mr Lewis' past record may indicate that, if he were to acquire control of IM, he would quickly dispose of assets for his own benefit to the detriment of the future of IM's businesses.

8.37. It seems likely that, having regard to the present position of IM, whoever may be controlling the group will have to consider the sale of some assets that are at present surplus to the requirements of its businesses. It might be possible for an individual who was in control of IM to extract all or part of the proceeds of such sales, instead of using them for the future development of IM. Mr Lewis has assured us that this is not his intention. He told us that any revenue which was derived from the proceeds of sale of properties belonging to IM would be used to improve the profit and loss situation, strengthen the balance sheet, or for reinvestment in other parts of the IM group.

8.38. The evidence available to us is not sufficient to support a conclusion that it may be expected that Mr Lewis would dispose of IM's assets for his own benefit to the detriment of the future of IM's businesses.

### **The plans for the IM group**

8.39. IM and Mr Lewis each provided us with their future plans for the group. It is convenient to consider the plans in relation to, first, the initial processing stages of topmaking, combing and scouring and, secondly, the later processes of spinning, weaving, and making up.

8.40. The Confederation of British Wool Textiles Ltd. (CBWT), who told us it represents over 90 per cent of the employers in the industry, was particularly concerned about the future of IM's initial processing division and considered it was important that the company's combing facilities should remain available to other firms in the industry, and not be lost, possibly to foreign ownership.

8.41. There was a difference in emphasis between the views of IM and Mr Lewis on investment in IM's initial processing facilities. IM hoped that it would be able to extend the existing co-operation with BWMB, who had recently purchased a 60 per cent interest in IM's topmaking company, and taken a 25 per cent interest in its scouring plant. IM considered that the maximisation of combing activity was of great importance and had arranged to purchase another company's combing machinery and to carry out combing on behalf of that company.

8.42. Mr Lewis told us that soon after he acquired an interest in IM he had been approached about the initial processing facilities. He was not interested in selling these as he wished to acquire the business for the long term and to stay in textiles. It would be inconsistent with this policy to sell a fundamental part of IM's vertically integrated operations. While he believed there was a future for IM's existing facilities, he doubted whether it would be appropriate to expand a sector of the business which depended on the custom of other companies in the wool textile trade. In his view, further investment should be in the later stages of the processing where it was possible to control the group's activities more directly in the ultimate markets for its products.

8.43. The recently completed joint arrangements with BWMB have been an important factor in improving IM's financial position and continued co-operation between the company and BWMB will clearly be an important factor in the future of its initial processing facilities. BWMB, which is responsible for the sale of wool produced in the United Kingdom, told us in writing and at a hearing that it had no objection to the merger because it believed Mr Lewis had the necessary qualities to bring much needed impetus to the industry.

8.44. In these circumstances it appears that co-operation between IM and BWMB will continue if the merger takes place, particularly as Mr Lewis told us it was his intention to appoint BWMB's Managing Director as a non-executive director of IM. We therefore do not consider that there is any evidence that the proposed merger is likely to lead to IM's initial processing facilities being sold or significantly reduced. Moreover, it is by no means clear that it would be against the public interest if IM in the future, while maintaining

its present initial processing facilities, decided to concentrate its investment on later processing stages.

8.45. IM told us that, in the later stages of wool processing (spinning and weaving), it intended to continue the rationalisation that has taken place in recent years, to seek opportunities to improve the return or to dispose of surplus properties, and to invest in modern facilities at its profitable units. Mr Lewis, who was not in possession of detailed information on IM's present financial position, told us that he considered further retrenchment to be unnecessary, that IM should maintain its present capacity at the remaining manufacturing units, and that it should energetically seek to develop new products and new markets.

8.46. The wool textile market in the United Kingdom is highly competitive, and foreign competition is unlikely to diminish. It is possible that some further contraction of IM's less profitable units might in any event be necessary, and that Mr Lewis, if he were to gain control, might find it necessary, despite what he has told us, to adopt a policy of retrenchment. On the other hand, with the introduction of new products and marketing techniques and with more vigorous management and better financial controls, he may be able to avoid further contraction and at least maintain present employment levels.

#### **IM's capital requirements**

8.47. It was suggested to us that one of the causes of IM's recent problems was the heavy bank interest resulting from the Ostrer brothers' policy of expansion financed by borrowings rather than equity capital. It was argued that it might be detrimental to IM's efficiency if it were, in the future, unable to raise further equity capital and this might be impossible if Mr Lewis would neither provide the capital himself nor dilute his holdings by a public issue.

8.48. Mr Lewis did not accept that it would be necessary to raise further equity capital. He considered that the company's present borrowing facilities were more than adequate for its needs. He explained to us that, if necessary, he could increase or replace those facilities. Moreover, in his view, it should be possible to release some of IM's under-used assets to provide additional capital for the company. If, in spite of this, IM were to require further equity capital in the future, he would be able to provide this either from his own resources or from other sources available to him. Mr Lewis supported this contention with evidence from his merchant bank, Henry Ansbacher & Co Ltd. Ansbacher stated that it expected, if Mr Lewis were to be the controlling shareholder, to be able to place on satisfactory terms any appropriate amount of share capital in IM.

8.49. The level of IM's bank borrowings has been substantially reduced, and its facilities at present appear to be more than adequate. There can, in any event, be little prospect of raising additional equity capital until IM is able to demonstrate a return to profitability. In all these circumstances we do not consider that the acquisition by Mr Lewis of the control of IM would prejudice its future efficiency by reducing its ability to obtain further equity capital.

## **The position of the trade unions**

8.50. The three trade unions primarily concerned told us that on the basis of certain oral assurances they had received from Mr Lewis, they would not oppose the merger, and that they saw possible advantages in Mr Lewis' control of IM if he were able to provide additional marketing expertise. At the request of these unions Mr Lewis later confirmed these assurances in writing (see Appendix 19).

## **Conclusions**

8.51. Whatever may be the future of IM's ownership and management, the outlook for the company cannot be easy or assured.<sup>1</sup> We have described the problems which it faces, derived partly from the circumstances of the whole British wool textile trade in recent years and partly from IM's particular history in the years of the Ostrer brothers' domination and the period of uncertainty and disagreement which has followed their death. The question which we have to consider is whether it may be expected that the prospects of IM after the merger would be so much more unfavourable than they would be without the merger that the merger would operate against the public interest.

8.52. We have examined Mr Lewis' business activities over the last 15 years as thoroughly as the time and the resources available have allowed. We questioned Mr Lewis closely about these activities and about his plans and intentions for the future of IM. His ventures have included both successes and failures. Neither the failures nor the successes, as far as our investigations have gone, have been shown to have occurred in circumstances which would require us to regard Mr Lewis as a person who in the public interest should not be allowed to take control of IM. Through the ventures which have prospered, Mr Lewis has now build up relatively substantial assets from small investments of capital. He has, on the other hand, no record of long-term commitment to industry nor any experience of industrial management on a large scale. Some creditors have been left unpaid in cases of failure of companies within Mr Lewis' group. Mr Lewis explained the reasons why he had felt an obligation to pay some creditors from group resources but no such obligation to others. He also told us that his attitude to any such case in the IM group would be the same as that of the existing management of IM.

8.53. Mr Lewis plays a predominant part in the running of his group. Expectations for the future must therefore be based largely on judgment of Mr Lewis himself. Our judgment is that he has a keen eye for an opportunity, and is prepared to act vigorously and with singleness of purpose in pursuit of his interests or those of his group. He has resource and imagination in planning and is not afraid to follow new trends. These qualities cannot be applied without risk to an old established business, but they might prove valuable in the task of restoring IM to prosperity.

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<sup>1</sup> See Appendix 2 for the preliminary announcement of the results of IM for the year ended 31 March 1983.

8.54. In comparing the prospects of IM after the merger with its prospects if the merger were to be stopped, we have to bear in mind what the position would then be. Abele already owns 48.24 per cent of the Ordinary voting stock. Even if it could be required to dispose of all this stock, it could not be required to dispose of it to any particular purchaser. It is therefore unrealistic to judge the prospects on the assumption that this large interest would pass to shareholders of a particular kind. Furthermore, Abele might be allowed some time to make the disposal. The result would be to prolong the uncertainty hanging over IM. We believe, by contrast, that the company's urgent need is of release from the continuing uncertainty about its ultimate control which has persisted since the death of the Ostrer brothers in 1975.

8.55. As we have said, the outlook for IM, whatever the result of our inquiry, cannot be either easy or assured. The judgment we have to make concerns the effect of the merger on that outlook. Would it make IM's future less easy or less assured? In this case, as in very many cases, that is a possibility which cannot be excluded; but there are other possibilities. The merger may be neutral in its effect on IM's future. It may be positively beneficial in hastening and strengthening IM's return to prosperity. We have to consider whether prejudice to IM's future is more than a possibility and moreover, there is such likelihood of its occurring that the merger may be expected, by producing that result, to operate against the public interest.

8.56. After careful consideration of all the evidence before us, we find in it no justification for expecting that the merger would produce that result rather than another. We therefore conclude that the creation of the merger situation may not be expected to operate against the public interest.

J G LE QUESNE (*Chairman*)

D G GOYDER

E A B HAMMOND

B C OWENS

D G RICHARDS

J S SADLER

N E D BURTON (*Secretary*)

21 July 1983