

## CHAPTER 10

### Conclusions

#### The merger situations

10.1. Under the terms of the references 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 merger situations in which section 64(1)(b) of the Fair Trading Act 1973 will be satisfied.

10.2. Section 64(1)(b) is satisfied in both cases as it is evident from the published accounts of Trident that its assets exceed £15 million.

#### Pleasurama and Trident

10.3. On 29 March 1983 the directors of Trident and Pleasurama announced that they had agreed the terms of an offer for Trident. Pleasurama's offer lapsed when the proposed merger with Trident was referred to the Commission but Pleasurama indicated to us that it remained interested in the merger. Arrangements for the merger are therefore in contemplation.

10.4. We conclude that a merger situation qualifying for investigation will be created if the arrangements in contemplation for the acquisition of Trident by Pleasurama 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.

#### Grand Metropolitan and Trident

10.5. Since it will be Pleasurama that acquires Trident, a merger situation between Grand Metropolitan and Trident can only arise if it can be said that, under the arrangements between Pleasurama and Trident, enterprises presently controlled by Trident must be regarded as having come under Grand Metropolitan's control. For this to be the case, section 65(3) of the Act must come into play. Section 65(3) provides that a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate, but without having a controlling interest in that body corporate, may be treated as having control of it. If it can be said that Grand Metropolitan can materially influence the policy of Pleasurama after the latter has acquired Trident, Grand Metropolitan can be regarded under section 65(3) as having control of Pleasurama. In such a case, for the purpose of deciding whether the merger test applies, enterprises formerly controlled by Trident may be taken, once the arrangements between Pleasurama and Trident have been carried into effect, to have come under Grand Metropolitan's control within the meaning of that word in section 65(3) and a merger situation will exist between Grand Metropolitan and Trident.

10.6. We consider that there are four main factors to be taken into account in deciding whether Grand Metropolitan has the ability materially to influence the policy of Pleasurama :

- (a) its shareholding of not less than 20 per cent after Pleasurama's acquisition of Trident;
- (b) its ability under the Ritz Casino shareholders' agreement effectively to veto the appointment to the Pleasurama board of any person previously associated with gaming;
- (c) the joint ventures with Pleasurama in the Ritz and Casanova casinos which have resulted in a substantial common interest in two very successful companies, both managed under formal agreements by Mecca Sportsman; and
- (d) the fact that Grand Metropolitan is a very large and successful company and has a high standing in the casino industry.

We discuss these factors in turn.

**(a) Grand Metropolitan's shareholding in Pleasurama**

10.7. At the time the references were made, Grand Metropolitan's shareholding in Pleasurama was slightly under 29 per cent<sup>1</sup> and under the terms of Pleasurama's original offer for Trident, it would have been reduced to 20.02 per cent. Other shareholdings are widely dispersed and in the absence of directors' holdings of any materiality, Grand Metropolitan argued that it could block resolutions at meetings of Pleasurama and prevent the re-election of the two present directors who come up for retirement by rotation or of any new Pleasurama director upon his re-election falling due. It also felt that it had a real prospect of obtaining representation on the board of Pleasurama (see paragraphs 9.11 to 9.15).

10.8. Pleasurama told us that Grand Metropolitan had no present ability to obtain sufficient support from shareholders either to resist ordinary resolutions proposed by the Pleasurama board or to secure the passing of such resolutions in the face of opposition from the board. It believed that if the offer for Trident had been put to its shareholders, it would have secured sufficient support to secure approval. If Grand Metropolitan sought representation on its board, Pleasurama would resist confident that its shareholders would support it. Pleasurama argued that it was, in principle, unsatisfactory for a major competitor to have such representation. Board representation might give Grand Metropolitan access to confidential and competitive information relating to the affairs of Pleasurama/Trident (see paragraphs 9.5 to 9.8).

10.9. The Commission have considered in other merger reports the relevance of a particular shareholding to the ability to control or materially influence the policy of a company. Both Pleasurama and Grand Metropolitan drew attention to the Lonrho/Suits/House of Fraser report (see paragraphs 9.6 and 9.10) as supporting their particular case. Grand Metropolitan also referred to the GUS/Empire report and the Eurocanadian Shipholdings and

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<sup>1</sup> Grand Metropolitan purchased further shares in Pleasurama shortly before we completed our report increasing its shareholding to 29.94 per cent.

Furness Withy report (see paragraphs 9.21 and 9.22). In these reports, the Commission had to consider shareholdings ranging from 19.0 to 29.99 per cent. It is clear from the reports that the effect of any particular shareholding was considered in the light of the circumstances surrounding it, and we propose to follow a similar course in the present instance.

10.10. We note that at one time Grand Metropolitan did have a director on the board of Pleasurama. Not long after Grand Metropolitan acquired its original shareholding in Pleasurama in 1977, one of its joint managing directors, Mr Ernest Sharp, was appointed to Pleasurama's board. Mr Sharp left Grand Metropolitan in 1980 but remained a director of Pleasurama. We think it is likely that if Grand Metropolitan put up a director of suitable standing for appointment to the board of Pleasurama it would be successful.

10.11. Furthermore, we consider that the wide dispersal of other shareholdings would make it difficult for Pleasurama to conduct company business without regard to Grand Metropolitan's views.

#### **(b) The Ritz Casino shareholders' agreement**

10.12. Under the Ritz Casino shareholders' agreement, Mecca Sportsman is able to exercise an option to purchase Pleasurama's interest in the casino should Pleasurama, without the prior consent of Mecca Sportsman and subject to certain exceptions, appoint a director to its board or any casino subsidiary board who has previously been associated with gaming. During the negotiations for unravelling the Grand Metropolitan and Pleasurama interests which we described in Chapter 7, Mecca Sportsman said that, in the event of a merger between Pleasurama and Trident, it would invoke the agreement by not consenting to the appointment to the Pleasurama board of Mr Ward Thomas, Trident's Chairman at that time. Pleasurama told us that, since it would not have wished to allow Mecca Sportsman to exercise its option, the lack of such consent might have resulted in Trident withdrawing its recommendation to the offer. However, it felt that it was unlikely that Mecca Sportsman would have maintained its position to such an extreme (see paragraph 9.4). We consider that the likelihood of Mecca Sportsman maintaining its position is not relevant in applying the test in section 65(3).

#### **(c) The joint ventures**

10.13. The joint ventures of Grand Metropolitan and Pleasurama in the Ritz and Casanova provide significant streams of profits for both companies. Grand Metropolitan is the major shareholder and manages the casinos through its Mecca Sportsman subsidiary but the ventures are substantially more important to Pleasurama than to Grand Metropolitan. They provided some 44 per cent of Pleasurama's pre-tax profits, as compared to around 5 per cent of Grand Metropolitan's pre-tax profits, in the year to 30 September 1982. We think it is to be expected that in these circumstances the senior partner in the ventures would be able to exert influence on the policy of the junior partner, if only because it would be in the stronger negotiating position, should any divergence of interest arise.

**(d) Grand Metropolitan's standing**

10.14. Grand Metropolitan is a very large and successful company. In addition, it has much the largest share in the London casino market where Mecca Sportsman's management has a long record of sound casino operation. These things coupled with its voting power would, we believe, enhance Grand Metropolitan's influence over other shareholders and thus increase the difficulty Pleasurama would have if it chose to disregard Grand Metropolitan's views (see paragraph 10.11).

10.15. To return to the test of control posed in paragraph 10.5, we consider that for the reasons given in paragraphs 10.10 to 10.14, Pleasurama would not make policy decisions affecting Grand Metropolitan's interests without giving serious consideration to Grand Metropolitan's possible reactions. We noted in paragraphs 7.9 and 7.10 that when Pleasurama was contemplating acquiring Maxim's, Mecca Sportsman told Pleasurama that it was not itself interested in acquiring that casino, and also that Pleasurama informed Grand Metropolitan in advance of the other shareholders of its intention to bid for Trident. We conclude that Grand Metropolitan is able materially to influence the policy of Pleasurama and that a merger situation between Grand Metropolitan and Trident qualifying for investigation will be created if arrangements in contemplation for the acquisition of Trident by Pleasurama are carried into effect. We consider the likelihood of the use of that influence in our consideration of the public interest.

**The public interest**

10.16. We look first at the likelihood that Grand Metropolitan would use its ability materially to influence the policy of Pleasurama and assess its chances of succeeding.

10.17. Pleasurama contended that, after the proposed merger, there would be no control or material influence by Grand Metropolitan over the operations of Pleasurama. Grand Metropolitan had not exercised any material influence over Pleasurama in the past. Furthermore its shareholding in the new group would be reduced from nearly 29 per cent to around 20 per cent and its power as a shareholder would be reduced accordingly (see paragraphs 9.3 and 9.6).

10.18. Trident's view was that it was contrary to Grand Metropolitan's interests to try so to direct its casino management as to exercise influence over Pleasurama. It made the particular point that if Pleasurama ran into licensing difficulties in the future and it were to be seen that Grand Metropolitan had taken a significant part in running Pleasurama's operations, there would be an obvious impact on Grand Metropolitan's substantial profits and investment in casinos (see paragraphs 9.24 to 9.27).

10.19. Grand Metropolitan argued that the likelihood that it would use its ability materially to influence the policy of Pleasurama after the proposed merger fell to be considered in the context of its relationship with Pleasurama as joint shareholders of the companies owning the Ritz and Casanova casinos; it was this relationship which provided the commercial

motivation for the use of influence. Grand Metropolitan pointed out that these casinos (including Pleasurama's one-quarter interest) contributed around 48 per cent of Mecca Sportsman's latest consolidated pre-tax profits and some 44 per cent of Pleasurama's 1982 pre-tax profits. The constraints and inhibitions concerning Grand Metropolitan's revealing to Pleasurama through its directors on the Ritz and Casanova boards its views and contentions on all matters concerning the London market, caused by Pleasurama's moving into that market would be exacerbated greatly by the acquisition by Pleasurama of another four London casinos. A clear course open to Grand Metropolitan to avoid these problems would be actively to use its ability to influence policy (see paragraphs 9.68 to 9.71).

10.20. A further important consideration for Grand Metropolitan was that past experience of the regulation of casinos showed that any taint arising from inefficient or improper conduct of a Pleasurama/Trident casino could jeopardise not only the Ritz and Casanova licences but also those of all the casinos wholly owned by Mecca Sportsman (see paragraph 9.72).

10.21. In arriving at our view of this matter, the long-standing relationship between Pleasurama and Grand Metropolitan in the London casino market is a key factor. In the year to 30 September 1978, when their joint venture in the Ritz casino commenced, Pleasurama was a relatively small company with after-tax profits of under £1 million, operating casinos solely in the provinces. Four years later, its after-tax profits had multiplied nearly five times to £4.5 million (see Appendix 1) and it had completed its first year as a casino operator in London. Grand Metropolitan, and particularly its casino subsidiary Mecca Sportsman, also prospered over the same period (see paragraph 6.21 and Appendix 7), but the significant change as far as Grand Metropolitan is concerned is that it moved from the ownership of three casinos in London to a position approaching dominance in that market; the six casinos it controlled had over 40 per cent of the drop in London, as indicated in paragraph 3.5; the Ritz and Casanova alone had nearly one-quarter of the drop. These casinos represent a highly successful business relationship between two operators who would have, after Pleasurama's proposed acquisition of Trident, around two-thirds of the London casino market.

10.22. We consider that Pleasurama's proposal to acquire a further four London casinos has been a step of sufficient magnitude to cause Grand Metropolitan fundamentally to re-appraise its relationship with Pleasurama; its past conduct in the relationship is therefore unlikely to provide an adequate model for its future behaviour. Some indication of Grand Metropolitan's new attitude can be seen in its threatened opposition to the appointment of Mr Ward Thomas to Pleasurama's board (see paragraph 10.12). In our view Pleasurama's bid for Trident marks a major change in its relationship with Grand Metropolitan.

10.23. Pleasurama and Grand Metropolitan told us about the negotiations to unravel their relationship which took place before the references to the Commission (see paragraphs 7.11 to 7.14). The parties were clearly a long way apart when the negotiations ended and we understand that negotiations were not renewed during the course of our inquiry. We noted Pleasurama's

intention upon completion of the Pleasurama/Trident merger to unravel the joint interests upon fair terms (see paragraph 9.89). Grand Metropolitan believed the entanglement with Pleasurama in the Ritz and Casanova was not in the best interest of the gaming industry, and whatever the outcome of our inquiries it intended to disentangle these cross-holdings. It would then be willing to discuss with Pleasurama the placing of its holding in Pleasurama in the market in a number of smaller parcels (see paragraph 9.97.)

10.24. We believe that if the merger between Pleasurama and Trident were to go ahead and negotiations to unravel the relationship between Grand Metropolitan and Pleasurama were proceeding, there would inevitably follow a period during which Grand Metropolitan would do whatever it could to influence Pleasurama's policy. In our view there is a good chance that it would be successful. Grand Metropolitan told us that the extreme situation could arise in which it could be in a position where it would have no option but to bid for the whole of Pleasurama because Grand Metropolitan had so much to protect and so much at risk, and Grand Metropolitan could not afford Pleasurama to be badly managed or Grand Metropolitan's investments and profit streams to be put at risk (see paragraph 9.71).

10.25. We conclude that there is a substantial likelihood that Grand Metropolitan would successfully exercise its ability materially to influence the policy of Pleasurama.

10.26. We now turn to the consequences for the public interest of Pleasurama acquiring Trident and Grand Metropolitan exercising its influence on the policies of Pleasurama. Grand Metropolitan, Pleasurama and Trident are all in the leisure field but the only material overlap of interests occurs in the operation of casinos in London.

10.27. We first considered whether the Gaming Board's regulatory powers under the Gaming Act 1968 enabled it to prevent one casino operator taking over another, on the ground that it would result in excessive concentration. We accept the Board's view that the structure of the market is not a criterion which it may use in discharging its responsibilities under the Act. The Board also advised us that the criteria applied by the courts did not seem wide enough to include concentration (see paragraph 8.2).

10.28. We found that the London casino market was distinct from the market in the rest of Great Britain. We therefore considered the public interest in the context of the London market which had 70 per cent of the drop in Great Britain, £894 million in the year to 31 August 1983 (see paragraph 3.3).

10.29. Because of the connection between Grand Metropolitan and Pleasurama, the issues related to the public interest are the same for both merger situations; in both there would be a commercial relationship between two large operators which we believe would provide them with an opportunity to co-operate rather than compete. Eleven out of 19 London casinos would be affected by this relationship. Grand Metropolitan wholly owns four of these casinos and controls another two, which are jointly owned with Pleasurama, because of its 75 per cent shareholding and the fact that it

manages them. Pleasurama's single London casino and Trident's four casinos would all be subject to Grand Metropolitan's material influence after the proposed merger of Pleasurama with Trident.

10.30. We dealt with market shares in London in Chapter 3. The question we have to decide is whether the effect of the relationship between Grand Metropolitan controlling six casinos with 44 per cent of the drop and Pleasurama, after the merger with Trident, controlling five casinos with 23 per cent of the drop in the year to 31 August 1982 (see Table 3.1), would be to confer an unacceptable level of market power.

### **Competition in the London casino market**

10.31. We now consider competition in the London casino market. The market is highly regulated. We found that gaming odds are controlled and therefore that the most important element in price competition has been eliminated. The main endeavour of the operators is to maintain their places in the market, notably by careful compliance with the regulations; and at the same time to enhance their shares, particularly in the case of the top casinos, by gaining the profitable custom of international gamblers.

10.32. An underlying aim of the Gaming Act 1968 was that gaming should be provided only to the extent necessary to satisfy 'unstimulated demand'. An indirect effect of this is to protect the position of existing holders of licences, provided that they operate within the law. It is not easy to show that there is unstimulated demand, particularly, as is commonly the case, in the face of contrary evidence from the Gaming Board and other operators. In considering this aspect of market structure, we noted that section 42 of the Gaming Act, with certain limited exceptions, prohibited casinos from advertising in Great Britain (see paragraph 2.2).

10.33. However, the system of regulation and supervision of operators increases the likelihood of detection of any malpractice and therefore the risk that misbehaviour will result in the loss of gaming licences, thus making room for the expansion of the remaining operators and the entry of newcomers.

10.34. This has been the striking feature of the London market in recent years. In the process of operators losing their positions in the market, the number of casinos fell from 24 in November 1978 to 16 in March 1982. In June 1983, there were 19 casinos in London. Although some substantial as well as small concerns withdrew, the number of owners declined significantly from 15 to 9 and the number of concerns owning one London casino each from 9 to 4, while the market as measured by the size of the drop fell in real terms by 7 per cent. Over the same period Grand Metropolitan increased the number of casinos it either owns or manages from 3 to 6 (see paragraphs 3.17 and 3.25).

10.35. Although, as we have noted, there is only limited price competition and advertising is restricted, it is clear that operators compete strongly in other ways. In particular, they try to increase their share of the market by obtaining new licences, by exchanging licences to facilitate a move to a more profitable area and by increasing the number of gaming tables in

exchanged and existing licensed premises. There is also competition in respect of the level of service operators provide for the gambler in the ordinary course of business, which embraces such matters as comfort and ambience including the quality of restaurant and other amenities; provision of complimentary transport and meals and other refreshments; and promotional activities at home and abroad.

### **Possible adverse effects of the mergers**

10.36. We had evidence from the main parties, other casino operators and the Gaming Board on the possibility that adverse effects would arise from the mergers.

10.37. The other operators suggested that there would be a number of detriments to competition. There would be a potential for abuse of position in relation to grants and renewals of gaming licences, increasing the difficulty of entering the market. The mere presence of the market force represented by the new grouping of casinos would be a disincentive to a prospective new entrant. There would be a tendency for the combined interests to retain gamblers within their own ring of casinos by offering membership throughout their London clubs and/or by using their greater potential for promotional activities. There would also be the ability to manipulate staking limits to the disadvantage of competitors (see paragraphs 8.16 to 8.18).

10.38. Pleasurama stressed that the very concept of competition was difficult if not impossible to apply to the casino industry, and could see no basis for the fears expressed by other operators. Pleasurama and Grand Metropolitan had not in the past co-ordinated their activities to the detriment of other operators, nor would such co-ordination occur if the merger with Trident proceeded. It also doubted whether a potential new entrant would perceive Pleasurama as being part of a single group but even if he did, it felt that the addition of four Trident casinos would not alter his perception of the resources of Grand Metropolitan (see paragraphs 9.36 to 9.54). To the extent that competition was possible the position of the enlarged group would be strengthened against the strong current position of Grand Metropolitan in London (see paragraph 9.30).

10.39. Trident saw the proposed merger as creating a second major force which would increase competition in the market and have no disincentive effect on new entrants (see paragraphs 9.55 to 9.65).

10.40. Grand Metropolitan, however, shared the concerns of the other casino operators about the consequences for competition. More generally it contended that the concentration of 11 casinos would bring with it a greater prospect of the whole London market adopting mutually convenient policies. One result of this would be to diminish pressure on operators to ensure that gamblers were attracted by maximum stakes as good as or better than those available elsewhere, particularly as the higher the stakes the greater the risk to the casino operator (see paragraphs 9.66 to 9.83).

10.41. The Gaming Board told us that a merger between Pleasurama and Trident with the present connection with Grand Metropolitan remaining

unaltered would cause it considerable concern. It would tilt the balance between concentration and fragmentation much too far in favour of concentration. The Board considered that the main danger to competition arose from an increased opportunity to manipulate the London casino market which could convey the ability to exclude new entrants, thus supporting the views of Grand Metropolitan and other operators (see paragraphs 8.4 and 8.6 to 8.8).

10.42. We noted in paragraph 10.21 that Grand Metropolitan is already in a position approaching dominance of the London casino market. The proposed merger between Pleasurama and Trident will in itself increase concentration because there will be one less distinct operator in the market. This additional element of concentration is associated with Grand Metropolitan's ability to influence Pleasurama's policy and will thereby further reduce or distort competition. Since there is already a high degree of concentration, we believe that any increase in Grand Metropolitan's influence is clearly adverse to the maintenance and promotion of effective competition between suppliers of services in the London casino market, and that this would be a serious detriment to the public interest.

10.43. We now consider certain matters concerning the effect of the mergers on competition which have been put to us.

10.44. We are concerned that the existing barriers to entry of new competitors (see paragraphs 3.32 to 3.39) would be enhanced because the tendency for the regulatory systems to favour existing operators would be reinforced by the connection between two operators holding between them some two-thirds of the market. We believe that they would, together, enjoy even wider options in the acquisition, exchange and extension of licences, particularly in the matter of absorbing small increases in demand. The result of this would be that fewer opportunities would arise for new entrants to enter the market. We also consider that potential new entrants would be likely to be aware of the connections between Grand Metropolitan and Pleasurama/Trident and of the effects of those connections, and that this would discourage them when assessing their chances of successfully entering the market.

10.45. Turning to the other competition issues raised in paragraph 10.37, we understand that Grand Metropolitan does not presently offer common membership of all its casinos to its customers and therefore, presumably, sees little advantage in doing so. We cannot see why it might change its view after the proposed merger.

10.46. In our view, there might be a greater potential for promotional activities intended to attract the high-staking gamblers. Furthermore, Grand Metropolitan's ability to influence the policy of Pleasurama would enhance Grand Metropolitan's chances of successfully pursuing an approach to staking limits aimed at minimising the risk profile of casinos in London (see paragraph 10.40).

10.47. Certain other detriments arising from the mergers were suggested by witnesses. The gambler's freedom of choice would be restricted; he could, perhaps through no fault of his own, find himself barred from all

casinos in the new grouping. The gambler might experience some reduction in his options for cashing cheques. As a result of a reduction in competition, efficiency and standards could decline and there could be a loss of individuality. Mecca Sportsman's influence over London gaming practices, already strong, would become dominant, and its standards and procedures might tend to become accepted as the norm. Mecca Sportsman would also become dominant in the market for certified gaming staff (see paragraphs 8.6 and 8.16 to 8.18).

10.48. We believe that the detriments set out in paragraphs 10.46 and 10.47 are of some substance, but not of sufficient importance to support a finding against the public interest.

10.49. Grand Metropolitan argued that there would be a further serious detriment in that there would be risks to the gaming industry from the loss of gaming licences. It contended that if 11 out of 19 London casinos were concentrated under single control, all 11 could be at risk with the possible outcome of a substantial period of time when the demand for gaming in London might only be met outside the law (see paragraph 9.72).

10.50. We think it is unlikely that either the Gaming Board or the licensing justices would disregard the responsibilities of directors when considering misdemeanours by operators in the London casino market. In this way the opprobrium resulting from an operator's losing his licence for a wholly-owned casino might indeed spread to his joint venture with another operator. However, we do not believe that it would be likely to extend to the other operator's wholly-owned casinos and thus produce the domino effect envisaged by Grand Metropolitan.

#### **Possible benefits of mergers**

10.51. We have been unable to identify any substantial benefits to the public interest arising from mergers. We note Pleasurama's argument, supported by Trident, that to the extent that competition was possible, the position of the enlarged group of Pleasurama and Trident casinos would be strengthened against the strong current position of Grand Metropolitan in London. We do not consider that the addition of one casino to Trident's group of four would significantly enhance the ability of the group, which in our view is already strong, to compete with Grand Metropolitan, because the Pleasurama/Trident group would have connections with Grand Metropolitan and in our view be subject to Grand Metropolitan's influence.

#### **Conclusions**

10.52. We conclude that the merger situations arising from the arrangements proposed for the acquisition of Trident by Pleasurama may be expected to operate against the public interest. The particular effects adverse to the public interest which in our opinion they may be expected to have are those concerning competition in the London casino market given in paragraphs 10.42 and 10.44.

10.53. We have been addressed by both companies on appropriate recommendations and remedies in the event of the mergers being found or expected to operate against the public interest. These were primarily concerned with disentangling joint interests which were freely entered into by the parties and which we have described (see paragraphs 9.85 to 9.97). The arrangements have suited the parties well for a number of years and if they now find that it is desirable to bring them to an end, we believe it is a matter best left to the parties to resolve between themselves.

### **Recommendations**

10.54. We are therefore unable to recommend any actions which would prevent the adverse effects which we consider would be likely to arise from the proposed merger between Pleasurama and Trident, and from the consequent merger between Grand Metropolitan and Trident, and we therefore recommend that the mergers should not be permitted.

J D ECCLES (*Chairman*)

H L G GIBSON

D G GOYDER

L KELLY

D G RICHARDS

Mr N L Salmon, being a member of the group, dissents from the conclusions for the reasons set out in the note of dissent included in this report.

N E D BURTON (*Secretary*)

16 November 1983

## Note of Dissent

I dissent from the conclusion that the proposed mergers may be expected to operate against the public interest. That conclusion is based on the expectation that the increases in concentration resulting from the Pleasurama/Trident merger and the consequent increase in Grand Metropolitan's influence would be adverse to the maintenance and promotion of effective competition in the London casino market (paragraph 10.42); that the existing barriers to entry of new competitors would be enhanced, with Grand Metropolitan and Pleasurama/Trident being advantaged in the acquisition, exchange and extension of licences and particularly in the ability to absorb small increases in demand; and that the potential new entrants would be discouraged by the connections between Grand Metropolitan and Pleasurama/Trident (paragraph 10.44).

I agree that these effects would be possible but I do not think they would be probable. My colleagues' expectations are founded on the belief that Grand Metropolitan is able materially to influence the policy of Pleasurama and that if the merger took place Grand Metropolitan could and would exercise this influence so as to alter the way in which the Pleasurama and Trident casinos were conducted, the way in which they competed even including the staking limits and the way in which they acquired, exchanged and extended licences and absorbed small increases in demand. In other words it is contemplated that as a result of its 'ability to influence policy' Grand Metropolitan would be able to impress its management policy and methods on Pleasurama and Trident casinos more or less to the same extent as if they were subsidiary companies. I doubt very much whether Grand Metropolitan's ability to influence Pleasurama policy could be sufficient to bring about these things; certainly it would appear by inference to be insufficient to enable Grand Metropolitan to block the proposed merger which it does not want.

If Grand Metropolitan wanted to assert its influence on Pleasurama and if Pleasurama resisted, as it has indicated it would, it is difficult to see how Grand Metropolitan could set about achieving its objective unless it was prepared to use its votes as a shareholder and its veto on Board appointments to harry and frustrate the Pleasurama Board and generally to be difficult—in the hope that Pleasurama would eventually decide it was better to co-operate than resist.

In considering what might happen in this situation, I think it is necessary to have regard to the importance to Grand Metropolitan of its public image, of its exposure in the sensitive areas of alcoholic drinks and gambling, of its position as a large and highly successful casino operator and of its natural desire to retain the goodwill and respect of the Gaming Board. I do not think it likely that Grand Metropolitan would seek to exercise material influence on the policy of Pleasurama by using a 20 per cent—29.9 per cent shareholding at Shareholders' Meetings to frustrate the will of the Pleasurama Board or by using its effective veto under the Ritz Casino agreement to prevent the appointment of obviously competent people to the Board of Pleasurama. Further, if Grand Metropolitan did do these things, I do not think it would necessarily be supported by other Pleasurama

shareholders if the points at issue were seen to be based on tactical considerations—ie designed to put pressure on the Pleasurama Board to persuade it to be responsive to Grand Metropolitan's views on various policy matters and in effect to submit to Grand Metropolitan's overall direction as a subsidiary company would submit.

Concern is expressed (paragraph 10.44) that as a result of the proposed merger the existing barriers to entry of new competitors would be enhanced because Grand Metropolitan and Pleasurama/Trident would together enjoy even wider options in the acquisition, exchange and extension of licences, particularly in the matter of absorbing small increases in demand. However, no indication is given of how this enhancement of the existing barriers would take place. An existing operator may have an advantage as against a prospective new entrant in getting a new licence granted or an old one renewed, but in fact some newcomers do get new licences even when very few are being granted and it is difficult to see how the position of an established operator in this respect could be enhanced as a result of a merger. It is a fact that Grand Metropolitan has a policy of initially opposing most applications for new licences in London—and that will not be changed by a merger. Grand Metropolitan, Pleasurama and Trident are already very active separately in seeking to acquire, exchange and extend licences and they would scarcely be able to extend significantly this activity as a result of the merger.

It is also stated that 'potential new entrants would be likely to be aware of the connections between Grand Metropolitan and Pleasurama/Trident and of the effects of those connections and that this would discourage them when assessing their chances of successfully entering the market'. I find it very difficult to believe that the many people understood to be wanting and waiting to open casinos in London would be any less keen to enter this highly profitable market because the merger took place. The attractions of casino ownership would not in my view be diminished by the merger and the self-confidence of entrepreneurs and others would not be diminished either.

I have explained why I think the effects of the mergers predicted by my colleagues are possible but not probable. But even if they did arise I do not think it likely that they would constitute a detriment to the public interest of sufficient importance to justify invoking the powers of the Fair Trading Act to prohibit the merger. My reasons are that this market is regulated by a statutory authority to an exceptional degree; it involves a comparatively small number of people; and it is one in which the normal elements of competition are either absent or muted.

N L SALMON

16 November 1983