

# 7 Conclusions

## **The complex monopoly**

7.1. We are required to report whether a monopoly situation exists in relation to the supply in the United Kingdom of the services of accepting advertisements for publication in specialist magazines intended for campers, climbers and walkers ('the reference services'). Under section 7(1)(c) and (2) of the Fair Trading Act 1973 (the Act) applied to the present circumstances, a monopoly situation (a complex monopoly situation) shall be taken to exist if at least one-quarter of the reference services which are supplied in the United Kingdom are supplied by two or more persons who are members of the same group who, whether voluntarily or not, and whether by agreement or not, so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the supply of the reference services.

7.2. Our finding on the identity of the specialist magazines and their publishers is given in paragraph 3.2. We have decided for the reasons given in paragraph 3.10 to measure the market for the reference services by the total advertising revenue of the specialist magazines. By this measure the total market amounted to about £1.3 million in 1986. Publishers who may be treated as members of a group such as was mentioned in the preceding paragraph are those who follow the practice ('the reference policy') specified under (c) in the reference, namely 'a refusal to supply the reference services to persons who wish to place advertisements containing information as to the price of the goods or services advertised'. The publishers who have confirmed (paragraphs 4.1 to 4.4) that they follow the reference policy are Holmes McDougall Ltd, High Magazine Ltd, Rambler Ltd and Mountain Magazine Ltd. The combined market shares of these publishers in 1986 amounted to about £780,000 (ie about 60 per cent) of the total market of about £1,300,000. It thus is the case that at least one-quarter of the reference services are supplied by members of the same group. As regards Footloose Magazine (for whose position see paragraph 4.6), we are satisfied that its market share is insignificant in comparison with the combined market shares of the publishers referred to above.

## **Effects of the reference policy on competition**

7.3. We have considered whether the members of the group so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the supply of the reference services. We have noted the conclusions of the OFT report. In the OFT's view the policy which was the subject of their report had an important effect on the provision of price information to consumers and hence on prices in the underlying market for goods. Further, by refusing advertisements containing prices for widely available brands Holmes McDougall was, the OFT found, restricting competition between suppliers who wished to compete and other suppliers, mainly specialist retailers, who sold the same goods. The OFT therefore concluded that the policy had the effect of restricting competition and was anti-competitive.

7.4. The first question affecting competition we have had to consider is whether the reference policy has hindered or prevented readers of the specialist magazines from having an adequate knowledge of the range of prices and from making an informed choice of retailer. It was argued (paragraphs 3.23, 5.17, 5.18 and 6.24) that the absence of comparative prices had only a small effect, or an insignificant effect, on the availability of such prices to the consumer who might wish to shop around according to his need for service and advice or for the lower prices which are available from mail order firms. Some said that the reference policy did not conceal the existence of mail order cut prices, since mail order firms advertised in magazines following the reference policy that discounts were available. Others

said that mail order catalogues containing prices were widely distributed. Readers of the magazines need only write or telephone mail order firms in order to discover the prices they offered. Further points, made by David Green Publications (paragraph 6.24), were that mail order firms were in any event able to advertise cut prices in that segment of the specialist magazine market which did not follow the reference policy; they could also use the national press.

7.5. There is some force in these arguments but no one has denied that the policy imposes an extra task on the consumer who seeks comparative price information in magazines following the reference policy. We consider that this imposition amounts to a restriction or distortion in competition. Consumer organisations and members of the public told the OFT or ourselves (paragraphs 5.22 and 5.23, 5.28 to 5.31) that they were opposed to the reference policy for these reasons.

7.6. Paragraphs 2.31 to 2.35 show the evidence we have on the effect of the reference policy on competition in prices between manufacturers and between specialist retailers and the mail order companies which offer prices below the general level. We have no specific evidence about the effect on competition between manufacturers themselves, but our survey indicates a relaxation in price competition at the retail level. This evidence is supported by the comments of those manufacturers and retailers who were in favour of the reference policy (paragraphs 5.2(a), 5.5 and 5.6). We consider that the evidence is sufficient for us to conclude that in general the level of retail prices would have been lower in the absence of the reference policy. There has also been a narrowing of the range of prices since the OFT conducted their price survey. We consider that these are the effects of a restriction on competition caused by the operation of the reference policy.

7.7. In view of what we have said in paragraphs 7.5 and 7.6, it follows that the operation of the reference policy results in the restriction or distortion of competition. Having regard to this and to our findings in paragraphs 7.1 and 7.2 we conclude that a complex monopoly situation, within the meaning of sections 7(1)(c) and (2) of the Act exists in relation to the supply in the United Kingdom of the reference services in favour of a group of persons consisting of Holmes McDougall Ltd, High Magazine Ltd, Rambler Ltd and Mountain Magazine Ltd.

7.8. These findings about the effect of the reference policy on competition refer to advertisements for goods. We estimated that advertisements for services form well under 10 per cent of the total market under consideration. Holmes McDougall told us (paragraph 4.2) that its reference policy did apply in theory to services but that advertisements for services made up a negligible part of all advertisements in its two specialist magazines and generally related to services which were own-brand by nature. Holmes McDougall would not refuse to accept advertisements which contained price information for own-brand services; indeed we have no evidence of any effective price restriction imposed by any publisher on advertisements for services. We therefore consider that any restriction or distortion of competition in respect of advertisements for services which has been brought about by the operation of the reference policy is minimal.

**Effects of ending the reference policy on the market for reference services**

7.9. We now consider whether ending the reference policy might have effects contrary to the public interest in the market for reference services and in the market for goods. Holmes McDougall adopted the reference policy in order to protect its position in the specialist magazine market. Its position was under threat from manufacturers and retailers. The OFT accepted that if Holmes McDougall alone abandoned the reference policy the viability of *The Great Outdoors* and *Climber*, its two specialist magazines, might have been significantly affected. *Mountain* was also constrained to follow the reference policy by pressure from one of its main advertisers. The two David Green Publications magazines, *High* and *Rambler*, follow the reference policy of their own volition. We believe that any magazine which abandoned the policy unilaterally would be at risk. The risks to the publishers arise in several related ways.

7.10. One risk would be the loss of circulation which would arise if specialist retail shops ceased to stock magazines showing mail order cut prices which could immediately be compared with their own. Our survey showed (Tables 3.2 and 3.3, paragraph 3.8) that on average only 11 per cent of all specialist magazines intended for campers, climbers and walkers are distributed through the specialist retailers. The figures for the mountaineering magazines, *Climber*, *High* and *Mountain*, are higher, between 14 and 28 per cent. Holmes McDougall could form no definite view about the reaction of specialist retailers, but told us that any significant decrease in total circulation of its specialist magazines would lead to an adverse effect on profits, and could eventually put their financial viability at risk (paragraph 6.7). David Green Publications considered that specialist retailers would cease to stock the magazines and while some of the loss would probably be made up by news-stand sales it was doubtful whether some of the magazines could survive following the net loss in circulation (paragraph 6.28). If no magazine were able to follow the reference policy of refusing advertisements containing prices, however, we have no evidence that there would be a significant net loss of circulation.

7.11. A second risk to circulation would arise if abolition of the reference policy resulted in the magazines being faced with publishing pages of unrelieved price lists. This would substantially damage the appearance of the magazines and reduce their circulation.

7.12. Publishers who gave us evidence disagreed about the effect on appearance and appeal of including advertisements with price lists with other advertisements in the present style. We noticed (paragraph 4.13) that some magazines in a number of specialist fields outside camping, climbing and walking contain advertisements with price lists.

7.13. Another risk to the magazines could arise through the withdrawal of advertisements.

7.14. There are two forms to this argument. First, if either or both of the manufacturers and retailers withdrew their advertisements to any significant extent, the economics of the magazines would force their cover prices to rise and their circulations to drop. A second form of the argument focuses more on the behaviour of the large manufacturers who place advertisements in colour. Loss of these advertisements would affect the ability of the magazines to afford editorial colour illustration at the present level, which is particularly attractive to readers.

7.15. We accept that the magazines would be in difficulty if advertisements, particularly colour advertisements, were withheld from them.

7.16. The support of their present advertisers is vital for the specialist publishers who follow the reference policy. There is some evidence (paragraphs 2.5 and 2.6) that advertisers still exert pressure on publishers to continue to follow the reference policy. We must therefore consider the extent to which there are adequate substitutes outside their current advertising outlets for those advertisers who might wish to switch if the reference policy were abolished.

7.17. Retailers and manufacturers who responded to our first survey differed on this question (paragraph 3.22). The views of Holmes McDougall, *Mountain Magazine* and David Green Publications, with which we agree, are that there are no adequate substitutes for *Climber*, *Mountain* and *High* for the advertisers of climbing and mountaineering equipment. The spread of effective media for less specialised equipment, such as general purpose sleeping bags, rucksacks and tents, is wider, but again we do not think that advertisers would be likely to find wholly adequate substitutes. Some clothing and other items of a kind which is less specialised, but nevertheless suitable for campers, climbers and walkers, are widely advertised outside specialist magazines, as indeed the figures for advertising expenditure in different media show (paragraph 3.21). We believe that there might be some diversion of advertisements for the least specialised items, such as clothing. Our overall conclusion is that if no specialist magazine were able to refuse priced advertisements advertisers would not be able to switch their advertisements to an extent sufficient seriously to threaten the viability of the magazines.

## **Effects of ending the reference policy on the market for goods**

7.18. Several of the arguments about the effects of ending the reference policy touch the market for reference services in that they concern the effects on the business of the specialist retailers who are important distributors of, and may advertise in, the specialist magazines. These arguments, however, mainly concern the effects on the market for goods.

7.19. The argument upon which the others depend is that ending the reference policy would introduce sufficient competition from cut price mail order firms to change the structure of the market for goods with several consequences which, it is claimed, would have effects adverse to the public interest. Those supporting the reference policy agreed about the consequences likely if mail order firms were free not only to advertise merely the availability of discounts, as at present, but also to advertise the discounted prices directly. They believed that the reference policy made for stability in the industry but that if mail order firms were free to advertise their prices many smaller retailers would be driven out of business. Some believed that sufficient price responsiveness existed among consumers to offset the advantages (which we describe in paragraphs 2.36 and 2.37) possessed by specialist retailers.

7.20. If there were to be a material effect on the structure of the market for goods it was argued that this would have one or more of the following adverse effects:

- (a) The numbers of specialist retailers would be reduced and consumers would suffer in consequence (paragraphs 5.2, 6.20 and 6.27).
- (b) There would be a deterioration in the quality and range of the goods available (paragraphs 5.5, 5.20 and 6.27).
- (c) If specialist outlets were lost the advice available from mail order houses would not suffice to protect the safety of climbers. Specialist outlets possessed the skills and offered the personal advice necessary to ensure the needs of climbers who did not have the knowledge and experience to choose the right equipment and fit it for themselves (paragraphs 5.6(c), 5.17(d), 5.24 to 5.26 and 6.27).

7.21. Because of the focus of our terms of reference, it has not been appropriate to conduct a detailed examination of these structural arguments. We observe, however, that the detriments claimed in paragraph 7.20 correspond to those specified in paragraphs (a), (b), (d) and (e) (the 'gateways') of section 14(2) of the Resale Prices Act 1976. Suppliers of goods may be able to justify maintained minimum sale prices before the Restrictive Practices Court by reference to such gateways. We believe that manufacturers and retailers forced the adoption of the reference policy by magazine publishers for motives similar to those of suppliers who wish to maintain prices directly, and we have found (paragraphs 7.4 to 7.6) that the adoption of the reference policy has had a discernible if small effect on prices. We see some force in the arguments in paragraph 7.19, but if manufacturers and retailers wish in effect to maintain retail prices it is open to them to consider applying to the Restrictive Practices Court for exemption of their goods from the statutory prohibition on resale price maintenance. They should not seek to maintain retail prices by actions on others which have this effect.

## **Conclusions**

7.22. We have considered the effects of abolishing the reference policy on the market for reference services and on the market for goods. Abolition of the reference policy would have an adverse effect on the public interest in the former market if it seriously threatened the viability of the specialist magazines published by those following the reference policy. We have concluded (paragraph 7.17) that if no specialist magazine were to refuse priced advertisements retailers would not refuse to stock them, nor would advertisers be able to switch their advertisements to an extent sufficient seriously to threaten the viability of the magazines. We have not found it appropriate to examine in detail the arguments (paragraph 7.20) that

any material effect of the abolition of the reference policy on the structure of the market for goods would have certain adverse effects. As we have also already stated (paragraph 7.21), we believe that manufacturers and retailers have forced magazine publishers to adopt the reference policy for motives similar to those of suppliers who wish to maintain prices directly. It is open to the manufacturers and retailers to consider applying to the Restrictive Practices Court for exemption of their goods from the statutory prohibition on resale price maintenance.

7.23. We conclude that the operation of the reference policy by the members of the group of publishers whom we have identified (paragraphs 7.1 and 7.2) has restricted or distorted competition (paragraphs 7.5 and 7.6) and constitutes an action on the part of each of these publishers which operates against the public interest. For the purposes of section 54(3) of the Act, these actions represent facts which operate against the public interest, and which have the following particular effects, adverse to the public interest:

- (a) It has hindered or prevented readers of the specialist magazines from making an informed choice of goods and where to buy them according to the balance of their individual priorities between personal service and lower prices.
- (b) It has restricted competition in prices between specialist retailers and the mail order companies which sell at lower prices.
- (c) It has narrowed the range of prices at which particular goods are offered, and it has increased the average price level.

## Remedies

7.24. We are concerned with a restriction which has had adverse effects on price competition in a small market. We first considered whether it would suffice to recommend that publishers following the reference policy should give a voluntary undertaking not to follow it. But we have noted the difficulties met by the OFT in seeking such undertakings, and we have good reason to believe that such difficulties would recur if a voluntary approach were adopted. We therefore recommend that the Secretary of State should make an Order under section 56 and Schedule 8 of the Fair Trading Act 1973 which would declare it unlawful for publishers of specialist magazines intended for campers, climbers and walkers to operate the reference policy.

R G SMETHURST (*Chairman*)

K S CARMICHAEL

P H DEAN

A FERRY

M S LIPWORTH

P K R MANN

S N BURBRIDGE (*Secretary*)

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