

## 6 Conclusions

6.1. Under the reference dated 22 June 1989, we are required to investigate and report whether a merger situation qualifying for investigation, as defined in section 64(8) of the Fair Trading Act 1973 (the Act), will be created, in that enterprises carried on in the United Kingdom by or under the control of Monsanto Company in the manufacture and sale of ingredients of analgesic drugs will cease to be distinct from enterprises carried on by or under the control of Rhône-Poulenc SA.

6.2. We have described in Chapter 2 the arrangements in progress or contemplation. Section 64(2) and the terms of reference require us to be satisfied that Monsanto and Rhône-Poulenc together would provide at least one-quarter of the supply in the United Kingdom of salicylic acid (SA), methyl salicylate (MS), and powdered aspirin which we subsequently refer to as bulk aspirin. In 1988 Monsanto supplied by volume some 47 per cent of SA, 55 per cent of MS and 65 per cent of bulk aspirin in the United Kingdom and Rhône-Poulenc 39, 28 and 17 per cent respectively. On this basis the combined enterprises' share of the supply of each of these products exceeded 80 per cent (see Table 3.7). The position has not materially changed since then. The market share test having been satisfied, the reference requires us to exclude the alternative assets test prescribed by section 64(1)(b) of the Act.

6.3. We conclude that there are arrangements in contemplation by which enterprises carried on by or under the control of Monsanto in the United Kingdom (see paragraph 6.4) would cease to be distinct from enterprises carried on by or under the control of Rhône-Poulenc. These arrangements, therefore, if carried into effect, would result in the creation of a merger situation qualifying for investigation. We have therefore to investigate and report on whether this merger situation may be expected to operate against the public interest.

6.4. Monsanto's United Kingdom analgesics business consists mainly of the manufacture of SA, MS and bulk aspirin at its Ruabon plant, and the merchandising of paracetamol, another analgesic, imported from one of its plants in the USA. Rhône-Poulenc does not manufacture any of these products in the United Kingdom but imports them from its plants in France.

6.5. The merger situation is only part of the proposed merger of the world-wide interests of Monsanto and Rhône-Poulenc in the production and supply of bulk analgesics and related chemicals, which for convenience we refer to as the analgesics business. Apart from its analgesics business in the United Kingdom, Monsanto proposes to transfer to Rhône-Poulenc its analgesics plants in the USA, its shareholding interest in a joint-venture company in Thailand set up to manufacture bulk aspirin and paracetamol, and the goodwill of its international analgesics business. To the extent that these transfers are outside the United Kingdom, they are not matters for us to investigate and report on.

### **The reasons for the merger**

6.6. Both Monsanto and Rhône-Poulenc are major international companies with extensive interests outside the manufacture and sale of analgesics, the activities subject to the proposed merger.

6.7. Monsanto told us that the world-wide results of its analgesics business had been unsatisfactory for several years and its prospects of recovery were poor, primarily because of the problems associated with overcapacity in the market for bulk aspirin and paracetamol at a time when sales of bulk aspirin were static and those of paracetamol were growing only slowly. Monsanto was accordingly receptive to a unilateral approach by Rhône-Poulenc in May 1988 to buy the business.

6.8. Although Rhône-Poulenc felt that the original approach came from Monsanto, it confirmed that serious discussions concerning the possible acquisition of Monsanto's interests in analgesics began in 1988. Rhône-Poulenc said that it had for some years been considering the future of its own salicylates activities in the light of the growing economic difficulties, particularly the stagnation in demand for bulk aspirin; increasing import competition from Third World countries; and the appearance of new products, such as ibuprofen. The acquisition of Monsanto's interests had a number of attractions for Rhône-Poulenc:

- (a) improved performance through rationalisation of production, technological synergies and an increase in the range of its aspirin grades;
- (b) access as a domestic producer to the markets of the USA and South-East Asia;
- (c) the opportunity to take increased advantage of its superior process in the manufacture of para-nitrophenol, the main raw material for paracetamol; and
- (d) above all as a means of improving the overall efficiency of the chain of chemical processes from phenol to salicylic acid, aspirin and paracetamol.

### **Monsanto's United Kingdom production of salicylates**

6.9. Salicylates account for about one-quarter of Ruabon's production, the rest consisting mainly of rubber chemicals. Salicylates sales by value and volume net of in-house transfers in 1988 amounted to some £10.4 million and 7,293 tonnes respectively.

TABLE 6.1 **Monsanto's sales of Ruabon salicylates production to third parties, 1988**

	<i>£'000</i>	<i>Tonnes</i>
Salicylic acid	3,485	3,249
Methyl salicylate	1,022	900
Bulk aspirin	<u>5,870</u>	<u>3,144</u>
	10,377	7,293

*Source:* MMC from Monsanto data.

The split between home and export sales by value in 1988 was as follows:

TABLE 6.2 **Ruabon's home and export sales, 1988**

	<i>£'000</i>	
	<i>Home</i>	<i>Export</i>
Salicylic acid	963	2,522
Methyl salicylate	193	829
Bulk aspirin	<u>1,632</u>	<u>4,238</u>
	2,788	7,589

*Source:* MMC from Monsanto data.

Export sales of salicylates increased substantially between 1986 and 1988. However, in the case of bulk aspirin, sales increased 36 per cent by volume but only 13 per cent by value.

## The United Kingdom markets

### *Salicylic acid*

6.10. The main use of SA is as a feedstock for the production of bulk aspirin but it has other uses, particularly in the production of aromachemicals for perfumes and fragrances. Monsanto is the only significant producer of SA in the United Kingdom. In 1988 it used about 3,500 tonnes of its Ruabon production to manufacture bulk aspirin and MS. Monsanto's and other sales of SA to third parties amounted to 1,976 tonnes with a value of £2.2 million, all for uses other than the production of bulk aspirin.

TABLE 6.3 United Kingdom sales of SA to third parties, 1988

	Market share	
	Tonnes	%
Monsanto	921	47
Rhône-Poulenc	780	39
Imports from sources other than Rhône-Poulenc	<u>275</u>	<u>14</u>
	1,976	100

Source: MMC from Monsanto/Rhône-Poulenc data.

The 14 per cent of imports from sources other than Rhône-Poulenc in 1988 may be compared with some 27 per cent in 1986, reflecting Monsanto's and Rhône-Poulenc's increased shares of the market. Rhône-Poulenc believes the main sources of these imports in 1988 were Poland, Bulgaria and Romania.

6.11. SA sales have increased from about 1,000 tonnes in 1984 to nearly 2,000 tonnes in 1988, reflecting growth in its use for the manufacture of aromachemicals and other non-analgesic products, and a technical shift in certain aromachemical processes from MS to SA. Neither Monsanto nor Rhône-Poulenc is forecasting further growth over the next few years.

### *Methyl salicylate*

6.12. MS, also, is used in the manufacture of aromachemicals. Sales declined by about half to £0.3 million between 1984 and 1988, partly reflecting the shift to SA already mentioned. Rhône-Poulenc saw a static market for MS in the near future while Monsanto felt it could make no prediction for this very small market.

6.13. In 1988 Monsanto satisfied some 55 per cent of the market by volume from its Ruabon production and Rhône-Poulenc's imports accounted for around another 28 per cent. The remaining 16 per cent or so of the market was satisfied by other imports.

### *Bulk aspirin*

6.14. Total United Kingdom sales fell in each of the years 1985 to 1987. There was a slight recovery in 1988 to £2.3 million but sales by volume at 1,081 tonnes were only about two-thirds of the 1984 level. This reflects a move away from aspirin-based analgesics in favour of paracetamol and ibuprofen. Both Monsanto and Rhône-Poulenc consider that sales of bulk aspirin in the United Kingdom will be static over the next few years.

6.15. Monsanto supplied some two-thirds of the market by volume in 1988 from its Ruabon production and Rhône-Poulenc's imports took another 17 per cent. Other imports accounted for 15 per cent of the market. Imports from China were significant in 1986 and 1987 and other suppliers have included East Germany and Spain. However, United Kingdom purchasers of bulk analgesics generally consider that there are problems with the grade availability, reliability and occasionally

with the purity of overseas aspirin. Rhône-Poulenc manufactures five of the ten grades produced by Monsanto at Ruabon, while producing a further three grades not manufactured by Monsanto. Over half of Monsanto's sales are not directly substitutable by grades from other sources.

### *Paracetamol*

6.16. Hartington and Sterling are the only two manufacturers of paracetamol in the United Kingdom and in 1988 accounted for some 65 per cent of the total market of over 2,000 tonnes which was worth about £9.7 million. Monsanto's imports from its plant in the USA supplied around 4 per cent and Rhône-Poulenc's from its French plant some 12 per cent of the market by volume. Other imports accounted for the remaining 19 per cent or so, the major supplies coming from the USA (other than Monsanto) and West Germany.

## **The EC market**

6.17. Estimates of the principal parties' shares of the traded or free market in the EC for SA, MS, bulk aspirin and paracetamol in 1987 are as follows.

TABLE 6.4 **The traded market for reference products, 1987**

	<i>Monsanto</i>		<i>Rhône-Poulenc</i>		<i>Combined</i>
	<i>Tonnes</i>	<i>%</i>	<i>Tonnes</i>	<i>%</i>	<i>share</i>
Salicylic acid	1,736	34	1,679	33	67
Methyl salicylate	143	16	223	24	40
Bulk aspirin	737	19	1,945	50	69
Paracetamol	52	1	1,360	31	32

*Source:* Rhône-Poulenc and Monsanto.

We note that, having regard in particular to the absence of barriers to entry, easily accessible manufacturing technology, the lack of dependence on brand loyalty, overcapacity world-wide, growth of imports and increased pressure on prices, the European Commission concluded that Rhône-Poulenc did not hold a dominant position in the Community market. It therefore decided not to object to the merger. The full text of the European Commission's press release is at Appendix 6.1.

## **World over-supply**

6.18. Monsanto and Rhône-Poulenc submitted joint estimates of world capacity and production of SA, MS, bulk aspirin and paracetamol in 1987:

TABLE 6.5 **World capacity and production of SA, MS, bulk aspirin and paracetamol, 1987**

	<i>Capacity</i>	<i>Production</i>	<i>Excess</i>
	<i>'000 tonnes</i>	<i>'000 tonnes</i>	<i>capacity</i>
			<i>%</i>
Salicylic acid	75	51	32
Methyl salicylate	12	7	39
Bulk aspirin	64	44	32
Paracetamol	45	35	23

*Source:* MMC from Monsanto/Rhône-Poulenc data.

They considered that the position of significant over-supply had not substantially changed in 1988 and had resulted in depressed prices.

## **EC import duties**

6.19. The rates of duty on imports of the reference products into the EC are as follows.

TABLE 6.6 **Rates of duty on imports into the EC**

	%
Salicylic acid	8.2
Methyl salicylate	17.6
Bulk aspirin	12.0
Paracetamol	7.4

*Source:* HM Customs and Excise.

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However, imports from countries which fall within the Generalised Scheme of Preferences (GSP) incur no duty. The GSP for the reference products covers most Third World countries including India, some Eastern European countries and, for SA and MS, China. Where imports are re-exported a rebate on duties is claimable. In June 1988 an EC regulation imposed an anti-dumping duty on imports of paracetamol from China, effectively adding at least 15 per cent to their price. We note that these Chinese imports into the United Kingdom declined from 607 tonnes in 1986 to 70 tonnes in 1988.

## **Public interest issues put to the principal parties**

6.20. We put the following public interest issues to Monsanto and Rhône-Poulenc.

### *Competition*

6.21. Whether as a result of the proposed merger:

- (a) Rhône-Poulenc would become the predominant supplier in the United Kingdom of salicylic acid, methyl salicylate and powdered aspirin and, if so, whether this would result in:
  - (i) a significant reduction in competition for the supply of these products with adverse effects on price, quality, service and availability; and
  - (ii) deter new entry or growth of existing suppliers;
- (b) the loss of Monsanto as a supplier in the United Kingdom of paracetamol would result in a significant reduction in competition for the supply of this product with adverse effects on price, quality, service and availability.

Whether following the proposed merger:

- (c) (i) the international nature of trade and excess capacity in the above mentioned products;
- (ii) the buying power of large customers;
- (iii) the prospects of new entry; and

(iv) substitutability of the products in terms of effectiveness and price;

would ameliorate or remove the potential adverse effects on competition identified above.

### *The future of the Ruabon plant*

6.22. Whether as a result of the proposed merger the future of the Ruabon plant as a whole would be adversely affected; and whether this would result in:

(a) loss of employment; and

(b) an adverse effect on the United Kingdom balance of payments.

### *Potential benefits*

6.23. Whether the following benefits would result from the proposed merger:

(a) a material loss of Ruabon salicylates exports business would be avoided (on the basis that the non-United Kingdom elements of the merger would proceed in any event);

(b) the long-term future of salicylates manufacture at Ruabon would be secured and possibly expanded; and

(c) efficiency of production at Ruabon would be enhanced.

6.24. We now look at these issues.

### *Competition*

6.25. We are dealing with competition in the supply of four products: SA, MS, bulk aspirin (these three being the salicylates) and bulk paracetamol.

6.26. As to paracetamol, Monsanto's imports accounted for about 4 per cent of the market in 1988; this was not in our view a significant competitive factor given the world-wide overcapacity in this product. Monsanto's share of imports was only one-sixth of total imports from sources other than Rhône-Poulenc.

6.27. The position is different for the salicylates manufactured by Monsanto, where customers have expressed almost universal concern about the proposed merger.

6.28. Rhône-Poulenc would clearly be the predominant supplier of SA, MS and bulk aspirin in the United Kingdom after the proposed merger, given the present market shares of itself and Monsanto. The fundamental concern of customers is that Rhône-Poulenc would be in a position to exploit this predominance by imposing unreasonable increases in price. A number of customers presently dual source from both Monsanto and Rhône-Poulenc or obtain quotations from both. They feel that their alternative sources are effectively restricted to Eastern European or Third World countries where they have found problems of quality, availability and reliability of supply. They often need particular grades of bulk aspirin which in their view require considerable know-how to produce to the necessary constant quality. Moreover, they can see virtually no opportunity to substitute these salicylates by other products. There is one other manufacturer of bulk aspirin in the EC, Bayer, but that company virtually withdrew from the traded market in 1988. There have been no imports of SA and negligible imports of MS and bulk aspirin from the USA in recent years.

6.29. For their part, Monsanto and Rhône-Poulenc told us that competition arising from world-wide overcapacity had depressed prices to the extent that the profitability of their salicylates business was inadequate.

6.30. We can understand customers' worries about lack of viable competition in the supply of SA, MS and bulk aspirin. Although the basic manufacturing technology is in the public domain, it is unlikely that a new United Kingdom manufacturer of these products would emerge to take on a predominant Rhône-Poulenc; prices are under pressure and the required investment would be substantial relative to a static United Kingdom market for SA and bulk aspirin of around 3,000 tonnes or £4.5 million at 1988 prices and small and declining sales of MS. We understand, for example, that Dow's salicylates plant in the USA has a bulk aspirin capacity of 5,000 tonnes per annum and cost some \$30 million in the mid-1980s. Nor would a prospective manufacturer be encouraged by Monsanto's decision to leave the market and the world-wide overcapacity. However, despite import duties, there have been substantial imports from outside the EC and no doubt merchants and overseas producers would see an opportunity to take advantage of Monsanto's departure from the market, as large customers in particular endeavour to maintain a second source. An anti-dumping regulation has been imposed on Chinese paracetamol but this seems to be an isolated case; we are not aware of any other anti-dumping action.

6.31. As to questions of quality, availability and reliability, we found that customers' comments on quality tended to merge into those on availability. There was particular concern about SA and bulk aspirin. It was not so much that the product offered failed to meet an objective standard of purity (although this was sometimes claimed to be the case) but that it was not of the particular quality or grade required by the customer. We recognise that customers need constant quality and often in a specific grade which in the case of bulk aspirin may not be readily available from sources other than Monsanto. Nevertheless, we are satisfied that in the prevailing conditions of over-supply with very substantial excess capacity (see paragraph 6.18) and given the incentive to dual source, such difficulties could be resolved over a reasonable period of time at an economic price by a process of upgrading either at source or at a later stage. We note in this connection that Eastern European and Third World prices are currently lower than Monsanto's or Rhône-Poulenc's. Two West German companies have upgraded such imported bulk aspirin, one using Chinese and the other Eastern European material. We also bear in mind that the principal customers for salicylates tend to be major multinational companies which are not without buying power. The holding of a higher level of stocks should deal with problems of reliability which might arise in respect of such imports. There is an established international trade in chemicals including analgesics.

6.32. We do not dispute customers' views that from their standpoint salicylates are not substitutable by other products. It is particularly the case for the non-analgesic uses of salicylates which account for 30 per cent or so of the market. However, from the standpoint of the ultimate consumer, there is clearly a degree of substitutability, for example, between aspirin, paracetamol and ibuprofen. Over the years, aspirin has lost ground to both the latter products.

6.33. To sum up, we do not believe there are material effects on competition arising from the proposed merger in respect of paracetamol. Nor do we believe that Rhône-Poulenc would be likely to be able to exploit its predominant position in the supply of SA, MS and bulk aspirin. It might be in a position to raise prices so that in conjunction with gains from increased efficiency (see paragraph 6.38) it would be able to secure its desired return from its salicylates business. On the other hand it is not very likely that it would be able to increase prices unreasonably. This ability to raise prices would, in our view, be significantly constrained by the prevailing conditions of world-wide over-supply which have already put prices under pressure. The basic technology is in the public domain and although the prospects for new entry by a United Kingdom manufacturer seem remote, imports at competitive prices are available from Eastern European and Third World countries. Problems of quality, availability and reliability affecting such imports could, in our view, be overcome. Moreover, although analgesics are not particularly price sensitive, consumers do not entirely ignore relative prices and we should expect this to impose a measure of restraint on Rhône-Poulenc's pricing policy. Bearing in mind the dual sourcing practised by some customers it is by no means certain that Rhône-Poulenc would retain all Monsanto's business. We accordingly conclude that Rhône-Poulenc would be unlikely to be able to impose unreasonable price increases. In the particular conditions prevailing in this market, we do not believe that on balance the effects of the merger on competition would be such as to operate against the public interest. No doubt it would be preferable for Monsanto and Rhône-Poulenc to remain in competition but this does not appear to be a realistic option as we now discuss.

### *The future of Ruabon*

6.34. The Welsh Office told us that there was understandable concern that the salicylates business might be withdrawn from Ruabon, possibly affecting the viability of the whole site. It appeared to be preferable for the plant to be in the ownership of a company for which analgesics was a core business and whose overall strategy was likely to favour further investment and product development in that business. Any loss of jobs at the plant would be a material blow to the area.

6.35. Both Monsanto and Rhône-Poulenc made clear to us their intention to go ahead with the merger with or without the Ruabon analgesics business. A principal attraction to Rhône-Poulenc was the acquisition of Monsanto's analgesics business in the USA and another was the acquisition of Monsanto's shares in the Thai joint venture giving Rhône-Poulenc a presence in South-East Asia.

6.36. Monsanto told us that the Ruabon salicylates business would not be viable on its own and it would be very difficult to sell to a third party. Furthermore, the business did not meet and was unlikely in the future to meet its expectations regarding the profitability of its activities. Ruabon's salicylates' sales were a mere 0.2 per cent of Monsanto Company's total sales and the rest of the Ruabon plant was clearly viable without the salicylates business. If, therefore, the United Kingdom element in the merger was not allowed, it would close the business. The result would be the likely loss of 110 jobs.

6.37. Rhône-Poulenc shared Monsanto's view that the Ruabon salicylates business would not be viable cut off from the rest of Monsanto's analgesics business. Furthermore in Rhône-Poulenc's view, Monsanto's position in the United Kingdom stemmed largely from its ability to produce grades particularly suited to the needs of certain customers; but that technology would no longer be enjoyed by Monsanto alone, since Rhône-Poulenc would have access to it as a result of the acquisition of Monsanto's plants in the USA.

6.38. As to the prospects of the Ruabon analgesics business under its control, Rhône-Poulenc told us that its stance on the analgesics market and on Ruabon's place in that market was essentially long-term. In the case of SA, Ruabon would benefit from its plans both for rationalisation ([ *Details omitted. See note on page iv.* ]) and for upgrading quality by the application of Rhône-Poulenc know-how. Subject to a more detailed technical feasibility study it also planned to make use of part of the capacity of the Ruabon SA plant for the production of new products, not necessarily analgesics. No immediate action was planned for the MS plant at Ruabon which required little manpower and had low fixed costs, making investment for industrial rationalisation unattractive. For the time being, it intended to maintain production of bulk aspirin at Ruabon but in the medium term planned to study the economics of keeping only one aspirin plant in Europe, either by increasing capacity at Ruabon or, given its commitment to maintaining the availability of Monsanto grades which satisfied the particular needs of customers, by modifying the process at its French plant to produce the Monsanto grades. Rhône-Poulenc thus saw significant improvements in efficiency through rationalisation of production and technological synergies. Gains of this kind would be available to Rhône-Poulenc if Ruabon was excluded from the merger but they would be reduced.

6.39. The upshot for employment at Ruabon would be in Rhône-Poulenc's view beneficial. Although it was possible that there would be a reduction in the size of the workforce at the Ruabon salicylates plant, those who remained would have an assured long-term future.

6.40. We consider that the future of the Ruabon salicylates plant if it is not transferred to Rhône-Poulenc as part of its proposed acquisition of Monsanto's world-wide analgesics business would be bleak, particularly since there would be a clear absence of commitment to it on Monsanto's part. Given Rhône-Poulenc's market position and the advantage it enjoys from its upstream integration into phenol production, we think it is likely that the Ruabon salicylates business is worth more to Rhône-Poulenc than to another buyer.

6.41. Having considered the arguments we do not believe that the merger would have any significant effect on the United Kingdom balance of payments.

6.42. As to the effect of the proposed merger on employment, we consider that there is more likelihood of security of employment for the majority of the salicylates workforce at Ruabon if the merger goes ahead than if it does not.

### **Summary of conclusions**

6.43. We have not found Monsanto's imports of paracetamol into the United Kingdom market to be a significant competitive factor (paragraph 6.26).

6.44. As regards Monsanto's salicylates products, salicylic acid, methyl salicylate and bulk aspirin, we have found that Rhône-Poulenc's ability to exploit its predominant position following the proposed merger would be constrained by competition, particularly from Eastern European and Third World sources. We have concluded that Rhône-Poulenc would be unlikely to be able to impose unreasonable price increases. In the particular conditions prevailing in this market, on balance the effects of the merger on competition would not be such as to operate against the public interest (paragraph 6.33).

6.45. There is more likelihood of security of employment for the majority of the salicylates workforce at Ruabon if the merger goes ahead than if it does not (paragraph 6.42).

6.46. We conclude that the creation of the merger situation qualifying for investigation which we have identified may be expected not to operate against the public interest.

### **Further observations**

6.47. Towards the end of the inquiry, in response to our request, Rhône-Poulenc addressed the question of remedies in the hypothetical event of the Commission's judging aspects of the proposed merger as being (or likely to be) against the public interest. As we have found that the proposed merger may be expected not to operate against the public interest, the question of remedies does not arise. Nevertheless, we note that Rhône-Poulenc expressed its willingness if we concluded that undertakings were necessary to give undertakings on the lines set out in Appendix 6.2. They provide useful confirmation of its intentions regarding the continuation of production at Ruabon (see paragraphs 2.30 and 2.31) and some reassurance to customers about the continued availability of grades of aspirin currently produced at Ruabon for which Rhône-Poulenc grades are not directly substitutable.

H H HUNT

F E BONNER

P S G FLINT

D G GOYDER

L A MILLS

B C OWENS

S N BURBRIDGE (*Secretary*)

21 September 1989