

6 Conclusions

The merger situation

6.1. The reference (see Appendix 1) was dated 30 August 1989. It was made under sections 64, 69(2) and 75 of the Fair Trading Act 1973 (the Act).

6.2. It appeared that a merger situation qualifying for investigation had been created because:

(a) Blue Circle Industries plc (BCI) had acquired 29 per cent of the issued ordinary shares of Myson Group plc (Myson), which is incorporated in the United Kingdom, as a result of which enterprises carried on by or under the control of Myson had within the six months preceding the date of the reference ceased to be distinct from enterprises carried on by or under the control of BCI; and

(b) the value of the assets taken over exceeded £30 million.

6.3. It also appeared that arrangements were in progress or contemplated which, if carried into effect, would result in the creation of a merger situation qualifying for investigation because:

(a) BCI was proposing to acquire the remaining issued ordinary shares of Myson, as a result of which enterprises carried on by or under the control of Myson would cease to be distinct from enterprises carried on by or under the control of BCI; and

(b) the value of the assets to be taken over exceeded £30 million.

6.4. Paragraphs 2.30 and 2.31 describe BCI's acquisition of 29.5 per cent of the issued ordinary shares of Myson and BCI's intention to purchase the remainder.

6.5. As is shown in Appendix 2.2, the value of the assets taken over and to be taken over exceeds £30 million.

6.6. As regards the merger in being, we have to consider whether, applying sections 64 and 65 of the Act, BCI's holding of 29.5 per cent has given it the ability to control or materially to influence the policy of Myson. We are satisfied that the holding was acquired during the six months preceding the date of the reference.

6.7. In considering the question, we have had regard to the size of the holding and to BCI's statement to us (see paragraph 4.7) that if the restriction on its voting rights following the reference were lifted it would be in a position materially to influence the policy of Myson. We take a similar view. For example, BCI would have the ability to defeat special resolutions, which under section 378 of the Companies Act 1985 require a minimum of 75 per cent of the votes. We therefore conclude that BCI is to be regarded as having the ability materially to influence Myson's policy, with the consequences that enterprises carried on by or under the control of Myson and of BCI have, within the six months preceding the date of the reference, ceased to be distinct from each other. A merger situation qualifying for investigation has, therefore, been created (ie the merger in being).

6.8. For the reasons described in paragraphs 6.4 and 6.5, we also conclude that arrangements are in contemplation which, if carried into effect, will result in the creation of a merger situation qualifying for investigation (ie a merger in contemplation).

6.9. We have, therefore, to investigate and report whether the creation of either of the merger situations so indentified operates, or, as the case may be, may be expected to operate against the public interest.

Concurrent inquiry into the proposed acquisition of Myson by Yale & Valor plc

6.10. On the same day as this inquiry began another reference was made to the Commission of Yale & Valor plc's proposed acquisition of Myson. We also reported on that inquiry today.

The companies to be merged

BCI

6.11. BCI has long been the United Kingdom's largest cement manufacturer. It has recently extended its activities to household furnishings and fitments. The group's turnover in the year ended 31 December 1988 was some £1,125 million. In 1988 BCI acquired Birmid Qualcast whose business included Potterton's gas domestic central heating boilers and electronic central heating controls. Potterton employs some 1,200, mostly at Warwick.

Myson

6.12. Myson manufactures gas fires and water heaters, domestic gas boilers and other central heating equipment, electric tumble driers, and industrial and commercial heating and air-conditioning equipment. The group's turnover in the year ended 31 December 1988 was nearly £170 million. The group employs some 3,600, of whom some 670 are involved in the manufacture of gas fires, gas water heaters and tumble driers at Padiham in Lancashire and around 570 are involved in the manufacture of domestic boilers—both gas and oil—at Birtley in County Durham and at Kirkby near Liverpool.

Reasons for the merger

6.13. BCI said that a merger of its gas boiler manufacture with that of Myson would release resources which in turn would make a combined group more competitive; in addition the marketing of those central heating products at present made by Myson but not manufactured by BCI could be improved. Myson also pointed out that a combined group would be able to offer complete central heating systems.

Competition between BCI and Myson

6.14. The only significant part of the business of BCI and Myson in which the two groups compete is in the manufacture of domestic gas central heating boilers. BCI'S gas boiler turnover in the 14 months ended 31 December 1988 was nearly £56 million. If this figure were adjusted pro rata to cover a period of 12 months only (£48 million) it would represent some 4 per cent of BCI's turnover. Myson's gas boiler turnover in the year ended 31 December 1988 was £32 million, some 19 per cent of Myson's total turnover. In assessing the impact of a merger on competition we have concentrated on this overlap of the two groups' production.

The relevant market

6.15. We have considered whether the market for domestic gas central heating boilers should be regarded as forming a part of a wider market for appliances and systems used to produce domestic heat and hot water. We concluded that the provision of heat and hot water through central heating systems involving the circulation of hot water can reasonably be separated from other methods of supplying heat and hot water. Moreover, within the production of wet central heating appliances we consider that the manufacture of gas boilers forms a separate market.

6.16. We have also found it useful to examine the sub-markets for the different types of gas boiler, eg floor-standing or wall-hung boilers. It has, however, been pointed out to us by Myson (see paragraph 4.23) that this approach to the categorisation of gas boilers, although widely used by the trade, merely reflected the historical stages of boiler development. Myson argued that a more sensible approach would be to classify gas boilers according to the type of ventilation which they required, ie a conventional flue, a natural draught balanced flue or a fan-assisted balanced flue. Whichever approach is adopted Myson, and others, suggested that customers purchasing gas central heating systems had considerable scope in their choice of type of boiler; we have estimated market shares in the different sub-markets for boilers (adhering to the conventional classification) but in assessing their significance we have taken into account the competition facing each type of boiler from other types of boiler.

6.17. In 1988 total sales of gas boilers in the United Kingdom were somewhat in excess of 1 million units, with a value of some £280 million (at wholesale prices). Sales by type of boiler were as follows:

	<i>Units</i>	<i>%</i>	<i>£ million</i>	<i>%</i>
Floor-standing	140,000	14	36	13
Back-boiler	189,000	19	48	17
Wall-hung	479,000	47	107	38
Combination	<u>213,000</u>	21	<u>91</u>	32
Total	1,021,000		282	

The total market has grown by about a third since 1984. Combination boilers have experienced the fastest growth in sales, while sales of floor-standing boilers have fallen.

The issues

6.18. Our main concern was the impact of the two merger situations on competition in the market for gas boilers. We also considered the effects of a merger on employment and research and development.

Competition

6.19. The aspects of competition to which we devoted particular attention were:

- (a) the impact of a combination of BCI's and Myson's shares of the market for domestic gas boilers; and, within that market, the impact of a combination of BCI's and Myson's shares of floor-standing and wall-hung gas boilers;
- (b) the scope for a merged company to reinforce its market position by restrictive distribution agreements;
- (c) the scope for new entry into the United Kingdom market, whether by manufacture or through imports; and
- (d) the consequences of BCI's entry into the gas fire market.

6.20. Our major concern over the impact of the merger situations on competition arose from the significant change in the structure of the market which would be introduced. At present over three-quarters of the market by volume (including gas-fired back-boilers) is supplied by five United Kingdom producers, all with broadly similarly shares:

	%	
BCI (Potterton)	16	} Combined share of 29%
Myson	13	
Baxi (mainly back-boilers)	18	
Hepworth (Glow-worm)	18	
Stelrad (Ideal)	<u>15</u>	
	<u>80</u>	
Others (about half imports)	<u>20</u>	
	<u>100</u>	

The immediate effect of a merger would, therefore, be to reduce five main suppliers to four, with one—the merged group—having an 11 percentage points' larger share of the market than that of its two biggest competitors (Baxi and Hepworth).

6.21. We have also noted (see paragraphs 3.20 to 3.27) that a merged group's share of the market for certain types of gas boiler would be higher than its share of the market for all types of gas boiler. This would apply in particular to conventional wall-hung (other than combination) gas boilers where a combined group's market share would be 42 per cent. A merged group would also have a somewhat higher share of the market for floor-standing gas boilers (34 per cent) than for boilers as a whole. However, many—though not all—customers for these particular boilers could without much difficulty choose an alternative kind of boiler. Over the last five years the big fall in the market position of floor-standing boilers, the slow decline of conventional wall-hung boilers, and the rapid growth of the popularity of combination boilers are evidence of customer preference switching between different types of boiler. A further factor specifically affecting the market for floor-standing boilers is that another manufacturer—Stelrad—has almost as large a market share (30 per cent) as that of a combined group.

6.22. In assessing the impact of a merged group's overall market share of around 30 per cent we had first to examine the argument that a merged group would find it difficult fully to retain its predecessors' combined share of the gas boiler market. Whether or not such a contraction would in the event take place is a matter for speculation but it is reasonable for us to proceed on the assumption that the initial share of the market would be around 30 per cent. There is no obvious reason to expect any sudden or marked change in either direction.

6.23. It is next important to examine the roles of distributors. They include a number of large independent companies operating nation-wide; typically they carry a wide range of different makes and types of gas boiler and offer instant delivery. It is clearly in the interests of the distributors to continue to purchase gas boilers on the best possible terms.

6.24. We have also considered whether a merged group would be in a position to impose exclusive dealership arrangements on the distributors. Our starting point in assessing this issue was the role of the central heating installers, of whom there are many thousands. They are very influential in determining the customers' choice of boiler. The demand from the installers, therefore, gives the distributors the incentive to continue to stock a wide range of makes and types of gas boiler. Given also the number of distributors—and the size of some of them—any attempt by a merged group to introduce exclusive dealing arrangements could be expected to be self-defeating.

6.25. We have also considered the scope for the entry of new United Kingdom manufacturers into the gas boiler market. We do not see any serious obstacle in the way of manufacturers of boilers designed to use other fuels deciding to make gas boilers, nor in the way of existing gas boiler manufacturers widening their range. An example of an existing gas boiler manufacturer extending its range is Potterton's renewed entry into the gas-fired back-boiler market. Worcester, which originally just made oil-fired boilers, has successfully exploited the creation of the new market for combination boilers, initially pioneered by importers, to establish a significant manufacturing presence in this sector of the gas boiler market. It also appears that many existing United Kingdom manufacturers of gas boilers have spare capacity.

6.26. The United Kingdom market is open to imports which provide some 10 per cent of the total supply, with a significantly higher proportion (42 per cent) of combination boilers. Virtually all the imports come from other European Community (EC) countries.

6.27. It is also reasonable to expect the entry of further continental suppliers into the United Kingdom market—the largest single market for domestic gas central heating boilers in the EC. This could take the form of a widening of the range of foreign gas boilers on offer, especially if condensing boilers prove to be competitive with other types. The upward trend in imports would be reinforced if, as we were told by United Kingdom manufacturers, the EC's harmonisation of technical standards raises the minimum standards required in the United Kingdom. Such a move would increase the competitiveness within the United Kingdom of some foreign boilers which at present have higher standards than those required here (they also tend to be more highly priced).

6.28. As to the possible benefits to competition arising from BCI's entry into the gas fire market we recognise that BCI's existing New World brand name—at present used for its gas cookers—could be employed successfully to promote the sale of Myson's range of gas fires, which account for 10 per cent of the gas fire market.

Employment

6.29. One effect of a merger is likely to be a transfer of employment from Myson's present supplier of cast-iron heat exchangers used in gas boilers to BCI at Warwick, possibly offset by labour-saving modernisation of BCI's Warwick foundry. BCI could also replace the fabricated heat exchangers which it imports from Italy by fabricated heat exchangers made by Myson, thus directly increasing employment in the United Kingdom. As far as employment on gas boiler production itself is concerned there is likely to be some decrease through pruning of the joint product range. Overall we do not expect significant reductions in employment.

Research and development

6.30. We noted the importance which the parties to the merger attached to research and development. We were struck by the views expressed to us (see paragraphs 4.15 and 4.27) about the shortage of research and development staff. This shortage, rather than lack of finance, has been a limiting factor in research and development activities. We consider that the merger is unlikely to reduce the scale of research and development and could improve its effectiveness by making better use of specialists through reducing duplication of activity.

Conclusion

6.31. For the reasons described in paragraphs 6.20 to 6.30, we have concluded that the merger in being does not and may be expected not to operate against the public interest and that the merger in contemplation may be expected not to operate against the public interest.

H H LIESNER (*Chairman*)

F BONNER

A FERRY

J MONTGOMERY

B C OWENS

R YOUNG

S N BURBRIDGE (*Secretary*)

29 November 1989

**Gas boiler manufacturers, subsidiaries/operating divisions and
brand names referred to in the report**

<i>Parent company</i>	<i>Subsidiary/operating division</i>	<i>Brand name</i>
Baxi Partnership Ltd	Baxi Heating	Baxi
Blue Circle Industries plc	Potterton International Ltd	Potterton
Hepworth plc	Glow-worm Ltd	Glow-worm
M B Group plc (Metal Box)	Stelrad	Ideal
Myson Group plc		Myson
Ravenheat Manufacturing Ltd		Ravenheat
Trianco Group Ltd	Trianco Redfyre Ltd	Trianco Gas
Worcester Heat Systems Ltd		Worcester
Cie de Saint-Gobain SA	Saunier Duval Ltd	Saunier Duval
Joh. Vaillant GmbH	Vaillant Ltd	Vaillant