

8 Conclusions

Introduction

8.1. We are concerned in this reference with the acquisition by *Crédit Lyonnais SA*, a French state-owned bank, of a 45 per cent shareholding in *Woodchester Investments plc* (*Woodchester*), an Irish financial services company. Each enterprise has a number of subsidiaries operating in the United Kingdom. The reference is the first that the MMC have received since the Secretary of State for Trade and Industry expressed concern about mergers involving state-controlled companies (see Appendix 6.2).

Terms of reference

8.2. Under the terms of the reference, which was made on 30 August 1990 (see Appendix 1.1), and the relevant sections of the Fair Trading Act 1973 (the Act), 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 a merger situation qualifying for investigation, in that enterprises carried on by or under the control of *Woodchester* will cease to be distinct from enterprises carried on by or under the control of *Crédit Lyonnais*. The reference also includes the condition that the value of the assets taken over exceeds £30 million. Details given in Table 2.2 (paragraph 2.14) show that *Woodchester's* assets fulfil that condition. The reference excludes from our consideration the market share test in the Act.

8.3. The reference also requires us to take account of the provision in section 66A(2)(a) of the Act (which was enacted in section 150 of the Companies Act 1989). That section permits the MMC to treat as having occurred simultaneously, on the date of the latest of them, a series of transactions between the parties occurring within the period of two years before the date of the reference.

8.4. If we find a merger situation, we have to consider whether the creation of the situation operates, or may be expected to operate, against the public interest.

The merger situation

8.5. Towards the end of 1989, *British & Commonwealth Holdings plc* (*B&C*), which was then the majority shareholder in *Woodchester*, found itself in financial difficulties and wished to dispose of its shareholding. Some shares were sold to other institutions, but on 29 December 1989 *Crédit Lyonnais* acquired from *B&C* just under 30 per cent of the ordinary shares in *Woodchester*. The acquisition was made through *Compagnie Rhodanienne de Gestion* (*CRG*), a wholly-owned subsidiary of *Crédit Lyonnais*. On 26 June 1990, after extended discussions between the parties, *Crédit Lyonnais* agreed that *CRG* should subscribe for new shares in *Woodchester* which would bring *CRG's* total shareholding (taking into consideration a parallel offer of shares to the public) to 45 per cent. It is these two transactions that fall together within section 66A(2)(a) of the Act. They are described in more detail in paragraphs 2.15 to 2.29.

8.6. It was a condition of the transaction agreed in June 1990 that *Crédit Lyonnais* should be able to sell a minority stake in *CRG* to one or more outside corporate investors to raise part of the funds. *Compagnie de Navigation Mixte* (*CNM*), a French holding company, in which the state has a small indirect shareholding, has agreed to take a 34 per cent holding in *CRG*.

8.7. Following the first acquisition by Crédit Lyonnais of a shareholding in Woodchester, three non-executive directors from Crédit Lyonnais were appointed to the Woodchester Board, then ten strong. Under the present proposals, it was intended that one more non-executive director would be appointed, nominated by CNM. Crédit Lyonnais has stated that in line with its normal policy, it will leave the existing management team of executive directors to continue, subject to satisfactory performance, to be responsible for the day-to-day running of the business. We accept that Crédit Lyonnais will not wish to interfere in that, but we have no doubt it will wish to place its stamp upon the overall strategic direction of Woodchester, especially since a large element in the aims of the acquisition is the desire of Crédit Lyonnais to obtain the benefit of Woodchester's experience for the expansion of its leasing business in continental Europe. Nor could Crédit Lyonnais afford to stand aside if-contrary to any present expectation-Woodchester's business seemed likely to run into difficulties.

8.8. We conclude that Crédit Lyonnais has and will have the ability, directly or indirectly, to control or materially to influence the policy of Woodchester, and thus under section 65(3) of the Act may be treated as having control of it. We consider this to be the case whether Crédit Lyonnais be regarded under the proposals as having a 45 per cent shareholding in Woodchester or-in view of CNM's indirect holding of 15 per cent-just under 30 per cent. Accordingly we find that enterprises carried on by or under the control of Woodchester and of Crédit Lyonnais will cease to be distinct from each other under the proposals, and that arrangements are in progress which if carried into effect will result in the creation of a merger situation qualifying for investigation.

Background to the merger

8.9. Crédit Lyonnais is among the four largest French banks, and is one of those that were re-nationalised in 1982; it remains nationalised today, since plans for its privatisation in 1987 were interrupted by the financial crisis of October that year. It has always been internationally minded, and has been established in London for 120 years. It is still extending its operations in this country, opening new branches in four regional centres in the course of this year. Its acquisition of Alexanders, Laing & Cruickshank Holdings plc in 1987 exemplified its policy of diversifying into a range of activities in the banking and financial services sectors throughout Europe. In responding to an invitation to take a major shareholding in the Irish-registered firm of Woodchester, Crédit Lyonnais was pursuing the same policies. Nevertheless its share of the various markets in which it operates in the United Kingdom is still in most cases well under 5 per cent.

8.10. Woodchester grew from small beginnings in 1977 in the Republic of Ireland to a position today where it is the sixth largest company listed on the Dublin Stock Exchange, playing a major role in several financial services markets. It has also diversified in the last few years into a number of similar markets in the United Kingdom, where it employs a staff of some 325 people. Its operations in the two countries are very roughly of the same size, though their significance on the Irish scene is much greater. Woodchester's main activities in the United Kingdom are in the areas of equipment leasing and motor vehicle instalment credit, and secondarily in motor vehicle distribution through its associated company Lookers plc.

8.11. As Crédit Lyonnais has told us, the financial services activities of the two groups complement each other, with little significant overlapping. The bulk of Crédit Lyonnais's own activities in the United Kingdom falls in sectors where Woodchester has virtually no role at all. These include corporate stockbroking, mergers and acquisitions, and international corporate finance; merchanting, dealing and broking in futures, commodities and financial markets; brokerage of United Kingdom and international equities; fund management, currency trading, lending and deposit taking; the London discount market and Eurobond trading. Much of this business came to Crédit Lyonnais through its acquisition of Alexanders, Laing & Cruickshank.

8.12. Both groups engage in equipment leasing, but their involvement is for the most part respectively in different sectors of this market. Crédit Lyonnais is active in medium-ticket and large-ticket transactions (usually over £500,000 and with a life of three to ten years) where it had less than 0.3 per cent of the market in 1989. It does not compete in the small-ticket sector (usually below £10,000 per transaction and with a life of only two to five years), in which Woodchester, which had less than 1 per cent of the market in 1989, operates. The position is similar in the instalment credit sector, where the two companies had between them less than 0.5 per cent of the market in 1989, and in two other areas of less importance to both

groups: mortgage finance, and factoring and invoice discounting. There is, finally, a quite insignificant overlap in the area of insurance.

8.13. While it can therefore be claimed that the merger would increase the share which Crédit Lyonnais has of the markets in some sectors, the actual overlap between the two groups is small. More important, in all instances the market shares of the two groups are extremely small if not insignificant: in the equipment leasing market in 1989, as shown above, the combined market share of the two groups amounted to about 1 per cent, and in the instalment credit market to less than half of that. Further, these are highly competitive markets, which have expanded considerably in recent years. The majority of competitors in those markets are subsidiaries of major financial or industrial groups (eg Mercantile Credit of Barclays Bank, Forward Trust of Midland Bank, and Lombard North Central of National Westminster Bank). Subject to satisfaction of regulatory requirements, new entrants face no serious problems.

8.14. We received no evidence that the small accretions of market shares were of any concern in the market, judged by normal commercial criteria. There are, however, wider considerations which have been put to us, arising from the French State's control of Crédit Lyonnais, and thereby of CRG and Woodchester, through its majority shareholding. The issue is whether through such a shareholding Crédit Lyonnais might be expected to exert its influence in an uncommercial manner and have some distorting effect on the market.

State control: potential issues

8.15. This reference, like three others concurrently under investigation, raises a set of issues beyond the normal competition criteria. These are issues surrounding the concept of state ownership or state control of at least one of the enterprises involved.

8.16. The Department of Trade and Industry (DTI) has suggested to us a number of propositions¹ against which the circumstances of any case involving state ownership or state control might be tested (see paragraphs 6.1 to 6.3 and Appendix 6.1). These proceed from the basic assumption that state control inevitably distorts the natural condition of the market. State-controlled companies, the argument runs, are likely to behave in a fundamentally different way from other companies because the state as a shareholder is unlike private enterprise shareholders. The state may have objectives distinct from the normal commercial objective of maximising the financial return on a shareholder's investment. State-controlled companies do not face the threat of financial failure, they are not financially accountable in the same way as a quoted company, and they may have access to cheaper forms of finance. Because their objectives (or actions) may not be, or may not be perceived to be, strictly commercial, their behaviour is apt to be unpredictable by the normal standards of the market place. This creates uncertainty among companies operating in the same area. To the extent that competitors in the private sector adjust their own behaviour as a result of the involvement of a state-controlled company, there may be a misallocation of resources in the market leading to overall loss of efficiency in the production of the goods or services concerned. In the case of acquisitions by foreign state-owned companies, the state concerned might be seeking to control a sector of the economy in order to pursue some objective inimical to the national interests of the United Kingdom. Furthermore, in addition to the distortion of the product market, the market for corporate control will be adversely affected, because state-controlled companies themselves will usually be immune from take-over and from take-over pressures.

¹These propositions, which have been put to the MMC in the three other concurrent references mentioned in paragraph 8.15 (British Aerospace plc and Thomson-CSF SA, Kemira Oy and ICI plc, and Sligos SA and Signet Ltd) are addressed in paragraphs 8.18 to 8.20. There has been consultation among the group chairmen concerned, with a view to approaching the propositions consistently in all cases.

8.17. DTI further argues that, taken together, these possible consequences lead to a general presumption that acquisitions by state-controlled companies are likely to have adverse effects on the public interest unless there are offsetting benefits.

8.18. We fully appreciate the importance which is attached by DTI to these propositions and the possible consequences suggested. We accept that, in some investigations including the present one, these and other matters arising in connection with state control are among the relevant issues.¹ As regards some merger situations qualifying for investigation, the fact of state control, taken alone or in conjunction with other relevant facts, might indeed be the basis of a conclusion that the creation of the situation operated or might be expected to operate against the public interest.

8.19. Nevertheless, we are unable to accept that we can look at these matters in terms, as has been suggested, of a general presumption. Our approach to the public interest, or to any aspect of it, is governed by section 84(1) of the Act. This provision requires the MMC 'to take into account all matters which appear to them in the particular circumstances to be relevant'. The subsection goes on to require the MMC to have regard to the desirability of five specific matters or objectives. The language of the subsection appears to us to exclude any presumptions, whether of fact or of law.

8.20. It is the MMC's duty to approach each case according to its facts. Whether any particular issue, including as to state control, arises, and the weight to be attached to it for the purpose of section 84(1), will depend on an evaluation of all the relevant evidence against the background of the circumstances of the case in question.

Banking and the state

Ownership and control

8.21. We received a considerable body of evidence from a wide variety of sources about state ownership of French banks and its implications. This evidence was both specific to this inquiry, for example, from the French as well as the United Kingdom authorities, from Crédit Lyonnais and some other French banks, and from some United Kingdom financial enterprises; and more generally about the issue of state ownership, from economists and others with a special interest in the subject. All this is summarised in the preceding chapters. A few witnesses suggested that state ownership, as a manifestation of nationalisation, was or could easily be detrimental to the normal operation of the market. But most were of the view that, given that Crédit Lyonnais was known to be in active competition in the market, or that its and Woodchester's market shares were very small, state ownership could not have such an effect in the present case. Of the economists who sent us their views, we noted that (with one exception) the general view was that there appeared to be no grounds for the MMC to assess the effects of this particular merger situation on other than the usual competition criteria.

8.22. Nevertheless, we should look at the facts more closely. In the case of the acquisition by Crédit Lyonnais of a controlling stake in Woodchester, we have to take into account that the French State itself holds some 53 per cent of the equity capital of Crédit Lyonnais, and 72 per cent of the voting rights. (If one includes the holdings of other state agencies, the state effectively controls over 80 per cent of capital and all the voting rights: see Appendix 2.1.) The state is accordingly in the position of majority and controlling shareholder. It appoints the Chairman (Président), who conducts the day-to-day management of the bank, with the assistance of a General Manager and an Executive Committee appointed by him, and who is also Chairman of the Board of Directors (Conseil d'Administration). The Board itself is composed of 12 members appointed by the state (six from the business community and six² from various Departments of State), together with six elected representatives of the bank's employees. The Board is non-executive, and its powers are limited to review of the activities of the bank, carried out under the Chairman's direction.

¹ See, for example, the discussion of conclusions-paragraphs 8.111 *et seq*-in the report on the merger situation of *The Government of Kuwait and The British Petroleum Company plc*, Cm 477, October 1988.

² However, one member resigned in June 1989 and the vacancy has not been filled.

8.23. This state of affairs is not peculiar to Crédit Lyonnais. It obtains in a number of other French financial institutions including several of the largest. The situation derives in part from the nationalisation policy of President Mitterrand's Government, which in 1982 nationalised a wide range of major enterprises including the banks and significant industrial firms. A policy of denationalisation was begun under the premiership of M Chirac in the mid-1980s, but this was interrupted by the stock market crash of October 1987; since then, M Chirac's administration having been replaced by that of M Rocard, there have been no developments either way (the policy of '*ni nationalisation ni privatisation*'). Of the banks, Société Générale and Paribas amongst the largest were privatised in 1987; but a number, including several which are represented in the United Kingdom (including two of the largest, Banque Nationale de Paris and Crédit Lyonnais), remain under state control.

8.24. We have attempted to determine whether by virtue of its state ownership Crédit Lyonnais has behaved in the United Kingdom in a way different from a private sector company. In relation to the nature and degree of control and influence actually exercised by the French state on Crédit Lyonnais, the evidence we have received from the French Ministry of Economy, Finance and Budget is quite clear. The basic principle is one of management autonomy, the role of the Board of Directors being to discuss broad policy and to monitor performance. The state as majority shareholder is concerned with performance and with the dividend. The same commercial approach has dictated the state's attitude towards financial assistance: it has made no special arrangements for funding by virtue of the fact that an enterprise is state-owned. French officials told us that they saw themselves as having a dual role in representing the state as shareholder: to ensure that its investment was properly managed, and to be duly supportive of the management.

8.25. Crédit Lyonnais told us that it did not consider itself significantly advantaged or disadvantaged by virtue of state ownership. The original nationalisation of banks in 1945 had motives more political than economic; there was a feeling that the families who had controlled the banks before the Second World War had shown too little concern for the national interest, and that this should not be risked again. So, having taken the banks under its wing politically in 1945, the state- commercially speaking-let them go their own way. Little changed in their conservative ways of management for years after that. More recently the management had necessarily been drastically modernised, and competition between banks had been sharpened. A degree of denationalisation had taken place through the issue of shares to employees and financial institutions. But even so renationalisation in 1982 had brought little change.

8.26. Crédit Lyonnais confirmed the picture that French officials gave us of its relationship with the Ministry of Finance. A senior bank official was responsible for maintaining broad contact, but day-to-day management was exclusively the bank's responsibility. A state-owned bank had rather less ready access to fresh capital than a private one, since it could not so easily make demands on its major shareholder. Crédit Lyonnais pointed out that the only example of direct equity investment by the French State in the company since 1945 had been when in 1990 it took new shares in Crédit Lyonnais, in consideration for a 3.4 per cent shareholding in Rhône-Poulenc, representing 5.6 per cent of Crédit Lyonnais's total increased equity over the last five years. The other principal increases in equity capital (other than consolidated reserves and minority interests) during that period had come from:

- (a) the issue of investment certificates (see paragraph 4.26) to private investors in 1986 (some FF4.3 billion);
- (b) the subscription of the public sector Caisse des Dépôts et Consignations for new shares on arm's length terms (some FF1.5 billion) in 1989/90. Crédit Lyonnais told us that the Caisse adopted its normal investment criteria, and was advised by two independent valuers; and
- (c) the acquisition by Thomson-CSF in 1990 of additional equity capital in Crédit Lyonnais as consideration for the latter's acquisition of the former's financial services business, now called Altus Finance (FF4.8 billion). Crédit Lyonnais stated that Thomson-CSF chose to sell the business to Crédit Lyonnais, rather than to any other financial institution, on purely commercial grounds.

The steps taken by Crédit Lyonnais to increase its equity capital have enabled it to achieve the prescribed capital adequacy ratios under the Basle Convergence Agreement of 1988 (the 'Cooke Ratio': see Appendix 3.1).

8.27. This somewhat transparent description of the relationship seems to us to do less than full justice to what must be in many ways something more complicated. Why, first of all, if the state is not to be distinguished from any other major shareholder, should pains have been taken to implement in the early 1980s such an extensive campaign of nationalisation? Statements by French Ministers refer to policies, such as long-term investment and the promotion of social objectives, which could not be achieved without some degree of influence over certain sectors of the economy. Senior officials of Government Ministries make up one-third of the Conseil d'Administration of the bank, apart from the government-appointed Chairman and business representatives. While this body has no executive function, it meets at least ten times a year, receives reports from the Chairman and his staff, including reports on company strategy, and approves the annual accounts. Apart from that, the Chairman and his senior colleagues maintain regular informal contacts with the Ministry of Finance, the bank's majority shareholder.

8.28. Historically the relationship between state and industry has always been close (*cf* Sèvres porcelain and Gobelins tapestries), and nationalisation carries quite different connotations in France from those we are familiar with in the United Kingdom. We note besides that the senior échelons of the civil service, the financial sector and industry, both public and private, enjoy a homogeneity of outlook, attitude and experience in France.

Distortion of the market

8.29. It therefore seemed to us that, by one means or another, there existed the ability for the state to influence policy if it wished to do so. We put to Crédit Lyonnais these concerns about the effects of state ownership. Crédit Lyonnais suggested that long-term planning and socially-orientated policies were more relevant to industry than to the banking sector. It would simply not be possible, we were told, for Crédit Lyonnais to undertake a project which overstretched its budget. It was unreal to imagine the state trying to influence a bank's operations abroad against its natural commercial instincts; if suspicions arose that this was happening, it would destroy the confidence of the bank's customers. No one bank could dominate the financial scene in another country, and as for the common ownership of some French banks, they were in active competition with each other and with privately-owned banks, both domestically and internationally. If they tried to collude, the competition rules of France, the United Kingdom and the European Community would constrain them.

8.30. We asked Crédit Lyonnais in particular for its views on the reasoning that DTI had put to us, in explanation of its belief that the activities of a state-controlled bank might distort the market, owing to the intrusion of state ownership. Crédit Lyonnais said in reply that it had the same objectives as other competing enterprises and was in no way protected from market forces. Like others, its activities were governed by the profit motive, and the only uncertainty was the inevitable incompleteness of knowledge of the market, which afflicted all participants. As for reduction of the size of the market for corporate control, Crédit Lyonnais said that if indeed it was effectively bid-proof, this was no more than the position of a number of major enterprises around the world, and indeed practically speaking of any first-rank private sector bank in Europe, where the authorities could not permit collapse. While admittedly Crédit Lyonnais could not be permitted to suffer collapse, if it approached that condition it would suffer radical restructuring, including probably the loss of its independence. Crédit Lyonnais suggested that its lack of an AAA credit rating¹ showed that it was not considered to be beyond risk, and that, if the ability of state-controlled companies to make acquisitions in the United Kingdom was limited, that in itself made for reduction in the market for corporate control.

8.31. Analogies can be misleading and this subject is no exception. To us in the United Kingdom, banking may seem above most things a business for private enterprise. But that is not everywhere so. In several countries of Western Europe, let alone further afield, various forms of public ownership of banks are prevalent; Germany, Italy and Spain are cases in point. There are in fact 77 foreign state-controlled

¹The highest credit rating for corporate debt, as assessed by specialist rating agencies.

banks represented today in London. On the other side of the coin, it may not be helpful to compare a French state-controlled bank with, say, a nationalised monopoly such as the French railway company Société Nationale des Chemins de Fer (SNCF), which in many ways resembles British Rail. There are significant differences in the relationship between the state and various types of state-owned enterprise: a state-owned bank or industrial concern, for instance, may be in fierce competition with other enterprises, state or privately owned, but a state-owned monopoly clearly is not. In France, in the case of industrial concerns nationalised in 1982, certain limitations of the general nationalisation law which might inhibit competition are expressly excluded. State-owned banks may lack the degree of managerial freedom enjoyed by a state-owned industrial enterprise such as Rhône-Poulenc, but that derives from the more elaborate regulatory controls imposed by any state, and today by the European Commission as well, upon its banking system, and generally applicable to privately-owned banks too (see Appendix 4.2).

8.32. We have received little evidence to cast doubt on the picture presented to us by Crédit Lyonnais and the French authorities. Such contrary views as we have received have been for the most part theoretical. We know of no concrete example of Crédit Lyonnais acting in a non-commercial manner. Indeed we received strong evidence from Mr Ian Hay Davison, the Chairman of Crédit Lyonnais's United Kingdom holding company, Crédit Lyonnais Capital Markets PLC, that his company was expected to perform within normal commercial standards and that Crédit Lyonnais behaved towards it as any other commercial holding company would do. As an illustration of Crédit Lyonnais's susceptibility to market disciplines he mentioned that following its acquisition by Crédit Lyonnais, the business of Alexanders, Laing & Cruickshank in market-making in gilts and equities in the United Kingdom was closed down following losses.

8.33. Nor do we have a picture of state ownership of several banks bringing about a combined or cumulative effect of a noticeable kind; certainly we have not discovered any form of co-operation between Crédit Lyonnais and any other French state-owned enterprise in relation to activities in the United Kingdom financial sector. Altogether, the French state-owned banks represent roughly 1.5 per cent of the United Kingdom banking market.

8.34. We considered in the course of our investigations how widely our inquiry should range. In view of DTI's belief that state ownership might create a situation of common control of a number of enterprises, we sought to obtain a broad impression of the working of the banking sector in France, in case that should suggest that the state-owned banks operating in the United Kingdom were likely to act together to any significant effect. Both Crédit Lyonnais and Woodchester argued against the propriety of the wider approach. In their view, our investigations ought to be limited to the effects of their own operations in the United Kingdom. We found, in any event, no positive evidence to contradict the assertion by Crédit Lyonnais, endorsed by government officials, that competition and profit are two of the principal guidelines of the banks, in their operations at home and abroad. It is clear too that the banks in question are a very long way indeed from a position from which they might hope jointly to dominate any of the United Kingdom markets in question. It does not seem probable to us that they-or more specifically Crédit Lyonnais-have any aspirations to do so.

8.35. As for whether the adverse effects advanced by DTI as potentially flowing from the operations of a state-controlled bank could bear upon the present case-that is, whether the operations of Crédit Lyonnais in the United Kingdom, following its opportunistic acquisition of a stake in Woodchester after the collapse of B&C, might be expected to have an adverse effect on the relevant United Kingdom markets-we have concluded that the combined market shares of the two enterprises are in all cases too small for any distorting effect to be of any consequence. Nor do we think it realistic to suppose that Crédit Lyonnais might be attracted to the use of Woodchester as a springboard for expansion into one or more of the United Kingdom markets on an uncommercial basis, and might thus begin to distort and create uncertainty in them. Crédit Lyonnais has been in the United Kingdom markets for a very long time. Certainly the merger with Woodchester has the effect of diversifying its operations (as did the acquisition of Alexanders, Laing & Cruickshank). It does not in our view create the circumstances in which Crédit Lyonnais could cause any disturbance in the market. Any move in that direction would be ineffectual because of the existence of competing firms with a major presence in the markets. It is not evident what Crédit Lyonnais would gain by seeking, for instance, to undercut the market price for leasing by artificial subsidy.

8.36. On the narrower point of whether Crédit Lyonnais has behaved in the United Kingdom in a way different from a private sector company, we have come across no evidence to suggest that. The financial results of Crédit Lyonnais world-wide over the past few years have been in line with the performance of private sector companies, showing substantial increases in banking income and, apart from a dip in 1988, in consolidated net profit and earnings per share. The French State's level of direct equity funding, with the state's directly-owned share capital at FF3,154 million nominal, was a relatively small proportion (11.6 per cent) of the total equity capital (including share capital, consolidated reserves, unappropriated retained earnings and minority interests) of Crédit Lyonnais at 31 December 1989 of FF27,170 million. The bank has moreover not been the subject of an investigation by the European Commission in relation to state aids under Article 93 of the Rome Treaty.

Market for corporate control

8.37. With regard to the market for corporate control, we are primarily concerned with the status of Woodchester, rather than that of Crédit Lyonnais. Since 55 per cent of Woodchester's shares will still be held privately, we would regard the company as being difficult to acquire rather than quite inaccessible. This is the status of a great many companies in the private sector, and Woodchester's conversion to that status is quite insignificant in terms of the United Kingdom market for corporate control, even in the financial sector alone.

8.38. Crédit Lyonnais has conceded that it could not be allowed to go bankrupt. However, this condition does not seem to us to be peculiar to state-owned banks. [

Details omitted. See note on page iv.

] The effect of the merger on the market for corporate control does not therefore seem to us to be likely to cause any detriment.

Conclusions

8.39. In reaching our conclusions, we emphasise that we make no judgment on the general propositions advanced by DTI. Our conclusions are confined exclusively to the case before us. The circumstances will vary in each case. In this instance we have found that the two companies have only a small presence in the market, with little overlap, and singly or together exert little market power. We are satisfied that the merged company would not exert its position in the market in an anti-competitive manner. We have also taken into consideration the statement by Crédit Lyonnais that it intends to leave the Woodchester management to conduct its day-to-day business without interference, and that one of its main purposes in entering into partnership with the Woodchester management was to obtain the benefit of the latter's skills and experience in the leasing business in order to develop its own leasing business more effectively in France and other parts of Europe.

8.40. Clearly there can be circumstances in which the fact of state control could, on investigation, be expected to operate against the public interest. For this to be our conclusion in the present case, each of several conditions would need to be fulfilled. Not only would the French Government have to be in a position to control the policy of the banks it owned, and in particular that of Crédit Lyonnais, but it would also have to be able to do so effectively. This would mean that Crédit Lyonnais would have insufficient autonomy of direction and management to withstand what might in some instances need to be quite significant interference in its normal commercial operations. Furthermore, the effect of adding the United Kingdom operations of Woodchester to those of the French state-owned banks (particularly, in this case, those of Crédit Lyonnais) would need to be significant enough, or otherwise to give rise to sufficient market power in the United Kingdom markets affected by the merger, that any such state interference, with its possible immediate or potential future distorting effects on competition and efficiency, was or might be expected to be adverse to the United Kingdom public interest. In this particular case we are clear that none of those conditions except the first is fulfilled.

8.41. We have accordingly concluded that the competitive status of Crédit Lyonnais and Woodchester together is too small directly to affect competition in the large and vigorous United Kingdom markets concerned (see paragraph 8.14), and that in the circumstances of the market the fact of state control may be expected not to have an adverse effect (see paragraph 8.35). Hence we conclude that the proposed merger may be expected not to operate against the public interest.

H H HUNT (*Chairman*)

C C BAILLIEU

C M BLIGHT

F E BONNER

S N BURBRIDGE (*Secretary*)

18 December 1990