

## **Note of dissent**

*by Mr K S Carmichael*

1. In making this minority report, my differences with my colleagues concern the answers to questions (c) and (d) in respect of branded matches in the reference to us. On the answers to the other questions, we are in agreement.

2. The reference requires us to investigate and report on the supply of matches and disposable lighters within the United Kingdom for retail sale.

3. Question (c) asks whether any steps (by way of uncompetitive practices or otherwise) are being taken by the person or those persons in favour of whom the monopoly situation exists for the purpose of exploiting or maintaining the monopoly situation and, if so, what uncompetitive practices or in what other way.

4. In question (d) we were asked whether any action or omission on the part of that person or those persons are attributable to the existence of the monopoly situation, and, if so, what action or omission and in what way it is so attributable.

5. My disagreements are mentioned in paragraphs 6 to 9 below.

6. Firstly, on the agreements between Bryant & May and certain of its customers:

(a) there is no evidence that Bryant & May forced the agreements mentioned in paragraphs 7.46 to 7.49 on the customers concerned, but rather that they arose from negotiation;

(b) further, the eight customers involved purchased only 29 per cent of the total sales of matches and disposable lighters sold by Bryant & May;

(c) in paragraph 7.36 we indicate that wholesalers purchase from more than one supplier, that five out of 47 had switched supplier for branded matches and that one-third had changed suppliers of own-label;

(d) the other 12 of the largest customers did not receive such discounts; and

(e) similar levels of discount were given by its competitors.

In my opinion Bryant & May was reacting to competition and the above steps were not, therefore, taken to exploit and maintain its monopoly situation in branded matches against the public interest.

7. We have accepted that Bryant & May's recommendation of retail prices does not give rise to concern. Such recommendation affects directly the retailer and the ultimate user of matches and disposable lighters. But the prices which Bryant & May charges and to which reference is made in paragraphs 7.54 and 7.67 are those charged to its customers (supermarkets, cash-and-carry outlets, wholesalers) and Bryant & May does not have any direct control over prices paid by the general public. For this reason, in my opinion, if Bryant & May passed on the benefits of cost savings to its customers, it does not follow that competition between wholesalers and retailers must benefit the consumer.

8. Secondly, the comments in paragraphs 7.54 to 7.61 relate to all matches. In paragraph 7.56 it is stated that Bryant & May has offered more competitive prices for those matches where it suffers the greater competition. There is the further comment in paragraph 7.55 that as the total costs for branded and own-label are approximately the same, Bryant & May has secured higher profits on branded matches than on own-label (which constituted about 12 per cent by value of its sales). In paragraph 7.60 factors which have contributed to the high rates of ROCE for all matches are listed and, of course, these affect the overall level for profits. The evidence shows that these profits have included the benefit of:

- (a) the transfer of production from Sweden to the United Kingdom;
- (b) the incorporation of the Masters business;
- (c) cost-cutting exercises, including reducing the number employed;
- (d) greater efficiency; and
- (e) with little investment necessary in match production and disposable lighters involving only distribution, the charge for depreciation has been negligible.

These factors are likely either not to occur or will have a reduced effect on profits in future years.

9. Bryant & May sells over 84 per cent of its matches to 20 customers, several of which are larger companies than Bryant & May. In my opinion, it is necessary to ask the reasons why such companies buy from Bryant & May when competitors charge lower prices. These, from the evidence placed before us, include:

- (a) the quality of its product-there seem to have been some transfers to Bryant & May due to its quality exceeding that of some competitors;
- (b) the efficiency of its distribution network; and
- (c) the retention of traditional brands.

These factors cannot be separated from prices in deciding whether its pricing policy is against the public interest. In my opinion, taking these factors into account, Bryant & May's pricing policy has not been against the public interest.

10. Since, in my opinion, the steps taken by Bryant & May and listed in this note of dissent were not taken to exploit and maintain its monopoly position in branded matches, remedies are not in point. However, if Bryant & May had sought to enforce or seeks to enforce any of the steps in respect of which my colleagues make recommendations in paragraph 7.75 it would be acting against the public interest and would be exploiting and maintaining its monopoly situation.

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