

7 Conclusions

7.1. Under the reference dated 27 February 1992 (see Appendix 1.1), made under the provisions of sections 64 and 69(2) of the Fair Trading Act 1973 (the Act), we are required to investigate and report whether a merger situation qualifying for investigation had been created in that enterprises carried on by or under the control of Associated British Foods plc (ABF) 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 Hillsdown Holdings PLC (Hillsdown). The reference prescribes the test in section 64(1)(b) of the Act (the assets test) and provides that, if we find this test, or the alternative test prescribed in section 64(1)(a) (the market share test), satisfied, we shall exclude the other from our consideration.

7.2. As described more fully in paragraphs 2.21 to 2.24, an agreement for the sale of ABF's undertakings and assets engaged in fruit and vegetable canning and in ambient stored meals to Hillsdown was completed on 13 September 1991. The value of assets taken over exceeded £30 million. Hillsdown accepted from the outset that the assets test was met.

7.3. We accordingly conclude that the condition specified in section 64(1)(b) of the Act is satisfied and that a merger situation qualifying for investigation has been created. We have, therefore, to investigate and report on whether the creation of that situation operates, or may be expected to operate, against the public interest.

Background to the acquisition

7.4. Hillsdown is an investment holding company, quoted on the International Stock Exchange in London, with a wide range of interests in the United Kingdom, continental Europe and North America. Its business is mainly in the food sector; important elements are the supply of meat, poultry and eggs, and food processing and distribution. Its fruit and vegetable canning and ambient stored meals¹ businesses are carried out through H L Foods Ltd. At the time of the acquisition its fruit and vegetable canning activities took place at Long Sutton and Wisbech in East Anglia, and at Forfar on Tayside. Ambient stored meals were packed at Kilwinning in Ayrshire.

7.5. ABF is involved in the production and marketing of a wide range of food products in the United Kingdom, the Republic of Ireland, Australia and New Zealand. Its most important business is British Sugar plc which it acquired at the beginning of 1991. ABF's fruit and vegetable canning and ambient stored meals activities, the subject of this inquiry, were carried out by Anglia Canning (Anglia), a division of Allied Foods Ltd, a wholly-owned subsidiary of ABF. Anglia canned seasonal and non-seasonal fruit and vegetables at King's Lynn and at Brechin on Tayside, where it also prepared ambient stored meals. Administration and sales were co-ordinated from King's Lynn.

7.6. ABF told us that it had been in the canning business since the 1960s. It had decided to dispose of its interests because, despite considerable investment, they were operating at a substantial loss with no prospect of improvement. Anglia's difficulties, which went back a number of years, stemmed initially from inadequate returns on baked beans and seasonal products. In the 1990/91 season ABF started discussions with Hillsdown about a joint approach to capacity rationalisation but it became clear during these discussions that a major reorganisation of canning capacity was required under the control of a single firm. ABF said

¹For a description of these meals see paragraph 7.51.

that its decision to leave the canning industry took into account the increasing role of imports and the degree of overcapacity within the industry. ABF made clear that if the discussions with Hillsdown had not led to a sale it would have closed down its canning business, probably by the start of the 1992 canning season. It took the view that the ambient stored meals business could not be sustained as a separate operation; it was moreover an attractive element to Hillsdown in the package of assets it had acquired.

7.7. Following the acquisition Hillsdown has moved its ambient stored meals production from Kilwinning to the Anglia factory at Brechin already producing this type of meal. It has closed the Anglia factory at King's Lynn, transferring production of seasonal and non-seasonal vegetables and fruit to its own Long Sutton and Wisbech plants, and it has also ceased canning at Brechin, where the most important product canned was raspberries, although the machinery remains ready for use.

7.8. The two sets of ABF interests acquired by Hillsdown in fruit and vegetable canning and in ambient stored meals, although now carried out within the same management organisation, have little in common and serve distinct markets. We therefore consider separately the markets and public interest issues involved.

Demand and supply for canned fruit and vegetables

7.9. The United Kingdom fruit and vegetable canning industry is based primarily on basic seasonal vegetables (chiefly garden peas, carrots, green beans and potatoes) and fruits, including soft fruits, plums and rhubarb. Each of these seasonal products individually is canned only during comparatively short periods of the year. The canner usually contracts for raw material supplies for canning before prices and indicative quantities to be supplied for the new season are settled with customers and is also vulnerable to the uncertainties of timing and supply caused by the weather. Non-seasonal products such as processed peas, baked beans, other beans or pulses and prunes are canned mainly at other times to utilise capacity and spread overheads over a larger volume of output. The markets for some of these products, particularly baked beans, are substantial and some canners, notably H J Heinz Company Ltd (Heinz), specialise in them. Besides these types of United Kingdom canned vegetables the total market also includes substantial amounts of vegetables such as tomatoes and sweetcorn canned overseas and of traditional imported fruits such as canned peaches, pears and pineapple.

7.10. Canned fruit and vegetables are part of the wider fruit and vegetable market which includes fresh fruit and vegetables and, since the 1950s, frozen produce. There are no reliable estimates for the total size of the United Kingdom fruit and vegetable market. From the National Food Survey (NFS) data we have calculated that in 1991 vegetables accounted for 14 per cent of total household expenditure on food, and fruit for about 6 per cent. More than half of the expenditure on vegetables was on fresh vegetables, while frozen accounted for 13 per cent and canned vegetables (including baked beans) for about 11 per cent of expenditure (see Table 3.1 for details). Fresh fruit accounted for about 90 per cent by volume of all expenditure on fruit, the remainder being mainly shared between canned and dried fruit, with only a tiny share for frozen fruit (see Table 3.7).

7.11. Most canned fruit and vegetables are sold in retail sizes and through the multiple retailers, which in a market research report in 1991 were estimated to have accounted for 75 per cent of total United Kingdom retailers' sales of canned foods (see Table 4.5). Most of the remainder were made through independent grocers, many of which purchase through large wholesalers or buying groups. Canned fruit and vegetables are also widely used in commercial and institutional catering. These, however, are mainly supplied in catering sizes which have to be produced on different lines from those used for retail sizes. While some of Hillsdown's production is in catering sizes, Anglia produced none and this sector of the market is dominated by Stratford-upon-Avon Foods Ltd (Stratford). On Hillsdown's estimates sales to the catering market account for about one-fifth of total United Kingdom sales of canned vegetables and one-tenth of sales of canned fruit. The catering market can therefore be regarded as a separate market on both the supply and demand side and is one where Hillsdown has only a limited role.

7.12. The canned vegetable and canned fruit markets have both been in steady decline for a number of years. NFS data show that household consumption of canned vegetables (excluding baked beans) has declined by about 15 per cent by volume over the period 1981 to 1991 and of canned fruit by 29 per cent. Although consumption of some vegetables such as tomatoes and sweetcorn has held up well, as has consumption of pulses (particularly baked beans), demand has fallen for such seasonal vegetables as peas, carrots and green beans, in which Hillsdown has substantial market shares following the acquisition. Sales of most types of canned fruit have been declining, including traditional imports such as peaches, pineapples and pears as well as United Kingdom canned soft fruits (mainly raspberries and strawberries) and rhubarb.

7.13. There appear to be a number of reasons for this decline. Some of these canned vegetables are regarded as akin to basic commodities and may also be perceived as inferior in quality to frozen or fresh food. Frozen produce is widely available at competitive prices. Fresh produce, particularly fresh fruit such as grapes and strawberries, is increasingly available around the year. Although often more expensive it is seen as an affordable and attractive alternative by many consumers, and as more in tune with today's interest in healthy eating. The general assumption amongst those giving evidence to us was that the decline in sales of these types of United Kingdom seasonal canned vegetables and fruit could be expected to continue.

7.14. Against this background of declining sales there has been a steady contraction of the United Kingdom industry. Over the last ten years a number of important canners have disappeared. Some like Del Monte Foods International Ltd (Del Monte), although it still sells imported canned fruit, have withdrawn from United Kingdom canning, but others have been taken over by Hillsdown. Hillsdown entered the market in 1981 by buying Lockwoods Foods Ltd from the receiver and has since acquired a series of companies with previously well-established brands, including Smedley, Morton and Hartley, before making the acquisition which we are now considering. Hillsdown has also closed a number of plants following its acquisitions (as explained in paragraph 4.12) thus reducing canning capacity in the industry.

7.15. There remain five United Kingdom canners of seasonal vegetables and fruits: the enlarged Hillsdown, Co-operative Wholesale Society Ltd (CWS), Gerber Foods Holdings Ltd (Gerber), Stratford and Mid Norfolk Canners Ltd (Mid Norfolk). Stratford produces almost entirely catering sizes. After Hillsdown, CWS is most significant in terms of market share, while Gerber also has an important share of the market. Mid Norfolk produces small amounts of a limited range of products.

7.16. Our estimates of 1990 shares of the United Kingdom market for types of seasonal vegetables canned in the United Kingdom (including processed peas), derived from company estimates and set out in Table 4.2, show that Hillsdown held almost 40 per cent by value of this market and Anglia a little over 12 per cent, giving the two businesses combined over half of the total sales of about £130 million. Anglia's market share for most individual vegetables lay in the 10 to 15 per cent range. Our estimates of 1990 shares by value of the much smaller market for United Kingdom canned fruit shows that Hillsdown's sales accounted for one-half and Anglia's sales for one-quarter of the total, giving them three-quarters by value of the total market. If Stratford's sales of catering-size cans are excluded the combined market share is even larger. Anglia held a particularly high share of the raspberry market, almost 60 per cent, and the two firms together held over 90 per cent of that market in 1990.

The relevant markets

7.17. There are a number of possible ways of defining the relevant markets and the extent of competition for the products involved in the inquiry. Clearly vegetables and fruit themselves are not substitutable products and must be considered separately. At one extreme each individual type of canned vegetable or fruit may be considered as to some extent satisfying a distinct demand. Alternatively the various types of vegetable or fruit can be separated into groups which are to some extent interchangeable. All canned vegetables taken together, and similarly all canned fruit, could be treated as comprising a single distinct market. Finally, all vegetables or all fruit (whether fresh, frozen, canned or otherwise preserved) could be seen as forming a single market.

7.18. Hillsgdown, although recognising what in broad terms is described as a 'side-of-plate' market for such vegetables as peas, beans or carrots, argued that in general we should look at both canned vegetables and canned fruits as single markets, and consider both as subject to competition from fresh and frozen products. Evidence from other suppliers and from retailers, however, suggested that the substitutability of fresh or frozen produce for canned produce varied from product to product and that in many cases canned products were seen as possessing advantages of taste, price or convenience. Similarly the extent to which one canned vegetable or fruit would be regarded as substitutable for another was affected by such factors as the type of product and its range of uses.

7.19. Looking first at competition between canned products, we noted that some vegetables such as baked beans and canned tomatoes clearly have distinct uses; the main use of canned tomatoes, for example, appears to be as a recipe ingredient. Baked beans can be seen as a distinct product, used to some extent as a 'side-of-plate' vegetable but for a wide range of other snack and meal uses. Other 'side-of-plate' vegetables are to a greater degree interchangeable but it seems likely that purchases reflect distinct preferences within the field and that the consumer does not regard them as completely substitutable.

7.20. Most of those putting evidence to us on the point agreed that there was greater substitutability between different types of canned fruit than between canned vegetables. While most types of canned fruit serve the same dessert purpose, types canned in the United Kingdom, for example rhubarb and soft fruits, may be more suitable for some types of pudding.

7.21. Canned vegetables and fruits, taken either individually or in broader groups, are subject to competition from both frozen and fresh fruit and vegetables, as is demonstrated by the decline in canned sales in the face of the developing sales of frozen products. While fresh produce has always been available, the increasing choice and year-round availability of fresh products in recent years may have encouraged some switching from canned products by consumers.

7.22. It is difficult to make direct comparisons between fresh, frozen and canned food prices since the available statistics do not take account of preparation wastage on fresh products or the liquid in the can, both of which are significant. Hillsgdown produced evidence from a small sample of products suggesting that, on a drained weight basis, canned vegetables were more expensive than frozen. Trends in prices for the two products over recent years have clearly worked against canned vegetables.

7.23. Canned vegetables and fruit as a class, however, still have advantages in storage, convenience and in some cases individual taste preferences, so that fresh and frozen products cannot be regarded as completely substitutable for them. Moreover, in contrast with general trends, sales of some canned vegetables, for example sweetcorn and baked beans, have increased.

7.24. We consider that, at least in the short term, there are some limits on the extent to which individual types of canned fruit and vegetables are substitutable for one another and for fresh and frozen products. We have therefore examined the market position for types of canned vegetables and fruit canned in the United Kingdom considered as broad groups, and for individual products within these groupings, noting that on either basis the market share of the merged business is substantial, as set out below.

7.25. Although we have been unable to establish the size of the total market for canned vegetables (which includes imported products like tomatoes, sweetcorn and pulses), we have produced our own estimates (see paragraph 7.16) of market shares for seasonal vegetables of the types canned in the United Kingdom (including processed peas). These show that in 1990 Hillsgdown's and Anglia's combined sales of these products, at £67 million, amounted to just over half, by value, of the United Kingdom sales of these products by those companies primarily supplying the retail sector. Their combined share of sales of some individual vegetables was higher; for example, their combined sales of garden peas at £18.5 million amounted to about 70 per cent of total sales of the product, of green beans (at £3 million) to almost 70 per cent of sales, of carrots (at £13.4 million) to over 60 per cent of sales and of potatoes (at £8.3 million) to over 50 per cent of total sales. As earlier noted, Anglia's share for these vegetables lay in the 10 to 15 per cent range. Although the sales of fruits canned in the United Kingdom form a comparatively small part of the total canned fruit market, Hillsgdown and Anglia in 1990, with combined sales of £6.6 million, together supplied 90 per cent of total United Kingdom sales of raspberries supplying the retail sector. Their sales of prunes (£4.3 million),

rhubarb (£1.1 million) and strawberries (£2.3 million) accounted for over 80 per cent, over 70 per cent and over 50 per cent respectively of total sales of these products by those companies primarily supplying the retail sector. As shown in Table 4.4, Anglia's share of sales for some of these products was significant. The two companies' combined sales of all fruits of the types they canned, at almost £21 million, accounted for about 80 per cent of all sales of fruits of types canned in the United Kingdom by those companies supplying the retail sector.

7.26. Hillsdown also has a significant market share in baked beans. As noted in paragraph 7.19, baked beans form a largely separate market. Unlike the markets for other canned vegetables, that for baked beans is dominated by the brand leader, with considerable promotional expenditure. Hillsdown's share of the market, which it estimated at between one-quarter and one-fifth, is entirely in own-label brands. There is significant competition from imports. We do not therefore see this as a product raising competition concerns.

Public interest issues

7.27. In relation to the vegetables and fruits identified above we consider first the competition which Hillsdown now faces in the retail market, and particularly the effectiveness of alternative sources of supply and of customers' buying power in restraining prices and maintaining availability. (For the reasons set out in paragraph 7.11 we do not consider that supply to the catering market raises competition concerns.) We then consider other public interest issues, including effects on growers, particularly effects on the demand for raspberries for canning, effects on employment and possible benefits of the merger. Finally, we consider the ambient foods market and public interest issues there arising.

Factors affecting competition

Alternative sources of supply

7.28. Looking first at United Kingdom sources of supply, as noted above there are effectively only four other United Kingdom canners of seasonal vegetables and fruit. Stratford, which is part of the Albert Fisher Group PLC (Fisher), produces only catering sizes (apart from a small output of retail cans of fruit at Falkirk) and would need to invest in new lines to produce retail sizes. Gerber (which produces only part of the extensive range available from Hillsdown) and CWS both told us that currently they have only limited spare capacity, although they clearly welcomed the prospects for extra business created by retailers' wishes to maintain supplies from two sources after the acquisition. Mid Norfolk produces small amounts of a limited range of vegetables and fruit. Given the continued decline in the total market expected by the industry it seems unlikely that any of these companies would be prepared to make the necessary investment to increase current capacity on retail sizes without the incentive of a substantial increase in profitability. However, their position in the market is significant enough to make them credible competitors which are likely to enable retailers to exercise a restraining influence on any attempts by Hillsdown to raise prices (an aspect discussed in paragraphs 7.35 to 7.37). If, as expected, the market continues to decline, these existing producers can expect to find themselves with some spare capacity, which would increase competitive pressures.

7.29. The prospect of new United Kingdom entrants into the seasonal fruit and vegetable canning market seems remote. While it would be possible for existing canners of non-seasonal products (baked beans, processed peas and pulses) to can seasonal products, those canners we consulted did not consider it would be an attractive proposition, given the declining size of the market and its low profitability. A completely new entrant seems even less likely since such an enterprise would face the same market situation with the additional problems of financing the investment required, establishing raw material supply and coping with the seasonal nature of production. In our view the expectation of substantial and sustained profits would be needed to bring new entrants of either kind into the market.

7.30. There is substantial production of canned vegetables in other European countries. A number of these European suppliers have entered the United Kingdom market in the last ten years. However, with the exception of canned potatoes, imports of seasonal canned vegetables currently appear to account for very small proportions of the United Kingdom market. Nor are they usually of precisely the same type of vegetable as United Kingdom production. For example, imported carrots are usually baby carrots and not the sliced or whole carrots which comprise the greater part of United Kingdom sales of canned carrots. Imported canned fresh peas are usually *petit pois*, which are a different product from garden peas and sell at a price premium. Unimerchants Ltd (the Fisher company which distributes imported canned vegetables) thought that continental products could not be substituted for Hillsdown's; they were different products and offered in different can sizes. We have also been told, however, of growing imports from Italy of lower-priced products, particularly baked beans and carrots. There appears to be less immediate scope for imports of United Kingdom-type canned fruit, although in the longer term Eastern European supplies of soft fruit may become increasingly competitive.

7.31. We received differing views on the significance of transport costs. Hillsdown pointed to imports of processed peas and baked beans from Italy as an indication that transport costs were not a barrier to imports at competitive prices. Bonduelle Ltd (Bonduelle), the main overseas supplier, told us, however, that it produced a high-quality product for the United Kingdom market at a price premium but that the price of basic garden peas and carrots would not support the costs of cross-Channel transport.

7.32. Major multiples which gave us evidence told us that for major products quotations from three or four suppliers were enough to ensure competition. They reported interest by foreign canners in supplying them and foresaw no difficulty generally in getting competitive supplies, although the continental product, as already noted in paragraph 7.30, might be somewhat different from that produced in the United Kingdom. It was also put to us that the organisation of United Kingdom food retailing, and its domination by a comparatively small number of retailers with centralised buying, make it a relatively easy and attractive market for the overseas buyer to enter. Some retailers told us that, other things being equal, they would prefer to buy United Kingdom products. It is clear, however, that importers' interest in supplying the United Kingdom market is sufficient to make the threat of competition from imports a restraint on United Kingdom suppliers' prices.

7.33. It was suggested that different can sizes are also a possible hindrance to imports. We were told in particular that one basic United Kingdom can, the A1 (300g size), is not sold on the Continent and that continental canners would find it worthwhile to supply in this size only if substantial demand were guaranteed. We have, however, seen some examples of imported vegetables in A1 sizes. J Sainsbury plc (Sainsbury), which displays unit prices, did not see acceptance of different can sizes as a problem. United Kingdom consumers are already becoming accustomed to continental sizes for many vegetables and this process will doubtless continue. There are also moves within the EC to standardise the present wide range of sizes accepted. There appear to be no other regulatory difficulties.

7.34. No suggestions have been made that availability or quality will be adversely affected following the acquisition. Hillsdown told us that it had not withdrawn any products formerly produced by Anglia and would continue the range as long as it could produce them profitably. Since the acquisition it has reorganised warehousing and distribution arrangements for its products. One buyer complained of a decline in service standards while the reorganisation was taking place but acknowledged that standards had now returned to satisfactory levels. We have identified no limitation of choice or in availability of supplies likely to arise from the merger situation.

Customer behaviour

7.35. Most retail sales of canned fruit and vegetables are made through multiple retailers (see paragraph 7.11). Independent grocers' purchases are usually made through cash-and-carry or major wholesalers, or negotiated on their behalf in a way which concentrates their buying power in a similar way. A number of customers, including multiple retailers, have told us that they dislike being dependent on a single supplier. They indicated that, although it may not be worth the extra costs to split purchases of a low-volume product, they will seek alternative suppliers where the acquisition has given the enlarged Hillsdown all or the main part of their business for any product with significant sales.

Given the nature of their contracts, which specify price but do not commit the retailers to taking any specified amount of product, such switching is easy and the volumes concerned are usually sufficiently large to make this worthwhile. Hillsdown told us that since the acquisition it had lost business, particularly in baked beans; but we felt that in such decisions it is difficult to distinguish the importance of the price offered from these other considerations.

7.36. Most multiple retailers and independent grocers make extensive use of own-label brands produced to their specifications by the canners. As shown in paragraph 4.22, the majority of Hillsdown's vegetable canning and almost all Anglia's before the acquisition was of own-label products, although Anglia's largest customer, Kwik Save, bought only branded products. For the combined businesses over three-fifths of canned vegetable sales and more than half of canned fruit sales were own-label sales. There is virtually no promotion by United Kingdom suppliers of their own brands of seasonal vegetables or fruit. Own-label products are canned to recipes and standards drawn up or specified by the retailer. The supplier has minimal brand power and retailers can easily switch sources of supply without the consumer being aware of the change.

7.37. Hillsdown said that the retailers' buying power, particularly in own-label products, would effectively prevent it from making any unjustified price increases. We noted that none of the major multiples objected to the merger and, while some noted a consequent reduction in choice of supplier in some lines, most seemed relatively unconcerned by the change and were confident that competition would be maintained. One retailer, Sainsbury, however, identified canned raspberries as a product where almost complete dependence on the enlarged Hillsdown for a product of acceptable quality might put supplies at risk.

The scope for price increases

7.38. In the light of the evidence set out in the preceding paragraphs on factors affecting competition on both the supply and demand side, we would not expect new entrants to appear in this declining market without a substantial increase in profitability and we do not foresee the trends in prices that would produce this. We think, however, that the remaining United Kingdom canners, together with imports and the threat of imports, provide sufficient alternative sources of supply to provide effective price competition on most products. We accept the view of all those who put evidence to us on the point that the bargaining power of the retailers, particularly in relation to their own-label products, and their access to alternative sources of supply will in general prevent Hillsdown raising prices on the basic types of seasonal canned vegetables and fruits discussed in paragraph 7.25 where their market share is large enough to give them a dominant position and to raise concern about the level of competition. We noted that no major retailers opposed the merger. We consider that there may be some scope for modest price increases on low-volume products where Hillsdown is the only current supplier and where the costs for the buyer of seeking an alternative supply outweigh the benefit to be gained but, given the scope for second-sourcing by retailers and the expected continuing weakness of the market, we think that Hillsdown would be careful not to antagonise major customers in respect of high-volume products.

7.39. We looked particularly at the position on canned raspberries where Hillsdown is now the dominant supplier to the United Kingdom market (a position which would have arisen in any event if ABF had closed down the Anglia business). Although the concern put to us was about whether Hillsdown would continue to supply canned raspberries in sufficient quantities to the United Kingdom market, this situation also implies a potential opportunity for Hillsdown to raise prices. While supplies have been available from Eastern Europe

in the past, we have been told that these have not been of the same quality as Scottish raspberries; the availability and quality of future supplies from Eastern Europe is far from clear. Canned raspberries are already expensive compared with other canned fruits and such evidence as we have been able to obtain on price elasticities suggests some consumer sensitivity to price rises, with any price rise leading to some offsetting loss of sales. If Hillsdown were to raise prices significantly is likely that major retailers would make a strong effort to find alternative acceptable supplies, but we cannot on present evidence be certain that this would be immediately successful. On balance we think that Hillsdown has some scope, at least in the short term, to raise prices for canned raspberries. In 1990 raspberries accounted for under £7 million of Anglia and Hillsdown's combined sales, compared with the figure of a little over £90 million for their sales of the fruit and vegetables that we have been considering. We do not think that the potential adverse effects to consumers on this one product, even taken together with the potential for market price rises on some low-volume products discussed in the preceding paragraph, are sufficient to support an adverse public interest finding against the merger as a whole.

Interests of growers

7.40. Concern was expressed by growers about the effects of the merger situation on the quantities of produce Hillsdown would require and about the contract terms offered. Although Anglia obtained some supplies of carrots and potatoes through merchants, most of Hillsdown's purchases, and both companies' purchases of peas and green beans, were obtained under contract from a relatively small number of growers or groups of growers. Most supplies of soft fruit, including raspberries, were also obtained under contract. For much fresh produce, particularly peas and soft fruit, growers have to be located close to the canning plant or have to make arrangements to chill their produce for transport. Growers have some scope, particularly when given some notice, to switch from producing for canning to producing for freezing or the retail market, or can move to supplying other products. These other markets, however, are themselves limited and, for raspberries in particular, may also be influenced by the effects of the weather on the quality of the fruit.

7.41. Before the acquisition Hillsdown and Anglia had both adjusted contract terms in 1990 and in 1991 for peas, and in 1991 for raspberries, so that part of the payment for the crop was phased over the ensuing selling season, instead of being paid within 28 days of delivery of the produce. We were told that these parallel moves were not introduced by agreement between the two companies but were independent responses to market situations in an industry where arrangements offered by the different buyers operating within the same area quickly became known. Hillsdown told us that its demand for vining peas, and consequently the terms offered, had been affected in 1991 by an overhang of canned stocks. Demand in 1992 was expected to improve and it had contracted to buy from all Anglia's previous suppliers except one which had itself withdrawn. Hillsdown told us that because of the improved market situation and increased demand it was offering improved terms for both peas and raspberries for the 1992 season.

7.42. In considering the effects of the acquisition on vegetable growers, and particularly growers of vining peas, we note that most operate on a large scale. Once Anglia ceased to buy their produce they would have been forced in any case to seek other outlets or adjust production. Hillsdown has offered contracts to growers previously supplying Anglia and the terms and quantities agreed reflect its increased requirements for 1992. We do not consider that the merger has had, or can be expected to have, adverse effects in this respect.

7.43. We received a good deal of evidence expressing concern over the future of United Kingdom raspberry production (see paragraphs 5.3 and 5.4, 5.72 to 5.75 and 5.85 to 5.88). United Kingdom commercial raspberry production is concentrated in Tayside where there are over 300 growers, many with small acreages which would not produce an economic livelihood if switched to other products. Few growers have more than 20 hectares and most between 5 and 20 hectares. Returns over the past two seasons have been poor because of Eastern European competition in the traditionally important German market and the effect of bad weather in reducing yields. Acreage for 1992 has been cut by about one-quarter but total production will fall by less if yields recover to satisfactory levels. Comparatively small amounts of raspberries of the highest quality have been sold on the fresh market. Raspberries of slightly lower quality have been frozen, although total freezing capacity is limited. Growers have relied, however, on canning

demand, which gives better returns than the market for raspberry pulp, for a major part of sales in recent years. Growers were thus concerned that the sale of Anglia left them effectively with a single major buyer for canning raspberries, apart from the small quantities canned outside the immediate area by Stratford at its Falkirk plant and by W A Baxter & Sons Ltd at Fochabers. Growers were even more concerned by the announcement at the end of 1991 that the Brechin canning plant was to be closed.

7.44. Hillsdown told us that purchases of raspberries in 1991 by Hillsdown and Anglia had been affected by poor weather and by the strong competition from Yugoslav supplies in the German market which takes a large proportion of raspberries canned in Scotland. However, contracts were being offered in 1992 for larger amounts of raspberries than in the two preceding years and assurances had been given to growers that the Brechin plant would if necessary be opened to deal with them. Hillsdown itself was concerned about the economic situation of raspberry growing since the economics of the Forfar canning operation would be at risk if further cut-backs in acreage threatened raspberry supplies for canning.

7.45. The Tayside raspberry industry is clearly suffering from considerable difficulties, which are recognised in the draft proposal recently published by the EC Commission for support to raspberry processing (see paragraph 4.45). These difficulties, however, are not caused by the acquisition, although this has understandably added to growers' anxieties. Hillsdown, as the single remaining buyer of raspberries for canning on any scale, may be able to negotiate slightly more favourable terms with growers than when Anglia was an alternative purchaser. The main determinant of contracted prices and quantities, however, will continue to be demand for the canned product. ABF made clear that, if the negotiations with Hillsdown had failed, it would have withdrawn from canning. We cannot assess what would have been the growers' response if Anglia had then offered the Brechin canning factory to them, but they would still have been heavily dependent on a single substantial canner, and on that canner's estimate of the demand for canned raspberries, in order to dispose of their crop. In all the circumstances we do not consider that the effect of the acquisition on the raspberry market is such as to justify a finding that the merger situation as a whole is against the public interest.

Employment

7.46. The closure of Anglia's King's Lynn canning factory led to the loss of 370 jobs and the suspension of canning operations at Brechin, together with the transfer of ambient meals activity from Kilwinning to Brechin, resulted in the net loss of 91 jobs. These losses have, however, to be set against the position if the acquisition had not taken place. ABF made it clear that if no buyer had been found the entire operation would have been closed down, and told us that it would not have been possible to continue ambient stored meals production by itself.

7.47. We received a complaint in general terms from one union of the three operating at the King's Lynn plant, Manufacturing Science Finance (MSF), about the pension arrangements in connection with the acquisition which it considered had put pressure on its members to transfer to the Hillsdown scheme, to their disadvantage. We received details of their schemes from both Hillsdown and Anglia. Hillsdown told us that it had explained its scheme fully to the employees concerned and arranged for independent advice and counselling. The schemes differ in ways which make overall comparison difficult and require individuals to assess their own circumstances. On the evidence we have received we do not think that Hillsdown acted unreasonably.

Efficiency gains

7.48. Hillsdown described the gains in efficiency and cost reduction that it hoped to make from the acquisition. The main component in cost reduction is expected to arise from achieving production closer to plant capacity.

7.49. Hillsdown also referred to benefits from economies of scale and investment. While economies are being achieved by merging headquarters and support activities and reorganising warehousing and distribution, the canning process itself offers little scope for economies of scale when capacity is increased by installing new lines. The new investment that Hillsdown is currently undertaking is primarily to meet health and environmental requirements, eg the installation of new effluent systems. Hillsdown referred in its submission in general terms to the possibility of enhanced economies of scale enabling it to compete on the European market.

Disposal of stocks

7.50. Hillsdown told us that a main reason for acquiring Anglia had been to ensure that the latter's substantial stocks were released to the market in an orderly way. It drew attention to the problems on prices caused by the release of Del Monte stocks in 1987, when that firm had withdrawn from canning in the United Kingdom, and the consequent destabilising of the market. Hillsdown told us that the effects on prices of releasing Anglia's stocks would have been damaging but temporary. The size of the stocks taken over had been such that Hillsdown had in any event had to accept lower margins on disposals than it had hoped to achieve. While the merger situation may have deprived some consumers of the benefit of some immediate price cuts if Anglia had closed down, we doubt whether the phased release of stocks by Hillsdown will have affected the long-term price level or that it has either benefited or harmed the public interest.

Ambient stored meals

7.51. The ambient stored meals market had its origins in the mid-1980s. It has grown rapidly, but is still a comparatively small and developing market with a turnover in 1991 estimated by Hillsdown at about £25 million. Ambient stored meals of the type produced by Hillsdown and Anglia are what are known as 'wet' meals. They are recipe meals or snacks packed in plastic pots or trays which simply require microwaving, or heating by other means, before eating. The recipe meals compete most directly with chilled and frozen meals, and perhaps to a lesser extent with canned meals, and offer the convenience of a long shelf life. The snack varieties are in competition with 'dry variety' ambient snack meals which are ready to eat after hot water has been added.

7.52. After the merger Hillsdown transferred its own ambient stored meal production from Kilwinning to the Anglia factory at Brechin. The combined Hillsdown and Anglia share of the market in 1991 is estimated by Hillsdown to have been about 28 per cent, of which Anglia supplied 9 per cent. Both companies produced only own-label meals, all supplied to the major multiples, for which Hillsdown and Anglia provided about 70 per cent of their total own-label supplies. Hillsdown also produces under contract for other manufacturers of ambient stored meals. There are a number of other substantial suppliers. These include Brooke Bond Foods Ltd and Heinz, the market leaders in branded meals, which, according to Hillsdown estimates, in 1991 held about 27 per cent and 15 per cent respectively of the total market.

7.53. The cost of setting up a line, including preparation, packing and sterilising, has been estimated by Hillsdown at perhaps £1 million or less and entry to the market is open. The main need appears to be to develop the skills and technology to meet the taste and quality requirements of the larger retailers. None of the suppliers, retailers or other parties which gave evidence to us expressed any concerns about the effects of the acquisition in this field.

7.54. We considered whether the acquisition and Hillsdown's increased market shares raised any public interest concerns, in particular whether as a result choice of meals was likely to be limited or Hillsdown was likely to be able to raise prices. Given the structure of this growing sector of the market and Hillsdown's reliance on the major retailers as customers we saw no reason to expect any such consequences.

Conclusions

7.55. In our consideration of the potential public interest issues arising from the merger we have borne in mind the ABF evidence, which we accept, that if the sale to Hillsgdown had not taken place ABF's Anglia canning interests would have been closed down. The elimination of Anglia as an important supplier, resulting in some reduction of competition and capacity, would have happened in any event and cannot therefore be considered as a consequence of the merger. We believe that the most important issue we considered is the effect of the acquisition on competition in the retail market for canned vegetables and fruits. We have noted the high market shares for certain types of seasonal canned vegetables and fruits which Hillsgdown, at least initially, held after the acquisition (to which we have drawn attention in paragraph 7.25) and which we would normally expect to give rise to a high degree of market power.

7.56. We consider that a number of factors will restrict the degree to which Hillsgdown may be expected to exploit its position. We recognise that the acquisition has given Hillsgdown the opportunity to secure much of Anglia's business which might, if Anglia's business had been closed down, have been more accessible to competing canners. Little of Anglia's business, however, was tied to firm contracts and Hillsgdown is likely to lose some at least of its enhanced market share because of major customers' wish to second-source. The buying power of the multiples, particularly on high-volume own-label products, combined with the availability of supplies from other United Kingdom canners, and from importers, is likely to prevent Hillsgdown securing significant price increases on most products as a result of the acquisition. For a few low-volume products there may be some scope for modest price increases but this will be restrained by the fact that the overall demand for canned fruit and vegetables is declining. We recognised the scope that Hillsgdown has to increase prices for canned raspberries. We did not, however, consider that the adverse effects arising on this part of Hillsgdown's business, together with the possible adverse effects on some other low-volume products, were sufficient to support an adverse public interest finding against the whole merger (see paragraphs 7.38 and 7.39).

7.57. We noted the difficulties of raspberry producers. We conclude that these were only marginally related to the merger situation and were primarily caused by other factors. We did not consider that the merger had adversely affected other growers (see paragraphs 7.42 to 7.45).

7.58. On employment, we consider that if the acquisition had not taken place Anglia would have withdrawn from canning and the consequent loss of jobs would have been as great, if not greater (see paragraph 7.46).

7.59. We do not find that Hillsgdown's acquisition of Anglia's ambient stored meals interests has any adverse competition or other public interest consequences (see paragraph 7.54).

7.60. Accordingly we conclude that the merger situation does not, and may not be expected to, operate against the public interest.

Further observation

7.61. During the inquiry we discussed, on a purely hypothetical basis, the practicability of various remedies if an adverse public interest finding were to be made. Hillsdown told us (see paragraph 6.98) that, in the circumstances of an adverse finding relating to the position of raspberry growers, it would be prepared to offer an undertaking that if it wished to dispose of the canning factory at Brechin it would offer it first to Scottish raspberry growers at a fair commercial price, having regard to other potential uses of the site. Recognising the concerns of the raspberry growers over Hillsdown's increased market share, it would also be prepared to offer to can raspberries surplus to its own requirements at Forfar for the growers, at cost plus a handling charge, as long as Hillsdown was able to keep the Forfar cannery operative throughout the year. It told us that it was already committed to a continuing dialogue with growers on a regular basis at which market developments and other relevant issues would be discussed. As we have found that the merger situation does not operate and may not be expected to operate against the public interest, the question of remedies does not arise. We welcome, however, the indications that Hillsdown gave us of its intention and willingness to co-operate with and assist the growers.

D G GOYDER (*Chairman*)

A G ARMSTRONG

I S BARTER

F E BONNER

J D MONTGOMERY

S N BURBRIDGE (*Secretary*)

27 May 1992