

6 Views of other interested parties

Contents

	<i>Page</i>
Introduction	87
Glass-sand suppliers	87
Hanson Aggregates.....	87
Hugh King & Co	88
Tarmac Northern Ltd.....	89
Glass manufacturers	89
Allied Glass Containers Ltd	89
Beatson Clark plc	91
Structural remedies.....	91
Pilkington plc	92
Rexam Glass Barnsley Limited	92
Rockware Glass Limited	94
United Glass Limited.....	95
Trade associations and other bodies	96
The British Glass Manufacturers Confederation	96
Forest Enterprise	96
Standing Committee of the European Glass Industries	97
Government departments	97
Department of Trade and Industry	97
Health & Safety Executive	97
Scottish Executive	98
Local authorities	98
Fife Council.....	98
Others	98
Anglo Pacific Group PLC	98

Introduction

6.1. We invited views from a wide range of third parties including glass-sand suppliers; aggregate suppliers; glass manufacturers; glass recycling companies; trade associations; government departments; and local authorities. This chapter summarizes the evidence we received. We held hearings with ten of these parties.

Glass-sand suppliers

Hanson Aggregates

6.2. Hanson Quarry Products Europe Limited, trading as Hanson Aggregates, which gave written and oral evidence, said that its glass-sand quarry was in Reigate, Surrey. Hanson had another industrial sand quarry at Wrotham in Kent that produced a slightly different grade of material suitable only for coloured glass and used locally by one small glassworks. Hanson also had an operational lease to 2020 and planning permission to 2011 on Blubberhouses quarry in Yorkshire. The site had been mothballed since 1991 when the silica-sand operations had been closed down. In its view, and in the light of the

costs of new plant and environmental works, it was highly unlikely that Blubberhouses would economically reopen within the current lease period.

6.3. Hanson told us that, around the end of 1999, it had been in discussions with HMC/SMC about the possibility of a swap of HMC/SMC construction-sand business for Hanson's industrial-sand interests. This was dropped once Sibelco's interest in acquiring HMC/SMC became known.

6.4. Hanson said that the glassmaking industry was committed to the use of cullet on environmental grounds and in response to pressure from alternative packaging products. The final quality of product determined the extent to which cullet could be substituted for sand. There was no obvious relationship between the price and supply of cullet and the price of sand, except that it put greater demand on the quality of sand required.

6.5. On the subject of imported silica sand, Hanson said that the only realistic source was Sibelco in Belgium which currently supplied various applications in the UK. In its view, the price of sand brought by barge from Belgium had provided an effective cap on UK prices, given the size of Belgian reserves.

6.6. Hanson told us that it had expressed interest when the Fife companies had been for sale. It had prepared a valuation, but had had substantial concerns about the details circulated by Warrior at that time. However, it had seen potential benefits in ownership, in particular to provide a future for its industrial-sands business or to extend its life by substituting materials from Reigate with those from FSS. It had also noted the potential for business development should the adjacent Devilla Forest reserve become available. Hanson had decided not to make a formal offer because any valuation it might make would be below the asset value stipulated by Warrior. Despite this it had visited FSS in October 1999. Hanson had then discovered two practical problems which led it to speculate that the value of the business could be nil or negative. The first problem had been a substantial restoration liability arising from acid leaching and the second concerned the outcome of outstanding planning applications. Guidance from Hanson's divisional corporate development director, based on prospective cash flows, had suggested a value of £2.5 million. Hanson had held a further inconclusive meeting with Warrior in November 1999 and did not respond to the final opportunity to bid. In Hanson's view, FSS had been a failing firm and likely to go out of business reasonably soon if it had not been acquired.

6.7. Hanson believed that the merger would provide for price increases because one company would effectively control both domestic and import prices. There were two factors. First, unlike Anglo Pacific, Sibelco might apply rational pricing criteria and seek to cover the true costs of the FSS business and, secondly, the undoubted price depression caused by FSS would be removed from the market. The price of FSS sand sold to Yorkshire was unsustainable, had encouraged misuse of a valuable reserve and did not properly provide for future exploitation of this reserve. Thus prices were likely to rise after the merger, but the effect might be beneficial in protecting the long-term future of the UK glass industry.

6.8. On the question as to whether it would consider the acquisition of FSS if the CC were to recommend its divestment, Hanson said that it would. However, it would only be interested if the purchase price fully reflected the business problems that Hanson had identified on its visit to the site. Its interest would also be subject to its being able to secure adequate returns and to main board approval of both strategic and financial implications. Asked whether it would use FSS for construction sand only, Hanson said that it had not sold industrial sand into construction markets, nor would it do so, as it would expect such sand to fetch a higher price when sold into the industrial sand market. It told us that it would always invest in value-added processes if such investment met its investment criteria, which were in line with those of any other rational supplier in its industry. Hanson rejected the suggestion that it would sell sand as quickly as possible into any market.

Hugh King & Co

6.9. Hugh King, whose quarry is at Hullerhill in Ayrshire, said that it was a family business in existence for nearly 150 years. It employed 25 people from the local community which, it said, already had high levels of unemployment because of the recent closure of other businesses. Hugh King had general concerns relating to the merger. It currently supplied moist silica sand to Rockware, the building trade, and, as the only independent high volume drier in Scotland, it also supplied dried silica sand to the construction industry and to a number of foundries. Prior to the merger, FSS, which had only a small-volume drier had supplied a specialized market.

6.10. Hugh King said that Sibelco already owned the Levenseat quarry near Fife (through the take-over of HMC/SMC) and this also had a high-volume sand-drying plant. Devilla, another nearby silica-sand quarry, supplied in-house to United at Alloa. This meant that Hugh King provided the only competition to Sibelco in Scotland. It believed that FSS had been loss making but that, given the finite market share that existed, Sibelco could return it to profit by raising prices or by aggressively seeking market share from Hugh King.

6.11. Following our Remedies Statement (see Appendix 2.2) Hugh King told us that it had for many years supplied Rockware with coloured glass-sand. It had received notice from Rockware Glass that its contract was to cease from the end of March 2001 because FSS/Sibelco would be supplying the sand at a lower price. Hugh King believed that this lower price indicated predatory pricing. In the event, Hugh King had not actually lost the contract because the specification had been relaxed and Rockware had accepted a cheaper, non-blended sand. However, Hugh King believed that it might be forced out of certain markets if FSS/Sibelco continued to pursue this aggressive policy, and as a result there would be no competition in Scotland. It believed that the merger was not in the interest of the consumer and it would support a structural remedy.

Tarmac Northern Ltd

6.12. The Tarmac Group was formed in March 2000 as a result of the acquisition of Tarmac plc by Anglo American plc. In the UK it is split into four regional businesses including Tarmac, which gave written evidence and attended a hearing. The Group's main activity is the production of aggregates, asphalt, ready-mixed concrete and concrete products. Tarmac said that its commercial strategy for sand was segmented into two distinct markets (sand for construction aggregates and sand for non-construction markets) because of their distinct quality requirements.

6.13. Tarmac's Loch Aline operations in Scotland supplied high-purity silica sand for the manufacture of tableware and crystal. It competed aggressively with Sibelco and Hanson in the higher-purity markets, but not directly with FSS which operated at the lower-quality end. Tarmac also competed with Sibelco in the foundry-sand market, supplied by its operations at Eaton Hall, Cheshire.

6.14. Tarmac said that cullet was used on a complementary basis rather than a sand substitute in the total glass mix. Although cullet did not affect the price of sand, it did affect the quality of the sand required in the batch mix, in that sand with lower iron content was required and this was more expensive.

6.15. In May 2000, based largely on the information memorandum provided to it in 1999 and its subsequent investigations in 1999, Tarmac had given an indicative price to Anglo Pacific for the Fife companies. No further negotiations had taken place on the indicative price. Tarmac said that, because mineral extraction was its core business, it would be able to operate the Fife deposit as efficiently as Sibelco. It would be interested in acquiring FSS only if the terms of the acquisition took account of the subsequent investment required and would produce a return for its shareholders. Tarmac said that the only reason it would have for acquiring the quarry would be for the production and supply of glass sand. It also said that it would not anticipate that a glass manufacturer would integrate backwards into quarrying glass sand.

6.16. Asked about the economic consequences of the merger, Tarmac said that it could not speculate on what these might be as they would be dependent on Sibelco's commercial policy.

6.17. Commenting on the Remedies Statement (see Appendix 2.2), Tarmac said that behavioural remedies might not be effective in view of the size of Sibelco's market share and might themselves distort competition.

Glass manufacturers

Allied Glass Containers Ltd

6.18. Allied, a wholly-owned subsidiary of Associated British Foods plc, gave written evidence and attended a hearing. It told us that it operated two sites, in Leeds and Knottingley, where it made glass

containers for the food and liquor markets. Its Leeds plant was currently supplied by Hanson from its Reigate quarry and its Knottingley plant by HMC/SMC from Oakamoor under a three-year agreement starting in August 1999. Allied said that, although it would prefer to buy from local sources, economics was the ultimate deciding factor.

6.19. Allied considered that the ability to source from two or three suppliers had enabled it to apply competitive pressure on the market leader, HMC/SMC, to keep prices down. It said, however, that its willingness to change supplier tended to be limited by transport-cost considerations, as well as the possible risk to quality of moving supply. It told us that it was not concerned about the individual components of the price, but only the final delivered price.

6.20. Allied told us that from 1993 to 1995 it had purchased sand for its Knottingley plant from FSS satisfactorily. In 1996/1997 quality problems had begun to occur and these had continued until 1998. Allied had attributed these problems to the fact that FSS had been attempting to push too much volume through the quarry. It had essentially been a matter of mismanagement of the site. It had visited the site and agreed that FSS should increase the frequency of test results it supplied to Allied, to monthly and then weekly supply. It had also initiated more direct communication between staff at its plant and the quarry operators. During 1999, the position had appeared to improve, but by then Allied had entered (in August 1999) into a new three-year agreement with HMC/SMC for supply to Knottingley. Allied told us that it had, at the same time, retained its long-standing contract with Hanson for supply to its Leeds plant, because it did not want to threaten the viability of one of the key glass-sand suppliers, thereby leaving the market to HMC/SMC and FSS. Allied told us that it had not been concerned that withdrawal of its contract with FSS would put that business in jeopardy, because Allied had attributed FSS's problems to a failure of management rather than to a fundamental failure of the business itself.

6.21. Allied would certainly consider buying from FSS again in future, provided it could be satisfied about the quality of the sand. It told us that, as a relatively small buyer, it had the advantage over its glass-manufacturing competitors of being able to move its business around the smaller sand producers (Hanson and FSS), which enabled it to secure more competitive prices. Allied took the view that, by contrast, its larger competitors had no alternative but to buy from HMC/SMC because of the more substantial volumes they required on a continuous basis. Allied had thought that it would secure a less favourable price had it been forced to buy from a single dominant supplier.

6.22. Allied said that the addition of cullet was beneficial in reducing the requirement for virgin raw materials including silica sand. However, in clear flint glass, cullet usage was limited by the requirement for extra clarity in the finished product. Cullet contained more impurities than virgin raw materials. Clear cullet was also the most difficult to obtain as it was the lowest-yielding colour in the bottle-bank system.

6.23. Allied told us that it had not approached the Fife companies when they had been up for sale and it would not be interested in acquiring FSS if it were to become available.

6.24. Allied said that, by acquiring HMC/SMC and FSS, Sibelco had gained a dominant share of the UK silica-sand industry leaving only one small supplier, Hanson, as a competitor. These acquisitions, together with the fact that Sibelco dominated European glass sand and effectively controlled the only potential source from overseas, meant that Sibelco had complete control of reserves and processing of 90 per cent of the sand openly available to UK glass manufacturers. If the merger went ahead Sibelco would be able to act independently of market forces and raise prices without competition. The extent of the increases possible would depend on Sibelco's view of what the glass-container market could stand without losing too much volume. Allied thought that Hanson would be likely either to follow Sibelco's lead on pricing or to exit the market. The wider economic consequence of the acquisition was that the privately-owned Belgian business would control major, long-term, mineral resources in the UK, creating a great deal of uncertainty for all users of silica sand.

6.25. In response to our Remedies Statement (see Appendix 2.2) Allied said it was aware that Sibelco was probably the most proficient operator available to operate the FSS deposit effectively and Allied would therefore prefer a behavioural remedy to a structural one. However, it believed that behavioural or structural remedies would be preferable to the potentially weaker suggestion of monitoring by the DGFT.

Beatson Clark plc

6.26. Beatson Clark, which is owned by the TT Group plc, gave written and oral evidence. It said that its main activities were the manufacture and sale of glass containers for the pharmaceutical, food and drinks industries. It told us that transport costs were forming an increasing proportion of the cost of sand and as a consequence sourcing in general was as close to end-use as possible. The ability to change suppliers had been limited by quality and volume considerations, with suppliers constrained by planning consents. The importance of this basic raw material meant that there was a strong tendency for glass-makers to become locked in to a proven quality supplier.

6.27. Beatson Clark, having been an exclusive customer of FSS since 1985, had switched to HMC/SMC on [] basis in 2000, principally because there had been problems with the quality of the sand supplied by FSS. It had first experienced these problems in 1998 and attributed them to a fundamental mismanagement of the quarry operations. Despite the problems Beatson Clark had been negotiating with FSS for a five-year supply contract some 18 months prior to the acquisition of FSS by Sibelco. FSS had been reluctant to agree to the price terms proposed and Beatson Clark had eventually agreed a four-year [] supply contract with HMC/SMC, the price fixed for the first two years. Beatson Clark told us that during their longstanding relationship FSS had always been cheaper than HMC/SMC.

6.28. Beatson Clark told us that it had not bid for FSS when it had been up for sale. If the business were available now it would not be interested in the purchase. Beatson Clark took the view that quarrying of sand was not its area of expertise.

6.29. Beatson Clark said that the UK had a poor record in generating cullet through recovery programmes. The industry currently had available for processing less than 30 per cent of the glass consumed in the UK and there was no indication that the figure would increase significantly over the next few years. As far as price was concerned, the container industry continued to pay more for a tonne of cullet than for batch materials in an attempt to encourage supply.

6.30. Beatson Clark believed that after the merger prices would almost certainly rise as a result of Sibelco's market strength and the limited scope for competition from other suppliers. In addition UK prices had traditionally been lower than in other parts of the EC, a position that it believed Sibelco would seek to redress over time. Beatson Clark told us that it was anticipating difficult discussions on price with HMC/SMC when its current contract came up for review. The loss of FSS as a competitor would weaken the ability of the glass producers to resist price increases by HMC/SMC.

6.31. In response to our Remedies Statement (see Appendix 2.2) Beatson Clark made the following comments.

Structural remedies

6.32. It was difficult to comment constructively without knowing what comprised the Fife companies in addition to their sand activities. While the output from the sand quarry had a variety of end-users in addition to glass manufacturers (it was obviously used as an aggregate and in the provision of bunkers for golf courses and for water treatment) Beatson Clark believed that the main value of the output was in the application to the glass industry. Anglo Pacific seemed to have found difficulty in operating profitably and in the present market conditions it was difficult to see how the business could survive on its own.

6.33. Beatson Clark was not aware of the extent of the Sibelco interests so it was not easy to comment on what should be divested.

6.34. Regarding the possible behavioural remedies Beatson Clark said that:

(a) In principle it thought that the regulation of prices stifled competition and removed the possibility of opportunity purchasing.

(a) Preventing discrimination by Sibelco in respect of either price or terms of supply would not harm Beatson Clark.

- (b) Increasing price transparency would give suppliers greater certainty over their absolute position as well as the relative position in the supply chain.
- (c) Ensuring that the haulage element of delivered prices for glass sand accurately reflected the transport costs involved would lead to prices being always ex-works which would reduce the incentive by the supplier to contain or control haulage costs.

6.35. Beatson Clark believed that any value this might have would depend on how the information was put to use by the OFT.

Pilkington plc

6.36. Pilkington gave written and oral evidence. It told us that it had manufacturing operations in 25 countries and sales in 130. Its three UK plants in St Helens, Lancashire, used the float process—a method of making high-quality flat glass in large quantities. The plants were currently supplied by HMC/SMC’s quarry at Chelford, Cheshire. Pilkington said that its supply chain was designed for a local supplier and its raw material stocks were very small. It did not believe that any other UK supplier had sufficient production capacity to meet its total requirements, although a number of sources could meet its specification. In considering alternative suppliers, freight costs would be the key issue. Imported sand was unlikely to be viable because of the transport costs. Quality, capacity and reserves were other important factors.

6.37. Pilkington believed that reserves at Chelford were likely to run out in about five years’ time. Asked whether it would then consider FSS as a potential source of supply, it said that its research had shown that the silica content of the sand there would meet its requirements. However, the problem was not with the sand reserves but with the processing equipment. To supply sand of Pilkington’s specification the business would need to invest in new equipment at an estimated cost of between £2 million and £3 million.

6.38. Pilkington said that it kept itself informed of suppliers’ activities. Although quarry management was not its core business, if a particular quarry came onto the market it was possible that it might be interested in the acquisition in order to secure security of supply.

6.39. [

Details omitted. See note on page iv.

]

6.40. Pilkington believed that Sibelco was a thoroughly professional and competent company. However, it was concerned over the company’s expanding activities and over Pilkington’s growing dependence on the Sibelco group [

Details omitted. See note on page iv.

].

6.41. Pilkington said that, when the Fife companies had been offered for sale, it had not been interested in the acquisition and it was still not interested. However, if the CC recommended divestment, Pilkington might reconsider its decision. It believed that other similarly-sized sand purchasers might also be interested in FSS. An alternative recommendation which Pilkington thought the CC might consider was the imposition of a form of price control where the company was closely monitored and had to justify price increases by reference to cost. The company would be allowed to make a return on its investment but its contracts would be limited to a period specified by the regulator.

Rexam Glass Barnsley Limited

6.42. Rexam is an operating company of the Rexam plc group which, Rexam told us, had moved from having interests in diverse product markets to focus on consumer packaging on a worldwide basis.

Rexam gave written and oral evidence. It said that its plant where it produced glass containers for the food, soft drinks, brewing, wines and spirits and pharmaceutical industries was in Barnsley, South Yorkshire. In recent years the two suppliers which had competed most for its business had been HMC/SMC and FSS. The competition between them had kept HMC/SMC's prices lower than they would otherwise have been; indeed Rexam had taken a strategic decision to support FSS with volume contracts because of the market strategy of HMC during the early to mid-1990s. This strategy had been based on HMC's view that, because of its high market share, all glass manufacturers would have to deal with it and accordingly its attitude to price had been robust. Rexam had not found Hanson competitive, largely because of the high transport costs from Reigate to Yorkshire. Rexam told us that transport economies depended on the availability of two-way traffic flows, with vehicles hauling sand to Yorkshire and finding return loads to transport back. There were fewer such return loads from Barnsley to Reigate than from Barnsley to Fife.

6.43. Rexam said that, having assessed the quarry's financial viability, it had entered into a three-year contract with FSS (from 1995 to 1997) for the supply of flint-glass sand. Rexam had continued to buy some flint-glass sand and all its coloured-glass sand from HMC/SMC. In 1998 it had entered into a two-year contract making FSS its sole flint-glass sand supplier. However, in 1999, because of problems with the moisture content of FSS's sand and the volume supplied, Rexam had been forced to buy emergency supplies from HMC/SMC. In Rexam's view, this was the result of FSS accumulating insufficient stocks to enable the sand to dry out on site before being delivered to customers. Rexam attributed these problems to poor management of the site. However, it told us that proper management had been restored over the past 6 to 12 months. Rexam currently bought sand from FSS and from HMC/SMC [

Details omitted. See note on page iv.

]. FSS was fundamentally a low-cost operation and did not need the acid leaching facilities required by HMC/SMC. Rexam believed that the quarry needed to concentrate on basic volume rather than, for example, producing small amounts of coloured-glass sand.

6.44. In Rexam's view the basic structure of the processing plant at Burrowine had been satisfactory, but there had been a failure to invest in comparatively minor and straightforward equipment that would have improved the overall efficiency of the operation. Rexam gave as an illustration the lack of adequate back-up water pumps; typically when the single pump broke down, the plant was brought to a standstill. This could easily have been remedied. What had been lacking, in Rexam's view, were simple measures to address foreseeable contingencies of this sort.

6.45. Rexam told us that the main challenge affecting the UK glass-container market was that it was currently in oversupply. Price competition was fierce and would be for the foreseeable future. Such competition had already halved the industry's profitability in the last four years. Rexam said that this situation was exacerbated by consolidation of its customer base which had concentrated purchasing power. Rexam was driving down its cost base and trying to add value by being a market leader in glass decoration techniques. This would only be successful if the cost base of the total operation were competitive.

6.46. Rexam said that sand was a relatively low-cost material on an ex-works basis and hence transport costs represented a significant proportion of the delivered price. Transport costs from mainland Europe were high in comparison to internal UK transport rates and quotes previously obtained from Sibelco in Belgium for delivery to the UK had been uncompetitive. Rexam therefore considered that sand for the glassmaking market was at best national.

6.47. Rexam believed that the use of cullet would continue to rise as a consequence of government legislation. It was a substitute for, and more energy efficient than, virgin batch materials. Its price was linked to the price of virgin raw materials and therefore influenced by sand prices.

6.48. Rexam plc had not bid for the Fife companies because operating a quarry had not fitted with its group strategy. It was unlikely to be interested in backward or vertical integration. Rexam believed that, if it had not been acquired by Sibelco, FSS would still be a serious competitor to HMC/SMC.

6.49. Rexam said that the presence of FSS had provided competition in UK prices of bulk sand. [

Details omitted. See note on page iv.

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Rockware Glass Limited

6.50. Rockware Glass Limited, a subsidiary of Ardagh Plc an Irish-based company, gave written evidence and attended a hearing. It told us that it produced flint-, green- and amber-glass containers mainly for the spirits market, at its plants in Doncaster, Knottingley, Worksop and Irvine. Rockware said that it competed on quality and service, but price pressure from customers responding to demands from the retail sector was high. The high strength of sterling was causing prices to fall in response to cheap imports and, combined with overcapacity in the UK market, was causing a major decline. Rockware said that it expected one of its competitors to lay down additional production capacity in the UK. This would exacerbate an oversupply against demand and force prices down for glass containers.

6.51. Rockware said that, historically, the price of cullet was set against the price of batch materials and therefore would be used on a complementary basis rather than as a substitute for sand. Any significant substitution was not viable in the short term because of the current low level of recycling. However, the use of cullet was on the increase and a number of initiatives were being put in place to use, collect and make available more cullet in the longer term. This would probably reduce the market for glass sand. However, a new glass-container plant was planned at Ince, Lancashire, Saint-Gobain had opened a float-glass plant at Eggborough, and a third party had sought planning application for a further plant at Goole. If these developments reached fruition, the demand for glass sand could potentially increase.

6.52. Rockware told us that generally neither Hanson nor Tarmac had shown any great interest in supplying its plants. It chose to dual source, purchasing flint-glass and coloured-glass sand for its English plants from HMC/SMC and all the flint glass sand for its Scottish plant from FSS. This was to protect itself against supply contingencies and because FSS was the main competitor to HMC/SMC. It noted that in the past the quality of FSS's sand had been inconsistent. In particular, in 1998/99 there had been problems with moisture and high iron levels, which Rockware believed were the result of mismanagement of the quarry rather than the unsuitability of the sand itself. The problems had been fully resolved after a change of management in 1999. Rockware told us that it had carried out a thorough audit of the FSS site and its operations in 2000 and it had been apparent that investment had been put into the plant. It currently had a three-year contract with FSS at prices that were [§§] per cent below HMC/SMC's prices for sand of a comparable quality to that being delivered to Rockware's plant in England. It was now fully satisfied with the quality and service and envisaged increasing the amount of sand it bought from FSS.

6.53. Rockware believed that the main driver for bulk sand prices in the UK had been the presence of FSS as a credible alternative to HMC/SMC. Rockware had had a long relationship with HMC/SMC and had been concerned over its acquisition by Sibelco. It noted that, although HMC/SMC had previously spoken of passing on productivity benefits to Rockware in 2001, in discussions after the acquisition it had indicated that prices would increase. Rockware was concerned that the acquisition of FSS would enable Sibelco to raise prices as it wished because there were no feasible alternative sources of supply for the amount required in the UK. Imported sand could cost twice current prices. Increasing sand prices would almost certainly flow through to increased cullet prices and escalating costs for the glass industry.

6.54. Asked whether it had considered buying the Fife companies, Rockware said that it had not bid for the business and would not be interested in running a quarry operation. It thought it unlikely that glass manufacturers would backward integrate into sand quarrying. However, if owning a quarry was the only way to acquire an alternative source of supply, Rockware might have to reconsider its position. It said that the entry barriers and the long-term trials to gain glass manufacturers' approval would deter new potential suppliers and believed that this had been clearly demonstrated by the closure of the Blubberhouses quarry five to six years previously. The quarry had been developed about 10 to 15 years ago but had never produced enough volume to be viable and had eventually closed.

6.55. In response to our Remedies Statement (see Appendix 2.2) Rockware made the following comments.

6.56. Regarding the structural remedies:

- (a) The FSS quarry should be divested from the Sibelco group to ensure that a viable glass sand operation could compete with Sibelco in the UK. As indicated (see paragraph 6.52), Rockware would almost certainly increase the amount purchased from FSS as, it believed, would other glass manufacturing companies. The increased volume would increase the attractiveness of the FSS quarry to other potential purchasers.

(b) In the event that FSS was retained by Sibelco, the other alternative would be to divest the quarries previously belonging to Hepworth from Sibelco. At a minimum the King's Lynn flint-sand quarry would need to be sold to a third party. Rockware believed, however, that as the King's Lynn quarry had fewer resources than FSS and the method of processing the sand was more costly, it would not be as attractive as the FSS quarry to any potential purchaser.

6.57. The proposal to regulate or fix the price charged by Sibelco either as a fixed ex-works price, relative to tonnage or a spread between a fixed low and high price, would not encourage Sibelco to make its business more efficient and pass on these savings to customers. Under this type of regime unless it was an X-% (where X is a public index such as RPI or PPI etc) this proposal would guarantee, irrespective of the market, a return without the pressure of market forces. Without market forces to promote innovation and efficiencies within the sand business Sibelco would become complacent and have no incentive to improve efficiencies within the business. This remedy would also create an artificial barrier to entry for any potential new entrants.

6.58. Rockware would not favour instructing Sibelco to provide information to the DGFT on the prices for and the terms under which it sold glass sand. Unless the DGFT also took cognizance of the glass market to set prices, it would be reflecting only part of the elements that drove prices in the market place.

United Glass Limited

6.59. United Glass Group Limited is a subsidiary of the US company, Owens Illinois Inc. The principal activity of the Group is the manufacture of flint-glass and coloured-glass containers for the spirits, beverages and food markets. This work is carried out on sites at Harlow and Alloa by the Group's subsidiary, United Glass Limited (United), which gave written and oral evidence. It told us that it used glass-grade low-iron silica sand for which there was no alternative. Sand for use in the Harlow glassworks was currently purchased from Sibelco's quarry at Redhill. The company's own quarry at Devilla Forest was operated solely to supply the Alloa plant. A small amount of the quarry's coproduct was sold for industrial and recreational uses but there were no sales of silica sand. United said that it had three key criteria in the procurement of sand: price stability, security of supply and consistent quality. Location of supply was very important because the cost of moving sand soon outweighed the cost of extracting it. Therefore the market tended to be local rather than national. Transport costs were not particularly volume sensitive but were influenced by distance.

6.60. United said that the Devilla quarry had become increasingly burdened with costs and responsibilities emanating from new and proposed legislation and regulation. Because quarrying was not the company's core business and the quarry might not have been operated as economically as possible, United had considered subcontracting its management to a professional operator. Hepworth had been United's only external sand supplier for several years, and therefore was selected as a possible partner. Talks had begun in 1999 and draft heads of agreement had been agreed on 19 June 2000. However, when Sibelco's acquisition of FSS had been announced, negotiations between the companies had been suspended because United believed that the merger would have a potentially significant impact on both the rationale and economics of the proposed arrangement.

6.61. In United's view, the merger would appear to have little potential impact on its operations because the Devilla quarry supplied all the silica sand requirements for the Alloa plant. FSS had not been an important supplier to United, and therefore any concerns it might have over the merger were general rather than specific. The Sibelco Group was an unknown entity as far as the company was concerned although it supplied some of Owens Illinois' European affiliates, apparently without any significant difficulties emerging.

6.62. United said that, although any reduction in competition for the supply of glassmaking raw materials was potentially unwelcome, there was a synergy and codependence between the sand producers and glass manufacturers which should encourage sensible cooperation. Silica-sand purchasers' main fears were over Sibelco's increased dominance as a result of the merger and therefore its ability to increase prices. Because the silica-sand market was not highly lucrative or attractive to investors, and because entry costs were relatively high, new entrants were unlikely. However, if prices rose, the situation might change.

6.63. Asked whether it had considered buying the Fife companies, United said that it had not. If the CC were to recommend that FSS should be divested, United would still not be interested. It did not know who else might be interested in the purchase but said that any interest would be for strategic rather than commercial reasons.

Trade associations and other bodies

The British Glass Manufacturers Confederation

6.64. The British Glass Manufacturers Confederation (British Glass), which represents the major glass producers and manipulators in the UK, said that its members were becoming increasingly concerned over the dominant position that Sibelco was taking in the UK and in Europe. British Glass stressed that sand for glass should be considered as a strategic raw material because the glass that was ultimately manufactured flowed through to all the major drivers of the UK economy such as the food and drinks industries, construction and building and the automotive industry. Competition in the supply of sand was therefore vital but, unfortunately, the necessary competitive edge was being eroded.

6.65. British Glass estimated that, if the merger went ahead, Sibelco would account for 75 per cent of the UK market. It said that substitution of supply via a change of supplier or by importing was not a viable alternative for its members. The cost of transport was significant to the overall cost; for example, glass sand imported from Northern Europe would be between two and three times the cost of domestically-produced material. In addition, supplies in Europe were highly concentrated in the hands of Sibelco through its links with Quarzwerke. British Glass feared that Sibelco would come to dominate the UK market as it dominated mainland Europe and thence control a strategic raw material throughout the EC and beyond.

6.66. British Glass said that the industry took pride in the amount of recycled glass it was using but cullet was not always available in sufficient quantities to meet its needs and there were certain process limits beyond which cullet could not be used.

6.67. As evidence of the market stance being taken by Sibelco, British Glass said that some of its members had reported that they had had favourable discussions with HMC/SMC about cost reductions in 2000/2001, just before the company had been acquired by Sibelco. Immediately after the acquisition Sibelco had indicated price rises of between 5 and 7.5 per cent. British Glass believed that the merger would be detrimental to competition and against the public interest.

Forest Enterprise

6.68. Forest Enterprise, an agency of the Forestry Commission, said that preliminary discussions had taken place between its mineral consultant and FSS over possible future exploitation of silica sand within the Forestry Commission's landholding at Devilla. Any decision to enter into further legally-binding agreements within the Devilla Forest main block were likely to be influenced by a number of external and management factors, not necessarily relevant to the status of the operator concerned. However, the ability of an operator to work any mineral reserves within a given timescale and to be in a position to meet its obligations in terms of any lease, was important to Forest Enterprise in reaching a decision. It said that it wished to have an operator with a proven track record and with sufficient size and expertise to secure a high level of operational performance and subsequent reinstatement of the site. Forest Enterprise had no reason to believe that Sibelco was any less able to meet its requirements than Anglo Pacific would have been.

6.69. Forest Enterprise said that its only area of concern was that the merger should not have an adverse effect on its ability, as landlord, to command a competitive royalty in future negotiations. A royalty was a payment made by one party wishing to acquire a right from another owning that right. Such negotiations often took place as a result of a competitive tender for an option on a mineral lease. To achieve a market royalty there needed to be competition. HMC/SMC, prior to its acquisition by Sibelco, had enjoyed about 60 per cent of the UK market. Given the Sibelco acquisition of FSS and its resulting dominant position in the area, it was unlikely that market royalties would exist.

Standing Committee of the European Glass Industries

6.70. The Standing Committee of the European Glass Industries (Comité Permanent des Industries du Verre Européennes (CPIV)) was concerned that the merger would increase Sibelco's dominant position in both the UK and Europe. It said that the glass industry required high-quality sand to be supplied at competitive rates. Hence the need for multiple suppliers to ensure fair competition. For end-product quality reasons and cullet availability, the recycling of flat glass cullet was limited to approximately 25 per cent of the glass produced. For container glass, where this share could be higher, cullet was not always available in sufficient quantities to meet industry's needs and its use was limited in certain processes. Thus there was no alternative but to use sand as the main raw material.

6.71. CPIV said that the merger would increase the dominance of Sibelco in the UK and would reduce glass manufacturers' choice of supplier. It pointed out that supplies in Europe were highly concentrated in the hands of Sibelco via its links with Quarzwerke. Furthermore, Sibelco had recently bought Arenas Siliceas in Spain, further restricting the level of European competition. CPIV therefore concluded that the merger would be detrimental to competition in the European silica market.

Government departments

Department of Trade and Industry

6.72. The DTI has responsibility within government for the sponsorship of the UK industrial minerals sector, which includes silica sand. It said that, in general terms, its view of the national importance of silica sand followed the government's position as set out in MPG 15, published by the DETR in 1996 (see paragraph 2.21). This indicated that silica sand was 'a valuable resource of recognised national importance'. MPG 15 also said:

The Government believes that for the economic well-being of the country it is essential that the silica sand consuming industries continue to receive an adequate and steady supply of indigenous raw material so that they can continue to meet the needs of the community for products which use silica sand in their manufacture.

6.73. The DTI said that, similarly, its view of the importance of the UK conserving its silica-sand resources for use in glass manufacture, as opposed to other uses such as construction, mirrored the Government's position set out in MPG 15:

It is in the national interest that high grade silica sand should not be wasted and that its use in the construction industry should be minimised. However, it would normally be appropriate to utilise as construction sand certain amounts of lower grade silica sand found within a silica sand deposit, which would otherwise be wasted.

There were no specific DTI policies in place, in addition to the Government's general policy as set out in MPG 15, to ensure that high-grade sand was only used for industrial purposes. The DTI noted, however, that, at the invitation of planning authorities or industry, it did comment on the economics of specific silica-sand development proposals in line with the general policy outlined above. Furthermore, the significantly higher average selling price for sand sold for industrial uses (such as glass manufacturing), as opposed to construction, should ensure that silica sand was used for the higher-quality purposes. However, other factors might also affect the decisions, at the margin, about whether to use silica sand, including distance to market, the relative quality of a deposit (linked to the price it could command) and the core business interests of an operator.

Health & Safety Executive

6.74. The Health & Safety Executive (HSE), which since 1975 has been responsible for the enforcement of health and safety in quarries, told us that it had investigated an accident at the Burrowine site in May 1998 when an employee had been injured while clearing a blockage on a conveyor. The HSE had recommended a number of improvements and these had been accepted by FSS. Four more routine visits had been made to the quarry since May 1998 but no major issues had been raised, the HSE said.

No complaints had been made about the site and the HSE had served no notices on the company. The HSE told us that it had no evidence to suggest that the Fife quarry was in a dangerous state, or that standards there were significantly better or worse than the industry average.

Scottish Executive

6.75. The Scottish Executive said that for a number of reasons it had not to date taken a position in Scotland on the strategic importance of silica sand. The existing production sites appeared to be working satisfactorily and had yet to raise any issues of supply or environmental impacts. The markets within Scotland appeared to be limited and a significant amount of production was exported. The locations being worked were relatively remote and did not appear to be in danger of being sterilized or hindered by other development pressures.

6.76. On the importance of preserving long-term silica-sand resources for glassmaking as opposed to, for example use for construction, the Scottish Executive said that its position was that in terms of sustainable development the use of materials should be related to their quality, ie high-quality materials should not be put to low-value uses. It would therefore be inappropriate to use high-quality silica sand for purposes where lower-quality materials would be suitable.

Local authorities

Fife Council

6.77. Fife Council said that it did not wish to make any representations on the merger. Its only concern was that the CC should be satisfied that the merger would not adversely affect the glassmaking industry in Scotland by removing competition in the sourcing of raw materials.

Others

Anglo Pacific Group PLC

6.78. Anglo Pacific, which gave written and oral evidence, said that it had acquired the Fife companies from Anglo European Minerals in 1989. Anglo Pacific had purchased the business for investment purposes and had not had any previous experience of silica sand quarrying. Initially Anglo Pacific had thought that it could make the business successful but, after a few years, realized that it could not. FSS had been severely undercapitalized. The existing plant had been in poor condition and Anglo Pacific had made some repairs, but had been unable to make the necessary investment in completely new plant. To survive as a viable business FSS needed a heavyweight partner or a new owner. In order to compete in both the glass- and dried-sand markets it had required a large injection of capital (in the order of £6 million to £10 million). This would fund its future fixed capital investment and its normal working capital needs as well as financing past capital requirements. Furthermore, extra funding had been needed to fully exploit additional sand resources. Although FSS had very good resources, Anglo Pacific had sought to improve it, for example by acquiring new rights. It said that the adjacent Devilla Forest on land owned by the Forestry Commission and Lord Balfour had very good sand reserves but Anglo Pacific had not been sufficiently significant in the market to negotiate for and develop these additional reserves.

6.79. The board of Anglo Pacific had decided to sell the Fife companies and in June 1999 had appointed Warrior, the minerals division of Standard Bank London, to conduct a tender offer auction. In the eight months following the tender offer closing date, not one acceptable or firm offer was received despite exposure to every potential buyer. Anglo Pacific's account of the selling process is set out in paragraphs 3.30 to 3.32. It told us that, shortly after the selling process had begun, FSS had lost some significant customers. However, subsequent management changes had improved the way the site was organized and the company had then negotiated some extra, profitable deals. The quarry had then been running well. Although it still had a negative cash flow there had been a considerable improvement and it could not be seen as a failing firm that was soon likely to go out of business. However, it was not really a viable enterprise without the substantial capital expenditure required.

6.80. Asked about the extent of competition between suppliers of sand for glass, Anglo Pacific said that it had competed for the Yorkshire glass factories business mainly with HMC/SMC and, to a lesser extent, Hanson. In Scotland, because of the quality of the deposit, it could compete effectively for Rockware's business at Irvine. On the question of whether the glass-sand market was local or national, Anglo Pacific said that it had explored the possibility of selling sand to Scandinavia but there had been different specifications. If the resource satisfied the requirements, it believed that FSS could supply Ireland, Northern Europe and the whole of Scotland.

6.81. On the question of whether the merger would strengthen the combined group's ability to raise prices for sand in the short to medium term, Anglo Pacific said that this would depend on the length of the contracts and supply agreements currently in place with glass manufacturers. Contracts usually ran for one to two years. When they came up for renewal, Sibelco might be in a dominant position because Hanson might not have the reserves and supply capacity although the increasing use of cullet would also impact on price levels.

G F OWEN (*Chairman*)

C DARKE

R A RAWLINSON

M R WEBSTER

R FOSTER¹ (*Secretary*)

12 April 2001

¹It is normal practice that the Secretary of the CC signs reports. On this occasion the Secretary was absent and so was unable to sign.