

4 Views of Sara Lee

4.1. In this chapter we summarise the views put to us by Sara Lee, drawing for the purpose on written submissions made to us on its behalf and on evidence given by it orally at a meeting at the MMC. For convenience we use 'Sara Lee' to mean the Sara Lee Corporation or any subsidiary or constituent part thereof.

Reasons for the acquisition

4.2. Sara Lee told us that it regarded shoe care as a core activity-annual sales by the group world-wide of shoe care products amounted to over £100 million-but before the acquisition it had lacked penetration through the special trades channel in a number of important markets, notably the United Kingdom and the United States. It therefore sought a stronger position in the special trades sector.

4.3. The circumstances and terms of the acquisition have been described in Chapter 2. It had enabled Sara Lee to acquire a complete shoe care range (accessories as well as applied products); expertise in supplying to the special trades, where retailers required a greater range of products and a higher level of personal contact, support and service (particularly in merchandising and training) than in the self-selection channel, which until then had (in the United Kingdom) been the main focus of Sara Lee's experience; and established distribution channels into the special trades sector. It would have been possible for Sara Lee to have entered that sector without acquisition, but that would have taken longer. Sales of chemical products were declining, and many in the special trades sector preferred single-sourcing to avoid complications with invoicing and delivery in respect of a large number of lines (several hundred stock-keeping units).

4.4. At the same time the acquisition had enabled Sara Lee to achieve the volumes necessary to justify continuing commitment to a declining market and to increase utilisation at its plant at Honley, as a result particularly of throughput of Cherry Blossom paste and liquid polishes and Meltonian creams. But for the acquisition, Honley would have been closed in 1993 and production transferred to Sara Lee's facility at Rouen, France.

4.5. It would be misleading to view the transaction as merely or principally an acquisition of brands. The prime motive was to acquire the expertise and knowledge associated with distribution of the Reckitt & Colman products to the special trades, in particular, in the United Kingdom. People and information had been acquired as well as brands.

4.6. Reinforcing this point in response to questions on its pre-acquisition performance in the special trades sector, Sara Lee recalled that the (pre-merger) Nicholas Kiwi business in the United Kingdom had been orientated heavily towards bulk sales to multiple retailers of a relatively small number of fast-moving lines, predominantly non-shoe care. Its management had little experience in selling shoe care products to specialist retailers and no particular inclination to do so. Sara Lee had no doubt that with the right corporate strategic focus it could have entered the special trades sector without a recognised brand.

4.7. The sale of Sara Lee's pharmaceuticals business to Hoffman La Roche had radically shifted the focus and priorities of Sara Lee's management in the United Kingdom and provided an impetus towards development of its shoe care business. Its experience with the well-respected Tuxan brand, whose sales had declined dramatically after Sara Lee acquired it in the 1980s, demonstrated both the consequence of the previous lack of such a focus and also that the ownership of a brand did not in itself make the difference between success and failure.

4.8. The knowledge and expertise acquired was of far greater significance: Meltonian was important not for the brand itself but for the range, quality and service that the brand represented in the minds of special trades retailers.

The market

4.9. There were no published statistics available to present a complete picture of the composition of the market and attempts to divide it between trade channels, market sectors and participants must be heavily qualified. Sara Lee's best estimates of its own and its competitors' market shares showed it to have a post-acquisition share in shoe care chemical products (a wider category than shoe polish products) of 56 per cent in the self-selection outlets and 22 per cent in the special trades, with a figure for both sectors together of 39 per cent. The corresponding figures for all shoe care were 43 per cent, 18 per cent and 30 per cent respectively.

4.10. Although Sara Lee was clearly the market leader in applied shoe care, particularly in the self-selection outlets, there were a number of other participants in the United Kingdom market, notably Punch, Dunkelman, CDM, S C Johnson and Dougmar (the views of these companies will be found in Chapter 5). Sara Lee pointed out that Punch had acquired the Patons laces and insoles business, which significantly improved its position in the accessories category and its attractiveness as a supplier to the special trades.

4.11. Sara Lee did not consider that the self-selection and special trades sectors constituted separate markets. Consumers could choose to buy products in either sector, and there were no significant barriers to suppliers diversifying and expanding their business from one sector to another. Before the acquisition direct competition between Reckitt & Colman and Sara Lee occurred principally in the self-selection sector, because of Sara Lee's low presence in the special trades sector. There was direct competition from other suppliers in both sectors.

4.12. Trends in fashion and lifestyle had resulted in a decline in demand for many applied shoe care products. Until perhaps as recently as ten years ago, the typical and most common footwear for both adults and children was generally made of leather and required to be brushed and polished regularly. But the traditional leather shoe had now been replaced to a significant extent by 'trainers', 'sneakers' and other casual styles of footwear which might be cleaned with a damp cloth, or in a washing machine, or not at all. More generally, the shoe-cleaning habit was in decline-the end of national service was a contributory factor-and demand for more convenient and clean products had led to a reduction in sales of pastes and creams in favour of liquids (with applicators) and aerosols.

4.13. In Sara Lee's view, retailers and most manufacturers regarded shoe care as a unitary market, comprising insoles and accessories as well as chemical or applied products. Shoe retailers in particular required a full range and because of the low sales and high number of items frequently found single-sourcing attractive. This was one of the reasons for the acquisition.

4.14. Self-selection outlets, by contrast, usually carried fewer but relatively faster-moving items, and tended to multi-source. Those following a single-sourcing policy did so for reasons of convenience since they received no financial incentives from suppliers to do so. Sara Lee did not actively promote solus arrangements and all those in which it was currently involved had been inherited from Reckitt & Colman.

4.15. Expenditure by shoe care manufacturers on promotions and advertising had historically been low and predominantly directed towards retailers in the form of discounts, trade press advertising and point of sale material, including the provision of merchandising units (display shelving). Consumer media advertising was a very low proportion of total sales compared with other branded goods markets (Sara Lee cited in this connection the MMC report on *Soluble Coffee*¹ (paragraph 2.62)); the majority of brands had received little or no advertising support over the last five years. Sara Lee's own advertising and promotion to sales ratio was about 13 per cent, which was low for consumer goods, and overriding discounts (see paragraph 4.23) came out of this budget.

¹ *Soluble coffee: a report on the supply of soluble coffee for retail sale within the United Kingdom*, Cm 1459, March 1991.

4.16. A typical feature of a mature market was a lack of product innovation, and although the past five years had not been devoid of new product launches, by far the majority of sales in both the shoe care market as a whole and the applied shoe care sector in particular had been of traditional products.

4.17. In many European shoe care markets a single manufacturer enjoyed a position of clear market leadership, while competing in a smaller way in other European markets. Notwithstanding such market leadership, competition in domestic European markets was intense. Sara Lee acknowledged that it was probably the overall leader in the European market, of which it reckoned it had about 22 per cent.

Economies of scale

4.18. There were some economies of scale, particularly in paste and cream polishes, but they should not be overstated. It was highly unlikely that a plant would be dedicated to one product, as higher utilisation could be achieved by producing a range. Non-automated packaging for paste polishes would be viable at a much lower minimum efficient scale without materially increasing unit costs.

4.19. Asked about economies of scale arising specifically from the merger, Sara Lee said that it had already (pre-merger) achieved optimum levels for printed tins, for example, and for other variable costs. There might be some economies of scale in recovering the fixed costs of the factory site. However, these fixed costs were low, due to the age of the plant and building, thus providing little scope for savings as a result of economies of scale. In addition, two shifts were now required which had raised costs to a greater extent than the throughput had increased. After a period of adjustment, costs were expected to return to the pre-merger level, but meanwhile the unit production cost of a 50 ml tin of black paste polish had increased by 0.4 per cent.

Pricing

4.20. Self-selection outlets, consistent with their general policies, sold shoe care products, particularly chemicals, at below manufacturers' recommended retail prices. The special trades tended to sell at recommended prices or above, reflecting the non-core nature of such sales, the large number of lines they were expected to carry, their low turnover, and accordingly their higher margin requirements.

4.21. Retailers in both channels and at all levels were sensitive to price changes, with multiple grocers in particular seeing themselves as custodians of consumer value. Most retailers accepted the need for periodic price increases reflecting increases in manufacturing and distribution costs, but not all did so and their purchasing power acted as a constraint upon manufacturers' margins. Sara Lee provided specific examples of retailer power constraining prices and so preventing Sara Lee from making what it would regard as an adequate return, in both the self-selection and special trades sectors.

4.22. While competitive tendering was not a frequent occurrence, most retailers reviewed their business and made decisions on listings and delistings at least once a year, and were always prepared to evaluate competitive offers.

4.23. Sara Lee did not offer loyalty rebates or discounts for continued sales but did have a system of retrospective overrides, applying across total Sara Lee business (the majority of which is non-shoe care) in a given year. This was always at the insistence of the retailer and was regarded by Sara Lee as a form of direct price competition between suppliers. Sara Lee thought that all its competitors were required to give similar rebates. Contract prices, often at a significant discount, depended on the value of the turnover with the customer concerned. Asked whether it was not in a position to undermine competitors by offering selective discounts, Sara Lee said that margins once lost could not be retrieved, and that such a policy might benefit the retailer but not the consumer. Cutting prices to gain market share was not the way to make money in the long term.

4.24. Sara Lee believed that consumer price awareness was quite low because of the low frequency of purchases. However, price expectations were also low: consumers were not prepared to spend large sums of money on these products, but were prepared to pay more in shoe retailers and repairers, in recognition of the wider range offered and higher level of advice and service. Retailers themselves ensured that prices remained low and as a result suppliers could not increase prices without considerable scrutiny and justification.

Brand loyalty

4.25. Market research conducted by JMA Research and Marketing (JMA) on behalf of Reckitt & Colman (see Appendix 3.1) indicated that consumer loyalty to established brands was very low. In a random sample of 729 users of Kiwi paste or Cherry Blossom paste, 51 per cent did not mind which brand they bought. The fact that some preferred a particular brand was irrelevant, in Sara Lee's view, because the ability of a firm to raise prices would be constrained by marginal consumers who would respond to such price increases by switching to other brands.

4.26. The fact that a number of major grocery chains (Gateway Foodmarkets Ltd (Gateway), Kwiksave Group PLC, Safeway, Waitrose Ltd (Waitrose)) stocked one supplier's applied shoe care products only illustrated that the majority of their customers appeared not to have any strong preference for any particular brands. This was in marked contrast to a majority of other consumer goods markets. Consumers regarded shoe care products, particularly traditional pastes and polishes, as largely homogeneous. There were few, if any, generally perceived quality differences: a tin of black polish, for example, would not be thought of as having any particularly high or low quality but merely as being useful in cleaning black shoes. There was store loyalty-people bought what was available where they regularly shopped-rather than brand loyalty.

4.27. Further developing its views on the minimal level of brand loyalty, Sara Lee drew attention to another feature of the JMA findings: 78 per cent of consumers who normally bought Kiwi paste, and 74 per cent of those who bought Cherry Blossom paste, would buy whatever else was on sale if their preferred brand was not available.

4.28. These two brands of paste, for which there was the highest consumer awareness, were not generally available in the special trades sector, yet there was no suggestion that consumers resisted buying in this sector, preferring for reasons of brand loyalty to make their purchases in self-selection outlets. Sainsbury had concentrated on its own label while at the same time increasing sales of applied shoe care products from under 16 per cent of the grocery sector to over 20 per cent. In Sara Lee's submission, this demonstrated that consumers who shopped in Sainsbury's did not exercise brand loyalty. Moreover in the special trades the market leader was Punch, of which there appeared to be very little brand awareness.

4.29. A number of leading variety retailers appeared to adopt a policy of stocking own-label products or brands other than those stocked by the grocery multiples, specifically in order to be seen to be selling different products. It was unlikely that this policy would be followed if there existed any significant degree of brand loyalty towards Kiwi or Cherry Blossom.

4.30. Asked whether retailers' perceptions of consumer brand loyalty, wrong though those perceptions might be, might have the same effect in the market as if significant brand loyalty did exist, Sara Lee said that there was no evidence that retailers in general did have such perceptions. That retailers in the special trades did not was evidenced by the very wide selection of brands and own-label products available through shoe retailers and repairers.

Own-label

4.31. Sara Lee estimated that about 11 per cent of sales were of own-label lines. There had been little change in this proportion over the past five years, and it was lower than in household and food products. Marks and Spencer plc had decided not to continue with shoe care, having previously sold a small range of products on a trial basis, and the retailer mentioned in paragraph 5.89 was in the process of withdrawing from own-label, leaving Sainsbury, Superdrug and Woolworths as the only own-labels among self-selection retailers (the last-named in respect of accessories, not polishes-see paragraph 5.91).

4.32. Applied shoe care products differed from other consumer goods where unbranded products provided the price competition to branded products: branded shoe care products were competitive on price with one another, and in the special trades sector retailers' own-label products might command a premium.

4.33. The packaging, sizing and quality offered in an own-label applied shoe care product was usually close to the equivalent brand. The cost structure was therefore similar, except that the generally smaller volumes of own-label resulted in smaller packaging runs, though this was more than offset by savings on selling costs and advertising and promotions. Thus, own-label products supplied by Sara Lee to Superdrug and Sainsbury were sold at approximately 10 to 20 per cent discount to the equivalent brand. Sainsbury in particular had expanded its share of the total market simultaneously with developing its own label.

4.34. Retailers and/or producers must incur some additional costs in launching an own-label-specifying the product, testing it, and designing packaging-but the marginal cost would be low for a major grocery retailer already having its own-label product development, quality control and design departments. Sara Lee estimated that it might be under £5,000, trivial both in absolute terms and in relation to sales.

4.35. Own-label penetration of total grocery sales had risen sharply in the past decade and now stood at about 40 per cent. The major multiples were estimated on average to carry approximately 7,000 own-label lines; Sainsbury launched 1,300 in 1991 alone.

4.36. There were no significant minimum production runs, or additional variable costs, for any relevant product other than paste polish. The key purchasing economies related to colour-printed lids of tins; the cost of the tin was about a third of the unit cost for high-volume black paste. Increasing print runs from 48,000 to 480,000 would reduce costs by about 8 per cent, and increasing them from 72,000 to 480,000 would reduce costs by about 5 per cent. After taking into account the savings in sales, marketing, promotion and advertising costs-making up about 15 per cent of the total cost of branded paste products-it was clear that own-label paste could be supplied at 15 to 20 per cent lower cost than equivalent brands.

4.37. Three retailers (Tesco, Sainsbury and Asda) accounted for 58 per cent of all shoe care sales in the grocery sector, according to Nielsen data. A minimum print run of 48,000 lids could undoubtedly be achieved for black and brown paste polish by Tesco and Asda, without storing printed lids for long periods and thereby incurring inventory costs or running the risk of obsolescence through design changes. Own-label paste polish should also be practicable for Safeway and Gateway. That these products were viable at lower sales levels than those achieved by Sainsbury was evidenced by Sara Lee's supplies to Superdrug (250,000 tins in three varieties).

4.38. A supplier could achieve purchasing economies at a much lower level by using plain lids and labelling them, and in this way extend its product range. Sara Lee's Tuxan and Kiwi Revive paste polishes were packaged in labelled rather than printed tins.

4.39. Reiterating that market research showed brand loyalty to be low, Sara Lee again drew attention to Sainsbury's success and to the general growth in own-label and minor brands in the grocery sector over the last three years (by 4.6 per cent to 14.9 per cent according to Nielsen data) which occurred even when Reckitt & Colman was an independent competitor in this market. The rapid growth recorded by Nielsen in this category, particularly in creams and whiteners, would not occur if consumers had entrenched preferences for established brands.

4.40. Given the feasibility of subcontracting production and importing products in the United Kingdom shoe care market, firms whose branded products had a high market share would have a dominant position only if both:

- (a) it was significantly more expensive to supply own-label products; and
- (b) smaller suppliers could not expand their market share and others (such as existing foreign firms) could not enter.

Sara Lee submitted that the considerations set out in the preceding paragraphs, and elsewhere in this chapter, showed that neither of these conditions was fulfilled.

Opportunities for entry and expansion

4.41. Sara Lee believed that there was significant spare production capacity amongst United Kingdom and other European suppliers and subcontractors. Both Punch and CDM were believed by Sara Lee to have the resources and willingness to increase output, as well as established branded products and distribution networks.

4.42. The capital investment (excluding land and buildings) required to establish a manufacturing base for paste, creams and liquids would be no more than £350,000 to £380,000 in each case, but rather less than £1 million for all three categories because of commonality of certain items of equipment. That level of investment would result in annual production capacity of 7 million tins, 2.5 million bottles and 2.5 million jars. There was an extensive second-hand market in filling equipment for liquids but not for pastes. However, in practice a newcomer would probably buy in its requirements from a contract packer or manufacturer, of which there were many.

4.43. It was in any event more likely that a new entrant would come to the market from an existing manufacturing base in other wax-based products, in processing or filling non-waxed-based products, or simply in filling chemical products generally. Know-how was available from a number of suppliers of waxes and pigments, all with independent formulations.

4.44. The establishment of an aerosol manufacturing and filling facility was significantly more expensive than for pastes, creams or liquids, and most suppliers, including Sara Lee, usually subcontracted this work to specialists.

4.45. A considerable degree of potential competition to United Kingdom suppliers existed in mainland Europe, from companies many of which were significant multinational concerns with existing distribution channels into the United Kingdom for brands in other household product sectors. Sara Lee identified a number of significant potential competitors in Germany, and said that there were others in France and the Benelux counties. Asked why there had been little sustained or effective competition from continental Europe hitherto, Sara Lee questioned whether this was so, but thought that to the extent that it was, the answer was simply that a small and declining market was not very attractive (but it could of course become so if prices and margins increased).

4.46. The cost of launching a brand was low-in Sara Lee's view a high level of trade/retailer awareness could be achieved for £20,000 to £30,000-as also was the cost of transport.

4.47. Sara Lee did not consider that distribution costs amounted to a barrier to entry as the marginal economies of scale which existed could be gained by using third party contractors' vehicles and depots. Thus new entrants would not have to make any investments to set up a distribution network. They could also use the services of an accessory supplier with existing distribution arrangements.

Effects of the acquisition

4.48. In setting out the effects of the acquisition Sara Lee made the following points: the increase in concentration within the shoe care market as a whole was not significant; within the applied shoe care sector there had resulted no significant concentration in the special trades channel; increased concentration in the self-selection channel was tempered by the strong countervailing power of purchasers, their access to alternative potential sources of supply, and consumers' lack of brand loyalty; there was spare capacity in the industry, barriers to entry and expansion were low, and there were overseas suppliers capable of supplying the United Kingdom market; the acquisition would result in no reduction in consumer choice; Sara Lee had acquired no greater ability to increase prices; there would be no adverse effect on suppliers; and there would be positive effects on employment.

4.49. It was generally accepted by economists and regulators that markets were defined as including products to which consumers would switch if there were a significant non-transitory price increase, and by reference to suppliers which would enter the market in response to such an increase. From the consumer's perspective, accessories were not substitutes for applied shoe care products. However, there was a material degree of supply substitutability: there were marketing and distribution synergies, brands might extend

across a wide range of products, and suppliers could easily diversify across the range. There was competition for the same shelf space between applied shoe care and accessories. Some suppliers had initially entered the market as accessory suppliers, while also acting as distributors of the applied shoe care products of overseas manufacturers. From a corporate view point, Sara Lee regarded shoe care as one market, and believed that other manufacturers and retailers did so too.

4.50. Even if the market were narrowly defined as applied shoe care products, it must be recognised that accessory suppliers were particularly viable as potential entrants. Actual and potential competition from such sources would act as a restraint on applied shoe care suppliers' pricing policies.

4.51. According to Sara Lee's estimates, its share of the shoe care market amounted to about 30 per cent, Punch's 28 per cent and Dunkelman's 11.5 per cent. Clearly, therefore, Sara Lee was a long way short of achieving any market power in the market as a whole. In applied shoe care, Sara Lee's market share at 39 per cent was not significantly greater than that of Punch, while in the special trades sector its share at 22 per cent fell some way short of Punch's 36 per cent. Only in the self-selection channel had Sara Lee's share significantly increased as a result of the acquisition.

4.52. The question for consideration was whether that increased concentration bestowed on Sara Lee any market power which might work against the interests of retailers and, ultimately, consumers. The clear answer was that it did not. The relevant retailers had very significant purchasing power: Asda, Tesco and Woolworths were among those which had prevented Sara Lee within the past year from raising prices or had delisted Sara Lee's products. The importance of their business to Sara Lee was far greater than Sara Lee's importance to them.

4.53. Particular brands were not, in this market, an essential consumer requirement and there was no sense in which any shoe care product could be relied on as a traffic generator, like some well-known brands in other product areas. Finally, there were ample opportunities to source products, particularly own-label, from other suppliers, some of which had existing supply arrangements with such retailers in respect of other household products.

4.54. Nor would competitors be adversely affected. On the contrary, the acquisition gave them the opportunity to supply, or supply to an increased extent, any retailer who was concerned at the potential effects of the acquisition.

4.55. In connection with new entry it should be further noted that no aspect of the conduct of any of the existing participants might cause entry in practice to be more difficult, or the results more uncertain, than the physical ease of entry suggested.

4.56. Consumers were not generally given, nor did they expect, choice within individual retail outlets, and did not usually 'shop around' for any particular brand. Nevertheless, it should be noted that Sara Lee did not expect consumer choice to be reduced as a result of the acquisition. Any rationalisation of the product range would be undertaken only to the extent that retailer and consumer opinion confirmed its acceptability. It was likely that choice from individual outlets would be increased, for example it was planned that parts of the Meltonian range should be offered to self-selection customers.

4.57. Selling to the special trades remained highly competitive and in the case of self-selection the power of the multiple retailers, their alternative sources of supply, and price sensitivity, would ensure that Sara Lee would be prevented from raising prices unjustifiably. Suppliers (apart from Reckitt & Colman's supplier of tins and jar lids) would not be adversely affected: there were unlikely to be any significant changes as a result of the acquisition, and because Sara Lee was a relatively minor purchaser in most cases it would not be in a position to achieve better terms. No competitor would be denied access, because spare capacity existed for all the raw materials.

4.58. The expansion of production at Honley had resulted in the creation of a further 25 jobs there, in addition to a similar number at headquarters. Had the acquisition not occurred, Honley would have been closed and 65 jobs would have been lost when production was transferred to Rouen. (Sara Lee's Board minutes and other internal papers shown to us recorded a decision in principle taken in October 1989 to consolidate all its shoe care manufacturing in Europe on one site in Rouen. Any move with respect to Honley was, however, delayed for two to three years, following which production costs and other matters

were to be again reviewed. After the merger, the decision taken earlier, so far as it affected Honley, was shelved.)

4.59. If Sara Lee attempted to raise prices unjustifiably, new suppliers would enter the market and existing suppliers would increase their sales. Barriers to entry were low (see paragraphs 4.41 to 4.47); existing foreign suppliers were particularly well placed to enter the United Kingdom market, and had an incentive to do so since sales were in slow decline throughout Europe. Existing competitors would not follow an increase in Sara Lee's prices if it would be more profitable for them to maintain (or cut) their prices to improve their market shares. They had spare capacity which in the short term could be used to supply such a growth in their sales and/or extra capacity could be acquired through subcontractors or the purchase of low-cost plant and equipment. Wholesalers and retailers were highly resistant to price increases (see, for example, paragraphs 4.21, 4.22 and 4.52), and were not at all reluctant to switch suppliers; if only a few of them did so, there would be a substantial effect on market shares. Consumers did not have entrenched preferences for established brands (see paragraphs 4.25 to 4.30). Smaller firms were able to grow rapidly (see paragraph 4.39), and the cost of launching an own-label range was low (see paragraph 4.34).

4.60. Rebutting a suggestion that it might have acquired power to engage in predatory pricing, Sara Lee said that it would never contemplate such a practice. Drastically cutting prices would be a very high-risk strategy, and commercially unacceptable because it would be very difficult to restore profitability. Moreover such a policy would be ineffective since it could not be introduced across all sectors and markets, and futile if limited to the self-selection sector, since competitors would simply re-enter once Sara Lee attempted to raise prices from the 'predatory' level.

4.61. In reply to the suggestion that it might engage in full-line forcing, Sara Lee emphasised that it did not and had not followed such a policy and had no intention of doing so. The opportunities to engage in such conduct were limited as retailers could still source all their shoe care requirements from other suppliers.

4.62. Sara Lee's rejoinder to the suggestion that customers might be 'locked in' by retrospective rebates ('overrides') was that such rebates, which were granted by its competitors also, were another form of price discount demanded by retailers, and reflected direct price competition between suppliers.

4.63. Fears on the part of an accessories supplier of being squeezed out of the market could not be ascribed to the merger, which had resulted in little increased concentration in the special trades. And fears that CMB, at present the sole producer in the United Kingdom of wing-opening tins (there were several other suppliers of snap-open tins), could be influenced to the disadvantage of competitors were entirely misplaced: less than 1 per cent of CMB's business was as a supplier to Sara Lee, which was in fact pursuing discussions with Metal Closures with a view to developing an alternative source of supply.

Remedies

4.64. Acknowledging that in Sara Lee's view there were no public interest detriments arising from the merger, the MMC nevertheless asked for comments on hypothetical remedies. Sara Lee said that a requirement to divest all the assets acquired would reopen the question of the future of Honley and might well result in production being transferred to Rouen as originally contemplated. One option in the special trades would be to switch to Tana (a Sara Lee brand available in North America and some European countries) if Meltonian had to be sold. Similarly with Cherry Blossom, it might be possible to substitute another brand. But none of this had been thought through. Some important export business, for example to Japan, that had been inherited from Reckitt & Colman would also be affected.

4.65. Sara Lee pointed out that if divestment were required, Honley's current advantage relative to Rouen as a low-cost producer would cease, and not merely because of the direct loss of throughput: Honley would become less viable as a manufacturing base than it was prior to the merger, because some products had been moved to Slough to make room for the increase in shoe care production. Reorganisation to move these products back to Honley would not be justified. The greater the extent of any divestment, the higher the probability that production would be moved to Rouen.

4.66. We asked Sara Lee to consider the cost and other effects were production to cease of the Cherry Blossom products at its Honley factory. It told us that for tinned paste products only, production costs would decrease marginally because of reduced labour costs. Similarly, for Cherry Blossom cream polishes only, stopping production at Honley would have a negligible effect on costs because they account for only 7 per cent of the cream line's production. For Cherry Blossom liquid polishes, however, Sara Lee told us that stopping production would have an adverse effect on unit costs because they accounted for nearly half by volume of the liquids line production, though it was not able to quantify the possible increase in costs that might result. Cessation of the full Cherry Blossom range of products would also affect total overheads, Sara Lee told us, though the full cost impacts had yet to be fully appraised.

4.67. Having regard to the possibility that the MMC might recommend the disposal of specific categories of branded products, as a consequence of adverse effects arising, for example, in paste polishes but not aerosols, Sara Lee drew attention to the fact that under the Trade Marks Act 1938 it would not be possible to assign the exclusive right to use a brand name on a particular category of applied shoe care products while retaining the exclusive right to use the same brand name on another category of the same sort of applied shoe care products. It would, however, be possible to grant an exclusive, royalty-free, licence for a term (or in perpetuity). Such a licence would, in practical and commercial terms, be equivalent to an assignment of rights.

4.68. Before considering behavioural undertakings, for example on solus agreements or overrides, Sara Lee would need to know how they would be phrased and administered. The demand for such arrangements tended to come from the retail side. It would be important to ensure that Sara Lee was not unilaterally disadvantaged and that a level playing field was maintained.

4.69. Solus or exclusive purchasing contracts were rare in the self-selection sector and were not expected to become more prevalent in future. Sara Lee did not, therefore, consider an undertaking on this point necessary, but would nevertheless be willing to undertake not to require its customers, explicitly or implicitly, to enter into any exclusive purchasing obligations. Sara Lee should retain its ability to enter into such arrangements if demanded by customers. Sara Lee would also be prepared to consider a requirement to refuse to grant overrides relating to shoe care products for a period of, say, two years.

4.70. Sara Lee would be prepared to consider entering into undertakings relating to the prices of those of its branded products in respect of which competition concerns were perceived to arise, provided that such controls allowed for increases reflecting increased costs of manufacture and distribution. This would have the advantage of ensuring Honley's continued operation.