

Tambrands Ltd

A report on the granting of discounts by Tambrands Ltd on condition that the whole or part of the Tambrands range of tampons is stocked



MONOPOLIES AND MERGERS COMMISSION

Tambrands Ltd

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**Presented to Parliament by the Secretary of State for
Trade and Industry by Command of Her Majesty
February 1996**

Members of the Monopolies and Mergers Commission as at 19 December 1995

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¹These members formed the Group which was responsible for this report under the chairmanship of Mr G Odgers.

Note by the Department of Trade and Industry

In accordance with section 17(4) and 17(5) of the Competition Act 1980, the Secretary of State has excluded from the copies of the report, as laid before Parliament and as published, certain matters, publication of which appears to the Secretary of State to be against the public interest, or which he considers would not be in the public interest to disclose and which, in his opinion, would seriously and prejudicially affect certain interests. The omissions are indicated by a note in the text.

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Part I

Summary and Conclusions

1 Summary

1.1. On 21 June 1995 the Director General of Fair Trading (DGFT) asked us under the provisions of the Competition Act 1980 (the Act) to investigate the course of conduct by Tambrands Ltd (Tambrands) of granting discounts to persons carrying on business in the supply of goods by wholesale or by retail in the UK on condition that such persons stock the whole or part of the range of tampons manufactured by Tambrands (see Appendix 1.1). We were asked to consider whether this course of conduct was an anti-competitive practice within the meaning of the Act, and if so whether it might be expected to operate against the public interest.

1.2. Tambrands products account for almost 60 per cent of the volume of tampon sales in the UK. The MMC last reported on the supply of tampons in 1986, when we found that Tambrands held a high market share and enjoyed high profitability, but, given no insuperable barriers to entry to the market, these factors did not operate against the public interest. Since that report there have been a number of significant developments including: the introduction of ultra-slim towels under the Always brand name by Procter & Gamble Limited (Procter & Gamble), which has reduced the share of tampons in total sanitary protection (sanpro) sales; some new entry to the industry; and a decline in Tambrands' profitability due in part to heavy increases in advertising expenditure. There has also been an increase in the share of retailers' own-label tampons, and an increase in the proportion of total tampon sales through multiple retailers which are in a strong position to promote their own brands through their control of shelf space.

1.3. Tampon prices, on the other hand, have increased in real terms over the last ten years, and we have seen no convincing evidence of strong price competition between tampons and towels. Tambrands' market power remains strong, but, in our view, not as strong as at the time of our previous report.

1.4. The course of conduct we were required to consider derives from a condition, in Tambrands' special contract terms with nine multiple retailers and in its chemist wholesaler terms, that the full range of Tampax be stocked. In return for acceptance of this and other conditions (including, in the case of retailers, minimum order size and full pallet purchasing), multiple retailers and chemist wholesalers obtain discounts additional to those granted to other customers. Tambrands has made some limited exceptions to these conditions. Moreover, it does not require the full or the agreed range to be stocked in all outlets; retailers are not required to purchase the full or the agreed range in every order; there is no element of exclusive dealing; and there is no refusal to supply if the full or the agreed range is not stocked. There are a number of substantial retailers which do not purchase their Tambrands tampon requirements under the special terms.

1.5. Most of the retailers from which we heard told us that they stocked substantially the full range of Tambrands tampons out of choice and their actual purchases were not affected by the condition. Only one retailer said that, as a result of the condition, it was stocking a product it would not otherwise have stocked. It purchased this item, however, only in small quantities

and stocked it only in a small number of its stores (its largest stores) where the effect was not to exclude other suppliers' products. None of the chemist wholesalers from which we heard told us that the range-stocking condition affected their stocking of other suppliers' products.

1.6. We consider that the course of conduct does not restrict the availability of retail space to competing products and does not act as a barrier to new entrants. Nor does it have any effect on the ability of competitors to supply through chemist wholesalers. We do not therefore consider that it has the effect of restricting, distorting or preventing competition.

1.7. In our view, Tambrands' intention in pursuing the course of conduct is to facilitate negotiations with retailers and to promote the distribution of its brands, but not to exclude the products of its competitors from retail outlets or discourage market entry. Moreover, given the weakening of Tambrands' power in the sanpro market, and the continued power of the major retailers, the course of conduct is not likely to restrict, distort or prevent competition.

1.8. We have concluded that in the circumstances of this case the course of conduct does not, is not intended to, and is not likely to, restrict, distort or prevent competition, and that Tambrands has not therefore been engaging in an anti-competitive practice.