6 Views of third parties

Introduction

6.1. This chapter summarizes the views of those who gave us evidence in connection with our inquiry.

Manufacturers of tampons

Smith & Nephew

Competitiveness of the sanpro market

6.2. Smith & Nephew manufactures Lil-lets and Dr White's Contour and own-label towels and tampons, as well as a range of toiletries and healthcare products. It believed there were a number of issues which were central to an assessment of the competitiveness of the sanpro market. These included market definition following the introduction of competitive new products and consequent changes in market shares over time, as well as barriers to entry. In addition, the growth in importance of own-label products had further strengthened the significant degree of countervailing purchasing power enjoyed by the major retailing chains. Smith & Nephew submitted that the relevant question for the purpose of establishing the scope of the relevant product market was whether a hypothetical monopoly supplier of a particular category of products could earn monopoly profits. Such a definition must take account of all forms of competition, and not just transitory short-run price competition.

Market definition

6.3. In the 1986 report the MMC had concluded that competition from improved external sanpro products was `likely to act as a more effective constraint or ceiling on tampon prices than was previously the case'. Smith & Nephew considered that this had been borne out. Moreover, since 1991, a number of new towel products had been launched, such as Johnson & Johnson's Silhouettes, Procter & Gamble's Always and others, which had substantially eroded the traditional advantages of tampons over towels (in terms of size, comfort and visibility) for the reasons set out in paragraphs 5.6 and 5.7.

6.4. Smith & Nephew said that the increasing degree of competition between towels and tampons was reflected by the fall in tampons' share of sanitary sales between 1991 and 1994. Over the same period the rate of growth of the tampon sector declined sharply, tampon sales volume being 17 per cent lower in 1994 than in 1991. In addition, the shelf space allocated to tampons had fallen. This stood in marked contrast to the MMC's finding in the 1986 report that `there does not appear to have been any erosion of the market share of tampons since the time of our last report'. Smith & Nephew considered that the long-term impact of developments in the towel sector upon sales of tampons was likely to continue as increasing numbers of younger women were continuing to use towels (or towels and tampons), whereas in the past they would have tended to switch to tampons upon reaching adulthood. These factors indicated that the structure of the sanpro market was fundamentally competitive, and was demonstrated by the number of strong competitors and the extent of changes in market shares since the publication of the 1986 report.

Barriers to entry

6.5. In the 1986 report the MMC had concluded that `there were no insuperable barriers to entry' but had commented that the main potential barrier was consumer loyalty to established brands. However, even here the MMC had found that there were other actual and potential manufacturers and retailers which were capable of inspiring the requisite degree of trust. In addition, the MMC had considered that the IBA's decision to allow television advertising of sanpro products would lower barriers to entry further by facilitating the launch of new brands.

6.6. Smith & Nephew considered that the MMC's conclusion had been supported by recent developments in the sanpro market. There was now little or no evidence that consumers had entrenched preferences for established brands. Historically, consumer media advertising of tampons and sanpro products had been low compared with other fast-moving consumer goods. However, the launch of new towel products by Procter & Gamble, Johnson & Johnson and others and the associated increase in media support following the lifting of television advertising restrictions had increased advertising expenditure in the sanpro market. The willingness of consumers to switch so quickly to these new products illustrated further the absence of any entrenched consumer preferences in the sanpro market.

6.7. Consumers had also switched to own-label sanpro products which were now stocked by all the major multiple grocers, as well as by Boots, Superdrug and Lloyds. Own-label tampons were an attractive lower-priced alternative and an increasing number of suppliers had found it profitable to supply these products. Retailers had strong incentives to increase their sales of own-label products as they tended to earn higher margins on them.

6.8. In Smith & Nephew's view, the relaxation of advertising restrictions on sanpro products had materially lowered barriers to entry by enabling existing and new manufacturers to inform consumers about their products' attributes and advantages and to gain a marked degree of consumer acceptance for their products. This was illustrated by the success of Procter & Gamble's Always.

6.9. There had been three new entrants in the tampons sector since the time of the 1986 report. This illustrated the ease of entry into the sector. In 1991 Hygieia had entered the UK market with its Confident brand of tampons and it now supplied a number of major retailers, including Sainsbury's, Boots and Superdrug (as well as own-label tampons to certain retailers). In 1992 Ontex, a German company, had begun selling its Helen Harper brand in the UK, as well as supplying own-label tampons. In mid-1991 Bodywise started supplying its Natracare brand of tampons (which was imported from Sweden) to a number of chemist and grocery outlets.

Countervailing buyer power

6.10. Since the 1986 report, multiple retailers had continued to gain market share and had thereby increased the degree of countervailing buyer power faced by suppliers. In 1994 Boots, Sainsbury's, Tesco, Superdrug, Safeway and Asda were the six largest retailers of tampons, and they accounted for 70 per cent of Smith & Nephew's sales, as opposed to about 40 per cent for Boots, Sainsbury's, Tesco and Superdrug in 1984. Smith & Nephew believed such retailers were in an increasingly powerful position, particularly with regard to the allocation of shelf space to own-label and branded products. There was increasing scope for them to bring new suppliers of both branded and own-label products `on line'.

Consumer choice

6.11. Smith & Nephew noted that consumer choice in the tampon sector of the sanpro market had increased significantly since 1984, because of the increase in the number of brands available at various price levels.

6.12. On the basis of the information available to it, Smith & Nephew considered that it was difficult to determine with any degree of certainty whether the course of conduct which was the subject of the MMC's inquiry could be regarded as anti-competitive and, if it was, to assess its effects on the public interest. In particular, Smith & Nephew noted that it had not received any complaints from retailers in relation to Tambrands' conduct.

6.13. Smith & Nephew said that it was always tempting for a company to blame its lack of success in a particular market on its competitor's actions. In the context of the sanpro market Smith & Nephew could therefore perhaps be expected to point to the actions of Tambrands as part of the reason for its relative decline in recent years. This was highlighted by the decline in its share of the total sanpro market from 31 per cent in 1984 to 18 per cent in 1994 and by the reduction in profitability of Smith & Nephew's tampon brands, as a result of its increasing own-label sales. However, Smith & Nephew said that there were a large number of competitors in the sanpro market and it found it difficult to identify Tambrands' actions as being a reason for its loss of market share, although it might well be a contributory factor. Smith & Nephew also pointed out that its tampon brands were lower value than Tambrands' and around 25 per cent of its sales were own-label, while Tambrands did not manufacture own-label products. These were additional factors which had contributed to Smith & Nephew's performance being less strong than Tambrands'.

6.14. With regard to availability, Smith & Nephew pointed out that some smaller retail outlets did not sell its sanpro products. It was not aware whether this was due to the exclusionary nature of the practices of Tambrands (or another competitor) or to a lack of shelf space in the outlets concerned. It was possible that Tambrands' practices were contributory factors and/or had had an effect on product choice more generally, but it was difficult to say with any certainty whether this was the case. Smith & Nephew noted that the total shelf space allocated by retailers to feminine hygiene items as a whole had not altered significantly in recent years, but more shelf space had been allocated to towels since the introduction of ultra thin and winged products in 1991. The resulting reduction in shelf space for tampons would necessarily have increased competition for space in the tampon sector of the sanpro market.

6.15. Smith & Nephew said that it was also difficult to gauge the effect on profitability which Tambrands' practices may have had, whether at retailer or manufacturer level or both. As mentioned above, Smith & Nephew had experienced a reduction in the profitability of its tampon brands. However, as also mentioned above, Smith & Nephew had a declining market share of sanpro products. It was difficult to identify whether Tambrands' practices had had any effect on profits in the industry, although they may well have been a contributory factor in the case of Smith & Nephew.

6.16. Smith & Nephew did not offer discounts of the type which were the subject of the MMC's inquiry. However, it did offer a variety of other discounts. The magnitude of the actual discounts granted to particular customers varied according to purchasers' demands, their purchasing power and the sophistication of their procurement processes, and were available across the full range of Smith & Nephew's product offering of which sanpro accounted for one-third.

6.17. Smith & Nephew offered quantity discounts to certain customers on sales of both branded and own-label products (where appropriate) above certain levels. The discounts were structured without reference to the sale of any particular product. Accordingly, a customer could receive the discount without purchasing any sanpro products at all, as the discount was available for all Smith & Nephew products including toiletries, cotton wool, suncare and healthcare to sanitary protection.

6.18. Smith & Nephew had no policy of `requiring' wholesalers or retailers to enter into discounting arrangements of a particular type. The form and magnitude of the discounts offered by Smith & Nephew to its customers were invariably at their insistence and were simply another form of competition.

Hygieia

6.19. Hygieia produces a range of branded and own-label towels and tampons. Hygieia told us that its products gave retailers the opportunity to offer an alternative product to the brand leader and make a higher profit, as well as saving consumers money. Hygieia offered discounts which were related to volume or to retailers to which it supplied own-label products. It did not specifically offer discounts or other bonus arrangements on the condition that the full range of its products were stocked. It believed Tambrands' policy to `force' distribution by seeking to have retailers stock a full range had reduced and restricted the sale of Hygieia's products. Hygieia was concerned that Tambrands and Smith & Nephew, the two companies which had large shares of the applicator and non-applicator markets, had made it difficult for it to develop its business.

6.20. In the UK to be effective, manufacturers had to deal with the major retailers which had high market shares.

6.21. Hygieia thought it was not unusual for manufacturers to require retailers to take their full range of products and this put pressure on shelf space. Tambrands had recently launched two new product ranges which had further crowded shelf space and persuaded retailers to consider very carefully whether they were able to stock Hygieia's products. There was only a limited amount of shelf space available for tampon products in any store. It seemed unlikely that these new launches by Tambrands would be financially viable as specific products but they had further increased Tambrands' dominance of the shelf space for tampons, thereby reducing the space available to other manufacturers. Retailers did not seek a proliferation of product offerings-they preferred to control their operating costs and keep the number of lines they stocked to a minimum. Large range extensions by bigger suppliers tended to reduce competition by limiting the products of other manufacturers which retailers would stock. If retailers had to take the full Tambrands range they were more likely to delist the products of other manufacturers.

6.22. Hygieia said that it was surprised at the level of distribution that Tambrands had achieved for Compak and Tampets, because it was out of proportion to its likely success. Tambrands' motive for launching digital tampons was unclear, particularly in view of the strong brand and market share of Lil-lets. Also, it was unlikely that users of applicator tampons would switch to digital tampons. It had probably cost Tambrands a great deal to achieve the small market shares of Compak and Tampets.

6.23. In Hygieia's view Tambrands and Smith & Nephew acted in a monopolistic manner, seeking to reduce competition at all times. This was a barrier to entry as Tambrands and Smith & Nephew sought to prevent other manufacturers from gaining economies of scale.

6.24. Hygieia said that it had not made a profit on its tampon operations since starting production in 1990, despite being a highly competitive producer. It expected to show a profit in 1995 because it had increased its volume. Tampon manufacture was a very volume-sensitive business.

6.25. Hygieia had invested in the technology to produce ultra-slim towels. It was vital to be in the market for ultra-slim towels, but the way in which the major suppliers operated, particularly Procter & Gamble, had made it difficult to be profitable in that market. Procter & Gamble had priced Always very high in order to fund a very high level of advertising. Then, having acquired a market share of around 30 per cent, it had reduced the price of Always, making it difficult for other suppliers to compete.

6.26. Hygieia said that the markets for towels and tampons were distinct. There had always been some dual usage of towels and tampons. There may have been a bit of switching between ultra-slim towels and tampons, but most of the women who had switched to ultra-slim towels had been using thicker towels.

Manufacturers of external sanpro products

Procter & Gamble

6.27. Procter & Gamble manufactures the Always range of towels and panty liners launched in the UK in 1992. Procter & Gamble thought panty liners, tampons and towels constituted a single market, as it had argued to the European Commission in the V P Schickedanz[1] case.

6.28. Procter & Gamble said that a discount scheme could only be looked at in the context of its own market, ie in terms of the circumstances of the particular product and the company in question. It said that it could not comment on Tambrands' discount schemes because it had no detailed knowledge of them and because it did not supply tampons in the UK or elsewhere. However, in its experience, retailers usually displayed tampons and towels side by side. This assisted the consumer in making her choice, and emphasized the substitutable nature of the two products. The Always range had achieved good distribution levels and did not appear to have been adversely affected by activities in the tampon market.

6.29. The range of discounts Procter & Gamble offered were on a three-month basis, after which time they were reviewed. The percentage discount payable to a retailer with regard to Always depended on the range of items that the retailer made available for customers. A retailer need not stock the whole, or a specified part, of the Always range to qualify for a discount, nor was the percentage of discount affected by the amount of shelf space the retailer made available to the Always range. Procter & Gamble said that the discount scheme was designed to encourage retailers to stock a range of Always products, and hence to provide the opportunity to satisfy the varying needs of consumers who wanted to purchase the item most suitable for their particular needs.

6.30. Always had been introduced at a suggested retail price of £2.99 and was now sold at about £1.99. Three things had contributed to this price reduction. First, the number of towels in each Always pack was reduced on average by 11 per cent in March 1994 and as a consequence Procter & Gamble had reduced its invoice price. The suggested retail price was also reduced pro rata to around £2.65. This reduction in pack count applied to Always in all countries in Europe. Secondly, its invoice price to trade customers was further reduced on average by 6 per cent in July 1994. Thirdly, competition between trade customers had reduced the profit margin they took on Always. The combined effect of these factors was to reduce Always' retail pricing to its current level. These pricing moves were not related to any comparison with pricing for internal sanpro products, nor were they intended therefore to encourage users of these products to switch to the Always range.

Retailers on special terms

Boots

6.31. Boots told us that tampon sales had declined because of developments in the towel sector, particularly the launch of ultra-slim towels. The technological advance in towel design had enabled the Always brand to become established, but there had not been a similar advance in the tampon market.

6.32. When deciding which products to stock, Boots said that it considered sales targets, the supplier's media spend, the strength of the brand and the quality of the product. Boots then allocated shelf space based on the performance of product areas and within each category the performance of individual brands. The sanpro market was one in which there was a great deal of brand loyalty. Boots said that it tried to offer a full choice of products to its customers in all its stores, but space was at a premium.

6.33. Boots said that it did not consider the sanpro market to be one where there were anti-competitive practices. Its relationship with Tambrands was no different from that with any other tampon supplier and its range selection was made on normal commercial considerations. Tambrands had a large market share and its products sold well. Therefore Boots stocked the full Tambrands range in its larger

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[1]Procter & Gamble/V P Schickedanz, EC Case No IV/M.398.

stores, but it did not have to. Tambrands had never suggested that Boots should stock the full range in its smaller stores.

Sainsbury's

6.34. Sainsbury's told us that although Tambrands had signed up to Sainsbury's standard terms and conditions of contract, it faced restrictions from Tambrands that it did not have from other suppliers. Tambrands had a very strong position in the market-place which it utilized fully. However, whilst trading with Tambrands had proved tough, there had been a marginal improvement over the last five years.

6.35. Sainsbury's, by choice, stocked the full Tambrands range of products, all of which achieved acceptable or excellent sales rates. To date Sainsbury's had taken on any new line offered by Tambrands and so it was not in a position to say what would happen if there was an instance where it refused to do so. Margins on Tambrands products were poor and Tambrands would not discuss margin improvement even when Sainsbury's listed new lines. Tambrands had instead offered short-term bonuses and promotions which had slightly improved over recent months. The level of commercial reward offered for volume business to Sainsbury's from Tambrands did not compare favourably with that offered by other manufacturers.

6.36. Sainsbury's said that there were products from various suppliers which it had chosen not to stock for a number of reasons. It only had limited shelf space for sanpro products and as such could not stock all the products on the market. It tried to offer all the key lines so as to give its customers a wide choice. Profitability and sales were also important when selecting which products to stock.

6.37. Shelf space was allocated according to sales and product size. This was set centrally, but stores adapted the number of facings given to a product according to local sales. The position of products within a display was governed by the need to make the fixture easy for the customer to shop from and to maximize product profitability. Sainsbury's currently had up to 6 metres dedicated to feminine hygiene in each of its stores. This was sufficient space to offer a comprehensive range whilst not diluting sales and jeopardizing other product areas. The space given to tampons was comparable to the proportion of sales of sanpro products taken by tampons, allowing for the fact that many tampon packs were smaller than packs of towels. The division of shelf space between rival tampon products was based on sales and offering the customer a good range.

6.38. The decision to stock a new brand or product was largely based on its market rationale, ie whether it would offer a perceivable benefit to the customer, whether it would expand the total market, the level of promotional activity, and its price positioning, profitability and turnover. However, Tambrands exerted pressure on Sainsbury's to take a new brand, irrespective of its market rationale.

6.39. Sainsbury's said that it enjoyed on average a further 20 per cent discount on Tambrands' standard retail prices for adhering to Tambrands' requirements. The key differences between Tambrands and other sanpro suppliers were the requirements for larger minimum deliveries (150 cases) and the range-stocking requirement. Sainsbury's said that these requirements were very restrictive. Tambrands' terms were interpreted by Sainsbury's as requiring it to purchase a minimum value of each item in the range, not to list each item in all its stores as this would not be appropriate for smaller stores.

Somerfield

The market

6.40. Somerfield told us that in the sanpro market consumers were very brand loyal. They were reluctant to switch between products, except perhaps for price reasons or in response to an advertising campaign. Manufacturers therefore targeted younger women. Price competition was significant for towels and panty liners, but not so much for tampons. There was not much competition against Tambrands' products.

6.41. Although Tambrands' share of the sanpro market had declined, its bargaining position had not weakened. Tampax was a `must stock' item. The strong position of Tambrands made it difficult for new tampon manufacturers to enter the market and there were unlikely to be any new entrants in the next few years. Somerfield said that new entrants to the sanpro market would be good for customers.

6.42. There had been a trend towards ultra-slim towels away from thick towels and, because of the discreetness of ultra-slim towels, a move away from tampons back to towels. Some of the move from tampons to towels was because of concerns about TSS. Also, the major manufacturers had been heavily advertising their sanpro products. There was now a lot more dual usage of towels and tampons.

Shelf space

6.43. Somerfield said that it allocated shelf space in line with its sales of any given category of product. Because Somerfield's stores were small its sanpro fixtures were relatively small compared with those of its competitors. Therefore it could not compete in terms of shelf space or the number of ranges of sanpro products it offered its customers. Somerfield divided its shelf space between tampons, towels and panty liners, and then decided which ranges to stock. Again, because of lack of space, only a limited range could be stocked in most of its stores. It allocated shelf space on the `1½-case rule' (ie at least one and a half cases of a product were on display), as well as on the basis of a product's market share and rate of sale. In this way products which sold well received more shelf space.

6.44. Its first consideration when deciding which products to stock, Somerfield told us, was the needs of its customers. Therefore it sometimes stocked products which would not necessarily give it the highest return. When deciding whether to introduce a new product or brand, Somerfield considered the product's potential within the market-place, whether it fitted Somerfield's customer profile and its profitability, the manufacturer's support package, the effect on other products and whether customers would know and trust the brand. If Somerfield decided to stock a new product it then had to decide which existing product to take out.

6.45. Somerfield said that it planned to relaunch its own-label range of towels and panty liners. These would be manufactured by Advanced Absorbent Products Ltd.

Tambrands' range-stocking requirement

6.46. Tambrands' terms and conditions required that its full range must be stocked. Somerfield said that this meant it was required to stock the full range in most stores. There were no `conditions' for purchasing with other manufacturers and their discounts were based on, for instance, full trailer quantities, or other volume-based measures (eg volume per week).

6.47. In June 1994 Somerfield had complained to the OFT about Tambrands' terms of trade, including the range-stocking requirement. Tambrands had asked Somerfield to stock Tampets. Somerfield believed it was inappropriate that it should be forced to stock an entire range of products at a supplier's request, particularly as a retailer with limited shelf space in a majority of its stores. Its priority was to ensure that it was offering the best range for its customers.

6.48. The Tampets product was aimed at 16- to 24-year-olds with a BC1 socio-economic profile, whereas the typical Somerfield customer was 45 to 65 years old with a C to D profile. So Tampets were not suitable for Somerfield stores. However, Tambrands had insisted that Somerfield stock Tampets or face reduced discounts. If Somerfield had not complied with Tambrands' requirement Somerfield would have been forced either to increase retail prices to protect profit levels or suffer reduced profitability. Somerfield therefore stocked Tampets in its 28 Food Giant stores, although it would have preferred not to. Since these were larger stores, however, this did not have the effect of displacing any other sanpro products from the shelf. Somerfield believed it should have the freedom to list the range of products most suitable for its customers.

6.49. Tambrands' terms and conditions required Somerfield to purchase in each of its eight ambient depots a minimum of 150 cases, where a `case' contained between 60,000 and 70,000 (depending on the line) individual packs of tampons. The 150 cases were made up of quantities of each line prescribed by Tambrands. All lines did not sell at the same rate, so that significant stocks built up in the depots. The situation was exacerbated when Tambrands promoted one of its lines, resulting in increased sales in that line, and Somerfield was required to place full orders for 150 cases to avoid going out of stock on each line. It therefore cost Somerfield to sell Tambrands products because of warehousing costs and cost of capital tied up in stockholding.

6.50. Somerfield told us that at the beginning of October 1995 it had placed a smaller than usual order for Tambrands products because its depot space was taken up with additional stock for Christmas. Tambrands failed to deliver this order, and when Somerfield chased the order Tambrands had stated that it would not deliver unless it received an agreement in writing that Somerfield would pay the undiscounted price. Because Tambrands had failed to deliver, Somerfield's stores were short or out of stock of some Tambrands lines which had deprived it of potential sales.

Superdrug

Purchasing arrangements and discounts

6.51. Superdrug told us that Tambrands was a powerful supplier because Tampax was a strong brand and a `must stock' item. Tambrands' products were stocked by two of its subsidiaries, Superdrug and Woolworths. Although Tambrands' terms of trading included a full range-stocking term, Superdrug did not stock the full range and had recently discontinued Compak products, and it did not stock all Tampax 16s, just regular and super. This had not affected its terms with Tambrands. Superdrug had delisted Compak because it did not seem to offer what consumers wanted, its rate of sale was so low that it did not justify the shelf space, it was a premium product and the only difference was that it had a plastic applicator. Also, Superdrug said that 10s and 32s were the most important pack sizes, because they offered customers low value and price respectively-16s fell somewhere in the middle. Woolworths purchased through Superdrug, so it had no direct supplier relationship with Tambrands. Sanpro products were introduced to a limited number of Woolworths stores in September 1994 so its stocking policy was at an early stage.

6.52. Superdrug's payment terms with Tambrands were 30 days, with no discount. Superdrug had three warehouses, at Croydon, Pontefract and Southampton. The minimum order requirement from Tambrands for Croydon and Pontefract was nine pallets. This required Superdrug to load balance stock in order to meet the minimum order requirement and, in general, to order far more stock than it actually required. In contrast with the majority of Superdrug's sanpro suppliers, Tambrands was quite inflexible in negotiation. The only slight concession on Tambrands' part was that it had allowed Superdrug to take smaller order quantities into its Southampton warehouse (its smallest one) than the strict minimum order quantity requirements because Superdrug lorries collected from Tambrands in that area. Tambrands was totally inflexible on prices.

6.53. However, Superdrug confirmed that Tambrands' supply terms could lead and had led to over-ordering. While there was no formal minimum order quantity, Superdrug was, through Tambrands' pricing structure, financially impacted if its orders failed to meet a minimum quantity of each particular Tambrands line and a minimum overall quantity of products for the order. Although Superdrug did not stock the full range it found that Tambrands' minimum purchase value imposed some difficulties. Specifically, Superdrug said that it had to over-order on Tampax mini 10s, the slowest sellers within Tambrands' range, to get the discount; it would prefer to order one week's stock at a time of that product, but it had to order about two weeks' stock. It would prefer to hold less stock. Overall it said that it was comfortable with the amount coming into its warehouses.

6.54. Superdrug said that other suppliers (eg Procter & Gamble) offered discounts on the basis of range stocking.

6.55. Superdrug would not stock any item which offered a significantly lower than average cash and profit rate of sale if it also was a line with low customer demand.

The market

6.56. The most notable change in the sanpro market had been the launch of Always towels by Proctor & Gamble in 1992 which had resulted in increased sales of towels. It had changed the shares of tampons and towels in the market-place. Tampons had been dominant, but towels now had a larger share than tampons by value. Procter & Gamble had very quickly taken market share from other towels and probably some from tampons as well. Discussions about TSS had also caused some people to change the way in which they used tampons and towels. There was much more dual usage of products, which meant that tampons could not be viewed as a separate market. Product development in panty liners had been led by Johnson & Johnson with its Carefree product.

Pricing

6.57. There was a high degree of product loyalty in the sanpro market. Traditionally this loyalty had been seen only for tampons, but recently it had been shown in the towel sector for Always and Bodyform. There had been a devaluation in terms of towel pricing. Always had been launched at a pack price of £2.99 but was currently £1.99. This had had more of a steal effect between towels than from tampons. Other suppliers had had to react very quickly to bring their pricing down into line. However, the pricing of tampons had not reacted to the reduction in price of Always, even though there had been a reduction in the numbers who used tampons only. Tampons had lost market share and many of their sole users. Tampon manufacturers had responded aggressively by increasing television advertising and making some new product developments.

Shelf space

6.58. Superdrug apportioned shelf space based upon an analysis of a category's profitability and the number of units sold in a specific time period. Strategic decisions also affected space allocation at the category level. This policy was applied to sanpro products generally, to tampons in particular and to individual brands. Superdrug said that it aimed to offer consumers a choice of absorbencies, so it offered at least one product of each absorbency within each brand in each of its stores. If it had to stock the full range of Tambrands' products it would limit the amount of space available for other products. But it felt that it stocked the right range for its customers.

New products and brands

6.59. When deciding whether to list a new product or brand, Superdrug said that it assessed its volume, sales and profit potential; whether the product offered a unique selling proposition which would appeal to customers; and the level of promotional support. It considered whether there was a range which was performing poorly that could be taken out; if market data suggested that the current range was out of date; whether a new brand offered a unique selling proposition; and if its customers had requested it.

Own-brand products

6.60. Superdrug had introduced its own-label tampons, about five years ago. It said that Smith & Nephew's pricing policy for unbranded tampons appeared to be designed to limit Superdrug's scope for any significant retail price differential, thus hindering the competitiveness of its own-label tampons with branded counterparts.

6.61. There had been a decrease in demand for Superdrug's own-label tampons. Superdrug planned to update and relaunch its own-label tampons. The margins on own-brand products tended to be higher than on main brands.

Tesco

6.62. Tesco told us that it had never been approached to stock the full range of Tambrands' products to the exclusion of others. It was initially unaware of any condition to stock the full range of Tampax, although it subsequently discovered that there was such a condition in Tambrands' terms of business. As far as Tesco was concerned, it was not contracting on the basis of Tambrands' terms of business, but on its own conditions of purchase, and it subsequently informed Tambrands of this. Tesco said that it had never felt Tambrands had imposed a full range-stocking requirement. It was free to choose which Tambrands products it wished to stock and did not currently stock the full range.

6.63. Tesco said that each decision concerning which range to stock was made on an individual merit basis and depended on general acceptability within the market, the price and profit margins and the level of support (ie marketing and advertising).

6.64. If there was a need to discontinue any of Tambrands' products Tesco said that it would make the move to do so. However, Tambrands' range covered many different needs, so if Tesco discontinued any of its products it would be decreasing customer choice. Although some of the products in the range did not sell as well as others, Tesco felt that it should stock them in order to continue to offer customer choice, for those people who would be unhappy to be given an alternative.

6.65. Tesco said that there was a high degree of brand loyalty for sanpro products. But there was also a trade-off between quality and price. Some people were not particularly brand loyal and bought depending on price. Tesco said that its range of sanpro products included cheap products to appeal to those customers who did not want to spend a lot of money, and more expensive products. To some degree the decision about which product to buy was related to performance and also to the amount of money that women had to spend on themselves.

6.66. The sanpro market was a finite one. Tesco regarded the relevant market as that for sanpro products rather than individual markets for internal and external products. There had been a movement towards ultra-thin towels from users of both tampons and thick towels.

Shelf space

6.67. The allocation of shelf space for sanpro products as a whole within Tesco's stores depended on the amount of space allocated to the health and beauty area. The allocation of shelf space to a brand of tampons then depended on its proportion of the market, rate of sale and profit, as well as the amount of shelf space taken by towels which were bulkier products. The division of space between rival tampon products depended on their rate of sale. Tesco had not increased the amount of shelf space allocated to sanpro products when thin towels were launched.

New products and brands

6.68. When deciding whether to stock a new brand of sanpro products or a new product from an existing supplier, Tesco said that it considered the rationale for the launch and any unique features or added benefits of the product. Strong marketing support was an important consideration. Pricing was also a factor, but it was less important in the sanpro market because of brand loyalty. Since there was a finite amount of shelf space, if it decided to stock a new product it had to delist another product. That decision was based on the lowest rate of sale and profitability.

6.69. The most significant product development in the sanpro market in recent years had been Procter & Gamble's ultra-slim towel. Before this the market had been skewed more towards tampons, but then it had levelled out to half each for towels and tampons. The launch had caused some tampon manufacturers to counterspend on marketing because they felt that their market shares were threatened. This marketing expenditure would tail off, but it would not stop altogether because manufacturers would give below-the-line support, for example specific retailer promotions. Advertising increased public awareness of the product and retailers could capitalize on it, in terms of sales.

Waitrose

6.70. Waitrose, part of the John Lewis Partnership, said that it did not feel, and had never felt, constrained by Tambrands' terms of business. In any case, its dealings with Tambrands were on the basis of its own conditions of supply.

6.71. All Waitrose shops sold tampons, although there was not necessarily the full range in all of them. Waitrose said that it assessed the shelf space allocated to products on its own criteria, rate of sale being a significant factor. It did not treat feminine hygiene products differently to any other products, nor did it approach the allocation of space between rival products any differently.

6.72. Each product that it stocked was taken on its own merits. Waitrose said that it looked at the projected long-term rate of sale and profitability of a product, and it considered whether it offered anything new or different to existing products and what the impact on those might be. In the last five years slim towels and ultra-slim towels had been introduced to the sanpro market, but Waitrose had not deleted any products from the range which it stocked. Waitrose did not sell own-label sanpro products.

6.73. Waitrose agreed detailed supply arrangements with each supplier at the time a product was introduced and these were routinely reviewed. In addition to the normal cost negotiations between buyer and supplier, a settlement discount was negotiated separately by the John Lewis Central Payment Office. There was no difference in Waitrose's approach or relationship with Tambrands than with any other supplier and it did not consider itself under any obligation to stock the full range of Tambrands' products.

6.74. More generally, Tambrands was a principal player in the market and all its products enjoyed good sales. Waitrose stocked these products because it chose to and as far as it was aware there had never been any suggestion that if it reduced the range which it stocked its trading conditions would be adversely affected. Waitrose said that if such a suggestion was made it would resist it forcibly.

A retailer

6.75. A retailer on Tambrands' special contract terms told us that there had been a crossover of products by suppliers to take market share from established brands. For example, Tambrands had moved into the non-applicator sector where Smith & Nephew's Lil-lets was the main brand and vice versa. There had been an increased spend on advertising of tampons. Pack sizes had been reduced to achieve improved price points. The market share of own-brand tampons had grown and there had been an extension of the panty liner market from menstrual to everyday use.

6.76. Shelf space for toiletry products was allocated against a sales matrix which took into account sub-sector trends and likely growth, current and proposed sales, and minimum stock requirements. Within a particular commodity, eg feminine hygiene products, space was then allocated against market share for the individual sectors (ie tampons, towels and panty liners), again taking into account likely growth, current and proposed sales and minimum stockholding requirements. Brands were then allocated space depending on their rate of sale. This retailer said that provision might be made for anticipated share moves and advertising support.

6.77. When deciding on whether to stock a new brand of sanpro this retailer said that it considered customer demand, product performance, the visual appeal of its packaging, value for money for customers, any unique selling point it might have over other products, availability of shelf space, the credibility of the supplier's history and brand name, the support package, the retail margin and anticipated sales. When deciding on whether to stock a new product from an existing supplier, this retailer also took into account the potential benefits in terms of existing products.

6.78. This retailer said that it understood from Tambrands' terms of business that it would order in full pallet quantities and stock the full range of Tambrands' products in its stores. However, distribution was negotiable, based on anticipated rate of sale, for example this retailer did not stock Tampax mini 32s.

Other retailers

Booker plc

6.79. Booker plc (Booker) told us that its current agreement with Tambrands did not include any discount arrangement. It had received an advertising allowance from Tambrands in 1994 to promote its products. Booker had this kind of arrangement for many products. It had received no further incentive payment. Its only other supplier of tampons was Smith & Nephew.

Budgens plc

6.80. Budgens plc told us that the granting of discounts on condition that retailers stocked the whole or part of a manufacturer's range was in its view common practice in relationships between leading manufacturers of branded products and retailers. There was limited shelf space in retail outlets, which manufacturers were competing for, and retailers tried to obtain the best possible terms and conditions by asking manufacturers for the highest discounts available.

Co-operative Retail Services Ltd

6.81. Co-operative Retail Services Ltd told us that it did not stock the full Tambrands range, and it had not experienced problems on the availability of Tambrands' products. The profitability from Tambrands products was slightly lower (3 to 5 per cent) than for alternative brands, but that was normal for a brand leader in a grocery market sector.

Numark Limited

6.82. Numark Limited supported Tambrands' practices and did not consider them to be against the public interest. It was important to consumers that pharmaceutical wholesalers and independent retail pharmacies had available a comprehensive range of medicines and other healthcare products, such as tampons.

Wholesalers

AAH Pharmaceuticals Limited

6.83. AAH believed Tambrands' terms had no effect on competitors entering the market and regulating their own price structures. Wholesalers could purchase imports if prices were more favourable than buying from Tambrands.

6.84. The availability of products to the public could be restricted if Tambrands reduced its discounts to wholesalers which did not stock its full range. As AAH understood Tambrands' terms and conditions, it had to stock the full range of products to maintain the level of discount it currently received.

6.85. Based on current sales, AAH had no plans to discontinue stocking any part of Tambrands' range, but if this situation changed in the future, it believed it should have the option to reduce or increase the number of products it purchased from Tambrands without penalty. Tambrands' conditions in no way affected its decisions on the stocking of other manufacturers' sanpro products.

Durham Pharmaceuticals Ltd

6.86. Durham Pharmaceuticals Ltd (DP) told us that at no time had Tambrands imposed any specific or implied conditions which linked discounts to a requirement to stock the entire range. DP said that although it was a small independent pharmaceutical wholesaler, it sold Tambrands' products at competitive prices, so it believed it was unlikely that other wholesalers were being offered significantly different terms to it. Tambrands had always traded in a straightforward manner and DP was very satisfied with its trading relationship.

6.87. DP said that any company which insisted on the stocking of a full range of products in return for the granting of discounts would be acting anti-competitively. This was particularly so for smaller companies, whose shelf space was at a premium and the cost of servicing stock levels had to be controlled carefully. If the supplier of a brand-leading product insisted that DP stocked the full range of its products, including its slower-moving lines which DP would probably not wish to stock, then it would almost certainly not stock a competitor's similar product.

L Rowland & Co (Wholesale) Ltd

6.88. L Rowland & Co (Wholesale) Ltd (Rowland) told us that its trading relationship with Tambrands was usual for its market segment. Tambrands had not approached Rowland to stock the full product range, and it had had no offer or inducement not to stock competitors' products. Rowland told us that it made its own decisions on the range and quantity of Tambrands' products and those of competitor companies which it stocked. Through the Numark marketing organization Rowland participated in two promotions of Tambrands products a year, similar to the promotion of the ranges and products of other companies. It told us that Tambrands' behaviour was not anti-competitive, since individuals had a choice. If public demand for a product which was not stocked by a wholesaler or retailer was great enough, the commercial pressures on the retailer or wholesaler to stock the product would be sufficient to cancel any agreement with a competitor company.

UniChem PLC

6.89. UniChem distributes products to its wholly-owned chain of about 400 pharmacies, Moss Chemists, as well as about 5,000 independent pharmacies. UniChem said that it stocked a large range of own-label sanpro products. It did not have an own-label tampon, but it planned to launch one which would be supplied by an Israeli company.

6.90. UniChem told us that there was very strong brand loyalty in the sanpro market. To many customers, a tampon was a Tampax. Although many own-label sanpro products were available, the market shares of the major suppliers were steady, which meant that customers were very loyal to particular brands. Therefore there was no need for the major suppliers to promote on price.

6.91. The markets for tampons and external sanpro products were distinct, because different consumers used different products. However, it was difficult to obtain separate market data.

6.92. UniChem purchased from Tambrands at the standard wholesale rate, which was the trade price less 15 per cent, and there was no minimum purchasing requirement. UniChem stocked the full range, but it said that this was acceptable because they were reasonably fast-selling products.

6.93. UniChem said that Tambrands' practice of fixing its discounts by reference to the purchase of its range of tampons rather than to the quantity of purchases was anti-competitive. This practice induced purchasers to acquire all their tampons from Tambrands even though on a line-by-line basis its prices and level of service were less attractive than those of other suppliers. Tambrands was, therefore, artificially maintaining a higher level of prices than would otherwise be possible. This practice was also a barrier to entry because retailers might be persuaded to acquire products from Tambrands in preference to products from other suppliers.

6.94. If Tambrands' pricing policy constituted a barrier to entry, employment in the UK was likely to be affected because competitors or potential competitors would be unable to establish a viable business in the UK to produce products to compete with those of Tambrands. Tambrands' pricing policy would also affect importers of tampons because they would find it difficult to obtain orders from customers or potential customers of Tambrands.

6.95. A pricing policy based on discounts which were available by reference to the range of products purchased would have a significant effect on the choice offered to retailers. This would be particularly so if the economic effect of Tambrands' pricing policy persuaded wholesalers to concentrate on Tambrands' range. This course of conduct was clearly against the public interest. Tambrands' pricing policy was also likely to artificially enhance its profitability. But for competitors the reverse was likely to be the case. UniChem believed the MMC should require Tambrands to discontinue its current pricing policy and offer discounts solely by reference to the quantities purchased.

6.96. Tambrands had approached UniChem about three years ago with a view to establishing a discount agreement which related to the range of products purchased by UniChem rather than to the quantities it purchased. UniChem had declined and, as a consequence, it was offered discounts purely by reference to the quantities it purchased. No additional discounts were offered to UniChem on the basis that it stocked the full range of Tambrands' products.

Scottish Healthcare Supplies

6.97. Scottish Healthcare Supplies told us that the use of tampon products by the NHS in Scotland was limited. It considered that margins in the hospital sector were low and competition adequate. Hospitals were increasingly moving away from the provision of tampons.