

7 Views of Tambrands

Introduction

7.1. This chapter summarizes the views of Tambrands provided to us in written submissions and in oral evidence.

The reference practice

7.2. Tambrands explained that through its special contract terms and chemist wholesaler terms, it granted discounts to retailers and chemist wholesalers on condition that they stocked the range of Tampax tampons in the manner described in Chapter 3.

7.3. It argued that the label 'full-line forcing' failed to capture the way in which the range-stocking provision operated in practice. In particular, the special contract terms were not forced upon customers. Rather, they had been developed in response to key customers' demands for preferential discounts to reward them for the special role they played in the distribution of Tambrands' products: the terms should therefore be viewed in the context of the power of major retailers. The range-stocking provision gave the customer an added incentive to continue to stock the different products in Tambrands' range, despite the fact that some lines within their range were sold in smaller volumes than others.

7.4. The special contract terms were based on and reflected Tambrands' established trading relationships with its major UK customers. They provided starting points for negotiation or renewal of supply terms for each individual customer. During the course of those negotiations Tambrands might have to concede certain aspects of its terms with different customers. Some lines were excluded from the condition (for example, Tampax mini 32s) and some retailers bought in less than full pallet quantities for certain lines. Tambrands told us that if a retailer found that an existing line was not selling, then, subject to verification by Tambrands, its stocking would be open to negotiation-since it would not be in Tambrands' interest to upset the overall balance of trade with a retailer over a single product line. There was no compulsion on any retailer to buy the whole range at any given time. However, Tambrands' sales staff would discuss the situation with the retailers if it discovered that the product was no longer distributed in any of their stores, ie the line had been *de facto* delisted. The depth of distribution within a retail chain was a matter for account handlers to negotiate with buyers. Tambrands' objective, however, was to continue broadly comparable pricing and trading terms to equivalent customers.

7.5. Tambrands aimed to negotiate broad distribution of the different products in its range, persuading retailers of the attractions of each line. It encouraged each retailer to stock an appropriate mix of different Tambrands products in each store. However, it recognized the constraints of shelf space under which different retailers operated, particularly in small stores. It was ultimately the retailer which decided which Tambrands lines to stock in each individual store. Tambrands did not dictate to the retailer what share of total sanpro shelf space should be allocated to its products, as opposed to competitors' branded tampons or towels or retailers' own-label products; indeed, Tambrands generally found that its share of retailer shelf space was less than its share of the market for tampons or the wider market for sanpro.

7.6. There was no refusal to supply Tambrands products if retailers were not prepared to accept the condition.

7.7. Tambrands refused to give any undertakings to the OFT to end the practice because it did not think the relevant issues had been fully investigated. It explained that there were a number of reasons why Tambrands had chosen to defend the range-stocking requirement before the MMC. The first was to help maintain a broad distribution of the Tampax mini product. This was an important 'starter' product,

which had specific characteristics, including a slender applicator, designed to assist first-time tampon users. Many new users would only purchase a few packets of Tampax mini before moving on to other applicator or digital tampons. As such, it was important both to the consumer, and from a commercial point of view as investment for the future.

7.8. The overall volume of Tampax mini sales (3 per cent of total Tambrands' sales) alone might not justify the shelf space the product was allotted. Tambrands said it would be concerned that if retailers purchased on a purely commercial basis, Tampax mini might become very difficult to find. Although concessions had been made to most retailers on special contract terms on the requirement to stock Tampax mini 32s, Tampax mini 10s were still in wide circulation. Tambrands told us that it offered Tampax mini to retailers at a considerable discount, but this was not always passed on to the final customer.

7.9. Tambrands said that a second reason for retaining the range-stocking condition was to help it avoid pressure from its most important retail customers for individually negotiated special pricing terms. If Tambrands was forced to remove the condition from its special contract terms, these customers would expect Tambrands to make other arrangements to reward them for the role they played in the distribution of Tambrands products. As a single-product company Tambrands' general philosophy was to operate a pricing policy which was open, fair and consistently applied. It therefore sought to resist pressures to agree differential prices, overrides or other beneficial terms with some customers when compared with those agreed with comparable customers. Tambrands submitted that even if it did not offer discounts on the basis of the range of products stocked, it believed the most important retailers which stocked the full (or most of the) Tambrands range would continue to expect financial rewards from Tambrands. Tambrands believed it would be pressured by these retailers to move to individually negotiated overrides or year-end rebates.

7.10. Tambrands argued that the range-stocking condition itself did not achieve a broader distribution of the company's products. Broad distribution was achieved by Tambrands through its sales force negotiating with retailers' purchasing departments. However, specifying the condition in the special contract terms was useful in that it allowed the sales force to start negotiations with retailers from the position that each Tambrands product should be stocked.

7.11. Tambrands explained that Tambrands Inc's largest eight markets were the USA, the UK, France, Canada, Spain, the CIS (principally Russia and the Ukraine), Italy and Belgium. Of these markets, the Tambrands group sold direct to retailers only in the UK and the CIS. In the USA, France, Belgium and Canada it used the services of a broker. In Spain and Italy (as in other European markets) the group made sales to independent distributors which stocked an agreed range and were then responsible for agreeing terms of supply with their retail and wholesale customers. They told us that different trading environments applied in different countries and in some countries the group's commercial preference to avoid price discrimination (and individually negotiated overrides and other incentive schemes) was matched by legislation on unfair competition.

7.12. Tambrands said that it only included a range-stocking condition in terms agreed with key retail or wholesale customers in the UK. This was not because of legal constraints. Indeed Tambrands believed range-stocking discounts or arrangements with similar effects were made available by other suppliers of sanpro and other consumer goods in many countries. Tambrands said that in the USA it was much easier to get a product listed by retailers than in Europe, so distribution was not a problem for suppliers. In any case, Tambrands had a much wider product range in the USA (36 SKUs, compared with the UK where there were only 14 SKUs) so it would be unreasonable to expect customers to agree to this type of condition. In France, on the other hand, where the tampon market was about half the size of that in the UK, supermarkets tended to charge high listing fees for stocking new products and the practice of year-end rebates and overrides was prevalent. Tambrands wanted to avoid this pattern developing in the UK.

The market

7.13. Tambrands argued that there was one market for sanpro as a whole, comprising a broad range of products from low-technology towels to the innovative ultra towel products, as well as digital and applicator tampons. It also encompassed a variety of different absorbencies and sizes.

7.14. Tambrands said that the OFT (and some econometric analysis submitted by Johnson & Johnson in the European Commission's investigations of the Procter & Gamble/VP Schickedanz merger) had started from the proposition that there was a clear distinction within the sanpro market depending on whether the product was designed to be worn internally or externally. This simplistic approach to market definition implied that there were two separate and distinct markets, one encompassing tampons (digital and applicator) and the other towels (ultra-slim, other innovative high-performance products, traditional press-on and looped products, and panty liners). It said that these assertions had not been backed up by sound data regarding competition in the UK market-place. It explained that the dynamics of competition in the sanpro market were more complicated. On the supply side, development and marketing strategies for a particular tampon product had to respond to and anticipate the strategies of competitors with respect to towels as well as tampons. For example, the launch of Always Ultra towels in the UK had had a significant impact on tampon sales and tampon manufacturers' competitive strategies. On the demand side, there were a host of factors influencing a woman's choice of sanpro product.

7.15. Tambrands argued that there had been important developments in the market since the time of the 1986 report. The recent market shift towards innovative ultra-slim towels and high-performance thick towels, spearheaded by Procter & Gamble's launch of Always (including its Ultra and Plus products), had had a significant impact on tampon sales. The long-term effect of this shift would be serious for the tampon market as a whole.

7.16. It had also had a serious impact on the market for traditional towels. At the same time it said that there had been marked concentration of power at the retailer level. This was accompanied by a significant increase in the number of retailer own-label tampons and towels available on the market.

7.17. Technological developments and marketing initiatives in the towel sector had compelled Tambrands and other tampon suppliers to improve, innovate and differentiate their products. So, for example, Tambrands had re-entered the digital sector with Tampets, and Smith & Nephew had entered the applicator sector with Lil-lets Applicator.

7.18. Finally, television advertising had been liberalized. Since 1986 sanpro advertising had been permitted on Channel 4. In 1988 the IBA also agreed to allow ITV to take sanpro advertising, subject to timing constraints.

Entry barriers

7.19. Tambrands recognized that there were significant barriers to entry to the UK tampon sector and to the wider sanpro market, at least to new entry through developing new branded products. Some of these barriers could be attributed to the structure of the market (in common with the markets for many other branded consumer products), and therefore also operated as obstacles to existing competitors. Such barriers included, first, the need to develop innovative new products in order to secure access to distribution. It argued that the pressures on tampon suppliers to innovate had grown significantly because of the increased competition from external products. Investment in research and development was essential if manufacturers were to be able to develop differentiated products offering consumers performance or other benefits over existing products on the market.

7.20. Secondly, Tambrands said that while the relaxation of television advertising restrictions had made the UK market more competitive, it had also increased the cost of entry and the costs facing existing suppliers. Tambrands felt that this effect had been particularly strong in the UK, because of the relatively high cost of television advertising in the UK and the continuing timing restrictions on sanpro advertising (which required sanpro suppliers to compete for these peak advertising slots).

7.21. Thirdly, the continuing importance of consumer loyalty to proven products and brands was a significant barrier to entry. Whilst this loyalty supported the strength of the Tampax brand in the flushable applicator tampon segment, it had presented Tambrands with formidable obstacles to entry in the digital tampon segment. Tambrands said that it had been able to overcome those obstacles by developing an innovative and differentiated product (Tampets) which it had backed with substantial advertising and promotion.

7.22. Tambrands saw the strategies and arrangements operated in the European sanpro market by their principal competitors as presenting a further barrier to entry. For example, Tambrands said that Johnson & Johnson had effectively precluded itself from extending its European digital tampon activities to the UK because of its continuing licensing and marketing arrangements with Smith & Nephew.

7.23. Also, the strategy of multiple retailers to develop own-label sanpro products had, according to Tambrands, acted as a barrier to entry to branded products as it had significantly reduced the share of shelf space available to branded products. Retailers inevitably devoted a disproportionate share of their shelf space to own-label products at the expense of branded products (particularly lesser-known brands). On the other hand, however, Tambrands pointed out that this had increased the opportunities for market entry for manufacturers supplying own-label products. Tambrands told us that it did not supply tampons under retailers' own labels.

7.24. Tambrands therefore anticipated that successful new entry to the UK market would come as part of the entrant's broader European and international strategy in the sanpro sector. Tambrands believed the likelihood of entry was real and would come from powerful international consumer goods suppliers, for which these entry barriers were not insuperable.

Effect on competition

7.25. Tambrands submitted that the inclusion of the range-stocking provision in its special contract terms did not constitute an anti-competitive practice. For the purposes of appraising the effects of the range-stocking provision, Tambrands drew a distinction between supplies to chemist wholesalers (which in turn supplied on to independent chemists) and supplies to multiple retailers (which sold direct to consumers).

7.26. Tambrands did not have direct trading relationships with independent chemists, but operated as an indirect sales force, visiting independent chemists and encouraging them to purchase their products. Chemist's orders would be placed with the full-line pharmaceutical wholesaler of the chemist's choice. Tambrands said that in carrying the full Tambrands range, wholesalers serviced the needs of the independent chemist trade. Tambrands did not agree minimum purchasing or range-stocking criteria with independent chemists, whose purchasing decisions were influenced by consumer demand for particular lines and by the pricing and other terms made available to them by their wholesalers or other suppliers. Therefore, the range-stocking provision did not foreclose retail shelf space to competing sanpro brands in the independent chemist sector.

7.27. Likewise, Tambrands did not believe the range-stocking provision in its special contract terms foreclosed retail shelf space to competing brands in the retail multiple sector. Retailers made stocking decisions based on consumer demand and on the different pricing, promotional support and other terms negotiated with their suppliers. Retail multiples clearly stocked competing sanpro brands as well as their own-label products. Tambrands submitted that the range-stocking provision did not prevent or impede retailers from stocking the goods of other suppliers.

7.28. Tambrands believed the absence of significant branded entry to the UK tampon market since the 1986 report was attributable to the various factors in paragraphs 7.19 to 7.24 and not to the operation of the range-stocking provision. Very small brands had entered and remained in the market, for example Natracare (in Waitrose) and Confident stocked by Boots, Tesco, Superdrug, Morrisons and Somerfield. It said that there was no reason to suppose that Tambrands' range-stocking condition had prevented the products being stocked, for example, in Tesco or Sainsbury's.

7.29. Tambrands pointed out that its main competitor, Smith & Nephew, had launched an applicator product with the full backing of advertising and promotional sampling and had not been inhibited by Tambrands' terms. There were also major players which would be looking at the UK, including Johnson & Johnson, which was currently launching new products in the Netherlands and Belgium, following launches in Spain, France, Germany and Portugal.

7.30. Tambrands said that as far as its new products were concerned, bringing a new product to the market would not obviate its existing arrangements with retailers. But the range-stocking condition was not designed to help the launch of new products, since it had been established when Tambrands had a

very stable range-although it acknowledged that the range-stocking condition could be expected to benefit new products. Tambrands' products stood on their own merits. In launching a new product, Tambrands undertook extensive market research and placement tests and put together a strong marketing support package. Tambrands noted that it had decided not to bring its 'Lites' product to the market because, after researching it, it found that there was not sufficient demand in the UK.

7.31. Tambrands argued that its products did not keep other products off the shelves. The rate of sale of most Tambrands products meant that they came under a rapid replenishment system, and never had a representative presence in terms of facings or physical shelf space when compared to their market share. Tambrands said that it had no evidence nor had ever seen any evidence that retailers' stocking Tambrands products had kept any other products off the shelves. There was only one Tampax product, mini, which was in the lower rate of sale category.

7.32. As far as complaints from special contract terms customers about the stocking of Tampets were concerned, Tambrands said that it had not heard anything from any company about this specific problem.
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Details omitted. See note on page iv.

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Public interest

7.33. Tambrands said that no aspect of its behaviour operated against the public interest. Its approach to trading in the UK was fair and encouraged competition at the retailer and wholesaler levels (as well as at the supplier level). As regards possible public interest consequences of the range-stocking provision, Tambrands said that the provision might encourage retailers to distribute lines addressed to special requirements (for example, Tampax mini and Tampax super plus) and innovative new products (for example, Compak and Tampets), thereby widening the choice of tampons for consumers.

7.34. By increasing consumer choice, Tambrands suggested that the overall size of the UK tampon market might be increased, thereby making it more attractive to entry for actual or potential competitors offering improved products.

7.35. Finally, Tambrands said it could be assumed that prices to retailers and wholesalers purchasing on special contract terms were lower than they would be in the absence of the range-stocking provision. These benefits could be passed on to consumers in the form of lower retail prices for products in Tambrands' range.

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