

Domestic electrical goods: II

A report on the supply in the UK of washing machines, tumble driers, dishwashers and cold food storage equipment

Volume II: Background chapters



MONOPOLIES AND MERGERS COMMISSION

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and Industry by Command of Her Majesty
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Note by the Department of Trade and Industry

In accordance with section 83(3) and (3A) of the Fair Trading Act 1973, 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 she considers would not be in the public interest to disclose and which, in her opinion, would seriously and prejudicially affect certain interests. The omissions are indicated by a note in the text.

6 Introduction to the references

6.1. In this chapter we set out the terms of reference for our inquiries into the supply in the UK of washing machines, tumble driers, dishwashers and CFS equipment. We then give a brief account of how the references came to be made, touching on the OFT's problems in implementing the provisions of the RPA. We go on to discuss the difficulties we encountered in collecting evidence and the way we treated particular evidence that was given to us on the understanding that the source would remain anonymous. We then describe how the inquiries were conducted.

6.2. On 27 April 1995 the then DGFT in exercise of his powers under the FTA made four references to us relating to the supply within the UK, otherwise than by retail sale or hire, of washing machines, tumble driers, dishwashers and CFS equipment (referred to here as 'the reference white goods'). The references were limited to investigating the effect on the public interest of two matters:

- (a) steps taken, by recommending or suggesting prices to be charged by dealers, or otherwise, to influence the prices at which dealers resell [any of the reference white goods]; and
- (b) withholding supplies of [any of the reference white goods] from dealers.'

At the same time the DGFT also made four references relating to televisions, video cassette recorders (VCRs), hi-fi systems and camcorders ('the reference brown goods').

6.3. Our full terms of reference are set out in Appendix 6.1. The eight references are separate from each other, so it was necessary for us to consider and answer the questions set out in the terms of reference for each reference good. Hence we have reported our conclusions on the reference white goods in four separate chapters (Chapters 2 to 5) covered by a single summary (Chapter 1). Much of the supporting material is common to all four goods and is therefore contained in a single set of chapters (Chapters 6 to 15) but differentiating between the goods as necessary.

6.4. We were asked to report by 30 April 1996 on all eight references. The reporting period was subsequently extended, first to 31 October 1996, and later to 30 April 1997.

6.5. At the outset of our inquiries the OFT told us of the practical and evidential problems it had experienced in enforcing the RPA in cases where it believed that covert RPM might be occurring. At our request, it sent us a note of these problems. An extract of the note is at Appendix 6.2.

6.6. Like the OFT, we found difficulty in collecting evidence from dealers about suppliers' practices in setting retail prices and withholding supply. Many of the observations dealers made to us, particularly during the course of our survey of small retailers (see paragraph 6.11), lacked sufficient detailed evidence for us to pursue them further. Our decision not to pursue such observations eliminated between 80 and 90 per cent of the original totals. In every such case this decision was made on the basis of whether the alleged behaviour by the supplier was sufficiently recent (ie post-January 1993) and contained sufficient information (ie the supplier's name, and reference good) for it to be reasonable to expect the supplier to respond to what was alleged. Many of the observations we decided not to pursue related to supplier behaviour ante-dating 1993, or were attributed to more than one named supplier, or were cases where the retailer had declined to name the supplier, or supply had been refused because the retailer's turnover was insufficient, or the retailer had been judged by the supplier to be a credit risk, or the observations proved to be outwith our terms of reference (for example, relating to spare parts, or

microwave ovens or vacuum cleaners.

6.7. Many retailers who gave evidence wished to remain anonymous. We carefully considered each retailer's request for anonymity, mindful of the potential risk that disclosure of that retailer's identity could adversely affect his relationship with suppliers and thereby damage his business.

6.8. Initially we put the substance of the observations made by retailers wishing to remain anonymous to the suppliers named by those retailers for their comments. However, in most cases the named supplier declined to comment without knowing the full facts including the identity of the particular retailer. Ultimately we decided in each relevant case to preserve the anonymity of the person who had sought it, since we accepted that there was a risk that the disclosure of his identity could harm his business.

6.9. Appendix 10.10 details the observations we received from dealers regarding the recommending of retail prices and Appendix 12.2 contains those relating to withholding of supply. Those cases in the appendices which we have relied upon in reaching our conclusions have been marked with an asterisk. In Appendix 10.10 there were a small number of 'anonymous' cases in which the named supplier had in effect accepted the substance of what the retailer had said. We have also relied on these cases and they too bear asterisks in the appendix. To complete our record of the evidence we received, we have included in the two appendices the rest of the 'anonymous' observations together with cases which we were unable to substantiate because there was an irreconcilable conflict of evidence between retailer and supplier. However, we have not relied on those cases in reaching our conclusions.

Conduct of the inquiries

6.10. The conduct of eight concurrent inquiries (see paragraph 6.2) presented us with an onerous task. The MMC have occasionally been asked to undertake concurrent multiple inquiries but never before on this scale. The fact that the inquiries were limited to two matters, retail prices and withholding supplies, did not greatly reduce the volume of the work. The gathering of evidence included fact-finding visits to some of the larger suppliers; preliminary hearings with 11 multiple retailers, two warehouse clubs, the Radio, Electrical and Television Retailers' Association (RETRA), and the Consumers' Association; visits to multiple retailers, small retailers, warehouse clubs, and CIH and some of its local groups; the issue and subsequent analysis of postal questionnaires to suppliers, multiple retailers, wholesalers, warehouse clubs, mail order companies, CIH and its local groups; a visit to Northern Ireland to meet RETRA (NI) and a major electrical wholesaler; meetings with the OFT; and with Directorate General IV (DGIV) (the Competition Policy Division) of the European Commission. We engaged GfK as consultants to provide statistical information and analyses of various aspects of the markets for white and brown reference goods.

6.11. We conducted an interview survey of 625 small retailers of white and brown electrical goods and followed up the interviews, where appropriate, by further visits to survey respondents. The methodology used in conducting the survey is described in Appendix 6.3. The analysis of the survey is at Appendix 9.1.

6.12. In February and March 1996, we wrote to all the suppliers and retailers of the reference white goods that we were able to identify of our provisional findings on:

- (a) the four scale and eight complex monopoly situations we had identified at that time;
- (b) the practices that defined the complex monopolies;
- (c) the members of the complex monopoly situations; and
- (d) the persons in whose favour the monopoly situations operated.

6.13. We set out our provisional findings in 'issues letters' to the larger suppliers and larger multiple retailers (see Appendix 6.1, Annex A). In the interests of minimizing the demands on the trade, we sent

only a summary of our provisional findings to the smaller suppliers and smaller multiple retailers. We also wrote briefly to about 5,430 small retailers. The full provisional findings were sent to any supplier, retailer or third party who requested it.

6.14. In the issues letters we summarized the evidence on which we had based our provisional findings, and set out the issues we thought might be adverse to the public interest (see Appendix 6.1, Annex B). From April to July 1996 we held hearings with six suppliers of the reference white goods (as well as 11 reference brown goods suppliers); five multiple retailers; two warehouse clubs; CIH; and RETRA. In September 1996 we sought the views of all recipients of the issues letters on possible recommendations and their likely effect on the reference white goods markets (see Appendix 6.1, Annex C). From November 1996 to February 1997 we held further hearings with two reference white goods suppliers (and two brown goods suppliers); CIH; the Consumers' Association; and the OFT.

6.15. At an early stage in our inquiries we decided that, in taking oral or written evidence, we should ask for a comprehensive account covering all the reference goods with which a particular witness was concerned rather than seeking separate accounts from that witness in respect of each of them. In every case, however (including the interviews for the survey of small retailers), we emphasized that if this comprehensive account was incorrect in respect of one or more of the reference goods then the witness should tell us about the difference in appropriate detail. In our questionnaires to suppliers, retailers, wholesalers, mail order companies and retailer buying groups the questions were drafted in terms of specific reference goods. All the witnesses accepted this regime without reservation, and we believe it worked most effectively in reducing the burden, on all concerned, of preparing what otherwise would have been highly repetitive submissions. We were satisfied, too, from responses to draft chapter material that we put to witnesses for comment, that this regime did not result in errors or misunderstandings. We are most grateful to the witnesses who co-operated so helpfully in this task.

6.16. A full account of the conduct of the inquiries is at Appendix 6.1.