Editorial

A Merger Policy for 1992

Paradoxically, it was a proposal (which by the time you read this may have come to fruition) by a Swiss company to take over a British one which highlighted the shortcomings of the DTI's mergers policy in the run-up to the single market. By its own declared criteria (most recently expressed in the March 1988 "Blue Paper", which largely restated the so-called 'Tebbit Doctrine') the DTI was right not to refer the Nestlé proposed takeover of Rowntree to the MMC.

The addition of Nestlé's share of the UK market (3 per cent) to Rowntree's (24 per cent) would not significantly reduce competition in the UK, the DTI's major consideration. But in the European market, the effect would be very different with the take-over eliminating one of the current players.

The DTI argues that the European dimension is already taken into account, and that a merger between two UK companies is more acceptable if there is strong competition from elsewhere in Europe. But national authorities cannot be expected to consider the effects elsewhere in Europe of a domestic merger.

A Community-wide system of merger control is not simply one part of the single market project. It is a condition precedent. Without it, enthusiasm for 1992 will result in increasing concentration and the creation of larger EC-wide conglomerates, untouched by national competition authorities.

Economies of scale are fundamental to the internal market, and will have to be pushed by merger and take-over. But the process will not start in 1992. It is happening now, and we should no longer delay giving the Commission powers to police it.

NB
The Editor regrets that the article referred to on p 118 of Infobank in the May issue on "Restrictive Practices: The Green Paper" does not appear in this issue, but will be in the July issue.

Editorial

SIB Takes First Bite

Difficult (and probably dangerous) to judge after the first month or so, but at least it does seem that the newly-empowered Securities and Investments Board is starting its life as a statute-wielding regulator with a decent amount of vigour. The main question will be whether the new broom has been so determined to sweep clean that it has been attacking areas which are innocent of any dirt, whether it has missed any major trouble spots and whether it can maintain its decisions through challenges to the courts.

At the time of writing, the most spectacular subject of SIB's new intervention powers under the Financial Services Act is Barlow Clowes Gilts Management, of London and Poynton in Cheshire, which had around £50 million under management and over 7,000 clients when SIB moved, late on the Friday evening before the Spring bank holiday recess, to have the Official Receiver appointed as provisional liquidator.

The shockwaves from this action are considerable. Not only is the company protesting and its investors — many of them small private investors — both baffled and alarmed by the move, but the implications for other investors, of several types, could be grim if it turns out SIB was right to pull out the rug. For Barlow Clowes is part of listed group James Ferguson which had its shares suspended "at the company's request" three days before the OR was installed in the offices shared by Clowes and Ferguson. Shareholders can therefore add their anxieties to the general angst. And then there are the investors with the offshore elements of the Ferguson group, notably the Gibraltar operation which is believed to have more clients and maybe twice as much under management as the UK firm. Within days of the SIB action the Gibraltar-based Barlowe Clowes International — a different corporate entity to BCGM although also a subsidiary of Ferguson — was telling alarmed clients that it had no financial troubles but, because of the rush to cash in investments, it would only be able to repay them on a phased basis taking up to 180 days.

This seems a rather odd course to adopt, even in the face of a panic run on the firm, since the money, again much of it from small "aunt agathas", is said to be invested in gilt-edged stocks. These should be readily realisable in the market without any real delay.

SIB can, however, take no direct interest in any other companies within the Ferguson group since they do not appear to come within the scope of the Financial Services Act by carrying out authorisable business within the UK. If, as declared to be the case, BCI is not marketing its services or soliciting business here but simply having investments routed to it by genuinely independent intermediaries, it does not come within SIB's authority. And there is, in any case, a jurisdiction problem because of Gibraltar's status and the fact that its own financial regulation laws are still in a state of relative disarray.

It seems likely that the full hearing of SIB's petition, presented under s 72 of the FSA, will be in early July which means weeks of anxious waiting by investors, since SIB is constrained from detailing its reasons for the action by the risk of prejudicing the full hearing. The application for the installation of the Official Receiver as provisional liquidator and the appointment of two special managers was held *ex parte* and in chambers. So the winding-up petition hearing will certainly attract widespread interest, both from the thousands of directly interested parties and from those who wish to see how and why SIB is exercising its new powers.

Should the petition succeed, another question will be added to the existing horde of queries about who had done what to whom. This time, however, it will relate to who has *not* done what to whom and what on earth they were doing instead. For, although SIB only became the regulator of BCGM — which was interim authorised having applied for membership of the Investment Managers Regulatory Organisation — on April 29, the firm had of course been subject to regulation before that date. For the several years of its pre-'A' Day existence, it came under the Prevention of Fraud (Investments) Act, requiring a principal's licence to deal, the body which, at least nominally, supervised such licensed dealers was the Department of Trade and Industry.

When conclusions can be reached, therefore, if investors turn out to be at risk because of practices which took place prior to April 29 (and if there is any just cause for the SIB action it seems unlikely to have developed suddenly over two or three weeks) the DTI is going to have a lot of explaining to do. It has already emerged that it has had inspectors in BCGM for several months, but if the situation was really alarming enough for SIB to clobber the firm almost immediately, investors are bound to wonder why the DTI had not done so already. Somehow I think that the same question is bound to arise over quite a few firms as the new system takes hold.

Hong Kong Exchanges Slated

Reports on the aftermath of the worldwide series of stockmarket crashes last October have been emerging apace during the past few months, but few have been quite as savagely critical as that produced by the committee headed by former Lloyd's of London chief executive Ian Hay Davison on the performance of the Hong Kong stockmarket.

Stern words were expected, but whether the market was quite ready for the conclusion that the executive staff of the exchange were "ineffective and lacking adequate knowledge and experience" to cope with the slump, whilst "an inside group had treated the exchange like a private club" and the regulatory system had merely adopted a "passive and reactive role" is a different matter.

Mr Hay Davison is known as a 'tough cookie' and his committee's recommendations include radical restructuring of the stock and futures exchanges and major strengthening of the regulating commissions which, he suggests, should be amalgamated. If they are adopted perhaps the time-honoured reputation of Hong Kong for housing one of the most volatile share casinos in the business may be due for revision in the future.

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