

can be used instead of mineral insulated cable, but these cables are also made by a number of other substantial cable manufacturers who are in competition with BICC. BICC (including Pyrotenax) therefore has a very much lower share (BICC estimates about 36 per cent.) of the market for mineral insulated cable together with possible alternative cables than it has of the market for mineral insulated cable alone. Mineral insulated cable can make progress against the other competitive systems only if price and service are competitive. Pyrotenax has succeeded in this field because it has always been a manufacturer of mineral insulated cable only and has therefore not been adversely affected by any inroads which mineral insulated cable might make into the demand for other types of cables. BICC, although a manufacturer of other types of cables, says that it has succeeded with mineral insulated cable because it has from the beginning been the responsibility of a separate and largely autonomous division of the company (the Mineral Insulated Cables Division), which has been free to develop mineral insulated cable and, substantially, to fix its own selling prices in competition with other divisions of the company. Indeed, BICC believes that an important reason for the failure in other countries to establish a market for mineral insulated cable is that its development has been in the hands of companies which either are not interested solely in mineral insulated cable, or which do not have the same philosophy as BICC regarding competition between divisions.

CHAPTER 6

The Views of Interested Parties

The use of mineral insulated cable

117. The significance of BICC's dominant position in the supply of mineral insulated cable following the merger depends partly on the extent to which this cable serves a separate market in which it is not subject to competition from other types of cable. We were therefore concerned to investigate whether in practice mineral insulated cable is indispensable for any purpose or whether other types of cable are always technically acceptable in place of it, as BICC argued (see paragraph 116). For this purpose we obtained the views of about 100 interested, or potentially interested, parties, including other cable manufacturers, electrical contractors, electrical wholesalers, shipbuilders, steel manufacturers, nationalised industries (particularly the Central Electricity Generating Board, the Area Electricity Boards and the National Coal Board), Government Departments, architects and insurance companies.

118. As far as we could ascertain, there are no regulations which specifically require the use of mineral insulated cable. The *Regulations for the electrical equipment of buildings*,* issued by the Institution of Electrical Engineers, recognise the use of mineral insulated cable in a number of situations but do not in any situation require its use exclusively. Insurance companies appear to accept the regulations of the Institution of Electrical Engineers, and do not make any stipulations about the use of mineral insulated cable in any situation.

* 17th edition, 1967. (17s. 6d. from the Institution, Savoy Place, Victoria Embankment London WC2).

119. We received a considerable amount of evidence that where cables were exposed to high temperatures the use of mineral insulated cable was regarded as very desirable. Some witnesses, however, went further and said that in these circumstances mineral insulated cable was essential. A steel company said 'there are certain applications in connection with steel furnaces, blast furnaces, soaking pits, etc., which involve heat and fire risks, where we now consider mineral insulated cable to be essential'. Another steel company said 'it is absolutely essential that mineral insulated cable continues to be manufactured, since there are no substitutes for it in hot or difficult conditions such as cable installations over or in close proximity to furnaces'. Shipbuilders said that 'for areas where high temperatures are likely to be encountered, e.g., for boiler equipment or fire detection systems . . . there is not an adequate substitute', and that there is 'no adequate substitute available to us for our special purpose'. We were told that, because of the heat resisting properties of mineral insulated cable, it was particularly suitable for use in fire alarm systems; electrical contractors told us that it was in fact regarded as 'virtually irreplaceable' for this purpose.

120. These views are typical of those of a large range of commercial and industrial users of mineral insulated cable; but they were not universally accepted. One steel company said 'the use of mineral insulated cable appears to be declining due to the introduction of high temperature PVC and butyl rubber cables'. The Marine Division of the Board of Trade said that, although there were certain circumstances in shipbuilding in which there was a requirement that cables should be fire-proof, and although mineral insulated cable was often used, silicone rubber insulated cable would usually meet their requirements. (One shipbuilder, however, said that silicone rubber cable cost too much for use in commercial shipbuilding.)

121. In addition to being heat resistant and flame-proof, mineral insulated cable is regarded as having a lower fire risk than other types of cable, and has therefore come to be accepted as particularly suitable for historic buildings. We were told that it was also attractive for this purpose because it could be installed unobtrusively, since its diameter was small and it did not need the protection of conduits.

122. Witnesses drew attention to the ability of mineral insulated cable to withstand mechanical damage, and said that this made it particularly suitable for use in factory installations and in quarries and mines where heavy falls of rock might occur. Others drew attention to mineral insulated cable's resistance to corrosion of various kinds, and to the fact that it was virtually everlasting. In all these cases however there was evidence that, although the use of mineral insulated cable was highly desirable, other types of cable were always available, even although they might not always be so satisfactory.

123. Although other types of cable might be technically acceptable as substitutes, we were told that for people in the trade, especially electrical contractors, mineral insulated cable was often essential because their customers specified it. When this happened there was normally no question of their accepting any alternative, and contractors would lose the business if they could not supply mineral insulated cable.

124. We received a considerable amount of evidence concerning the price of mineral insulated cable compared with that of other cables which might be used as alternatives. It was explained that a simple comparison of purchase prices was misleading because the cost of installation could vary greatly according to the degree of protection required and the difficulty of fitting that protection in the particular situation. The only true comparison was between the installed cost of each, and this could vary so much according to the nature of the particular job that it was difficult to generalise. But on the one hand the use of mineral insulated cable for domestic wiring had been limited because adequate alternative systems had usually been cheaper to install, and on the other hand where its special qualities gave mineral insulated cable an advantage it was often cheaper because the alternatives required protection with conduits or trunking which could be difficult and expensive to install. (BICC estimated that, depending on the type of installation involved, the installed cost of mineral insulated cable could be 25 per cent. less than that of some other cable system.) One shipbuilder told us, for example, that to use any substitute in a ship's galley would be too expensive.

Competition from other manufacturers

125. A number of witnesses gave us their views on the possibility of Glynwed's offering any significant degree of competition with the merged companies in the supply of mineral insulated cable. There appeared to be no doubt that the Glynwed product was technically acceptable, and it appeared that the net price, at any rate to some users, was lower than that of Pyrotenax or BICC. Some witnesses thought that Glynwed was likely to offer increasing competition with BICC, particularly because some users of mineral insulated cable would switch their demands to Glynwed simply because they preferred not to deal with a monopoly supplier and therefore wished to encourage the continued existence of an alternative supplier. Others on the other hand thought that Glynwed was of minor significance as a supplier of mineral insulated cable or that Glynwed's share of the market was not likely to grow very much. One user, a shipbuilder, had not heard of Glynwed or Sterling Cable (formerly Glynwed's sole distributor) as suppliers of mineral insulated cable. Other views were that Glynwed would not be able to exercise a competitive influence on BICC because it was not large enough to be able to meet the requirements of a large contract; that it would be too difficult for Glynwed to compete successfully against BICC and it would not survive as a manufacturer of mineral insulated cable; and that if Glynwed was too successful 'no doubt they would get absorbed'. Glynwed's own views on its prospects of success as a manufacturer of mineral insulated cable were optimistic (see paragraph 15).

126. We looked into the possibility that further competition might arise from new manufacturers of mineral insulated cable. A number of cable manufacturers gave us their views. It was generally recognised that there would be technical difficulties to be overcome, but there was no reason to suppose that any of these would be insurmountable. One cable manufacturer pointed out that the capital required would be 'very large', that it would be a long time before production became profitable, and that 'BICC would make it very, very difficult for us to succeed'. Another told us that it

had already given some thought to the possibility of making mineral insulated cable, but that it believed the capital cost might be of the order of £½ m.* and that it had no present intention of doing so. Another said that it had 'never seriously considered the production of mineral insulated cable'. On the other hand one cable manufacturer said 'we are considering at this time, as doubtless are a number of other people, whether the potential is such that we ought to be making it'. This company also thought that the merger might increase the likelihood of other cable makers undertaking the manufacture of mineral insulated cable.

The consequences of the merger

127. Some users, particularly large companies, while recognising that the merger would create a near monopoly in the supply of mineral insulated cable, nevertheless thought that there were no grounds for objecting to it. However, some of these also thought that Pyrotenax products should 'continue to be marketed on a competitive basis', or that we should satisfy ourselves that there would 'still be reasonable competition in the manufacture of the various products of the two concerns' (i.e. BICC and Pyrotenax). Several witnesses said that they would not expect to see any deterioration in availability, quality or service as a result of the merger, although two of them said that this view depended on the continued existence of a second source of supply (i.e. Glynwed). One witness thought that the merger might lead to improvements in quality through greater funds for research being available.

128. On the other hand, numerous users of all kinds thought that the merger would lead to a gradual increase in the price of mineral insulated cable, or to a reduction in discounts. Cable manufacturers and electrical wholesalers especially were concerned about discounts, but electrical contractors and shipbuilders also expressed concern. Customers of BICC or Pyrotenax have hitherto been able to change from one to the other in order to take advantage of more favourable discounts, and we were told that there have been occasions on which they have done so. We were told also that because of competition between distributors (including the two companies' own distributing organisations) increased discounts resulting from competition between the manufacturers have had to be passed on, at least in part, to users. Some witnesses expressed the fear that delivery and service, particularly to smaller users, might deteriorate. Some thought that the diminution of competition would lead to reduced research and development, so that it would be less likely that new types of cable would be produced or that the quality of existing cables would be improved.

129. In addition to these general fears about the possible consequences of the merger, certain more specific fears were also expressed. First, cable manufacturers who had relied on either BICC or Pyrotenax for supplies of mineral insulated cable to complete their range feared that following the merger BICC could, by refusing supplies, giving poor deliveries or service, or quoting unfavourable prices or terms for mineral insulated cable, make it difficult for them to compete. Moreover the effect would not be confined to the supply of mineral insulated cable; by making use of its near-monopoly

* BICC told us that it estimates that the initial capital required (including working capital) to establish production of mineral insulated cable on an economic scale in a new factory in the United Kingdom would be of the order of £1.2m.

position BICC would be able to get an advantage over them in competing for orders for other cables. They thought that BICC could, for example, win a whole power station wiring contract by manipulating the mineral insulated cable content in the contract to its own advantage. And salesmen would be tempted to offer customers special terms for mineral insulated cable on condition that they also ordered their requirements of other cables from BICC. Secondly, electrical contractors drew attention to the fact that BICC operated an electrical installation department of its own in competition with themselves. They feared that, with so large a percentage of the supply of mineral insulated cable in BICC's control, it could extend its own contracting activities into the domestic and commercial fields and, by discriminating in price or discount in favour of its own contracting organisation, expand them at the expense of other contractors; by denying supplies to other contractors it could become the monopoly installer as well as supplier of mineral insulated cable. Thirdly, some wholesalers feared that BICC might not continue to make supplies of mineral insulated cable available to them, or that it might not do so on terms as favourable as they were receiving at present. It might also by-pass wholesalers by offering more favourable terms to users who placed orders for mineral insulated cable direct in combination with orders for other types of cable. Fourthly, as already mentioned, some small customers for mineral insulated cable thought that they would tend to be given less favourable treatment—not only less favourable than that given to larger customers but also less favourable than that which they had hitherto had from Pyrotenax, which had always been willing to deal direct with small users.

Safeguards

130. Many of the interested parties who expressed fears that their interests, or the public interest, might be adversely affected by the near monopoly which the merger brought about, suggested safeguards. The various safeguards sought may be summarised as follows :

- (a) Mineral insulated cable should continue to be available to wholesale distributors direct and through other manufacturers as at present, at terms and conditions no less favourable than those available now.
- (b) Mineral insulated cable should continue to be available to other cable manufacturers, and the pattern of terms and conditions of supply, including the discount structure, should be no less favourable relative to other classes of customer than at present.
- (c) The monopoly power resulting from the proposed merger should not be used in any way directly or indirectly to attract to BICC business in any other type of cable.
- (d) The price of mineral insulated cable should not be increased disproportionately to any increases applied to other types of cable, and monopoly profits on mineral insulated cable should not be used to eliminate competitors in the manufacture of other types of cable.
- (e) BICC should not attempt to manipulate the market to increase or decrease the demand for mineral insulated cable in relation to other types of cable.

- (f) BICC should not use its monopoly power to the unfair advantage of its own electrical contracting subsidiary and should not discriminate unfairly against its electrical contracting competitors in price, service or continuity of supply either nationally or regionally.
- (g) BICC and Pyrotenax should continue to market mineral insulated cable in competition with each other.
- (h) The continued independence of Glynwed as an alternative source of supply should be assured.
- (i) Patent licences (if any) and know-how should be freely available to anyone wishing to manufacture mineral insulated cable.

CHAPTER 7

Conclusions

The facts

131. Paragraph 2 of our reference instructed us, when investigating and reporting upon the facts, not to consider whether the provisions of sections 6(1)(b)(ii) of the 1965 Act were satisfied. Our first duty under section 6(2) of the Act, therefore, is to report whether arrangements in progress or contemplation for the merger of British Insulated Callender's Cables Ltd. and Pyrotenax Ltd. would result in section 6(1)(a) and 6(1)(b)(i) of the Act being satisfied.

132. The Board of Trade did not exercise their power under section 6(11) of the 1965 Act to stay the proposed merger, the arrangements for which were completed shortly after the date of the reference (see paragraph 102) with the result that the two enterprises referred to in the reference have ceased to be distinct enterprises. Section 6(1)(a) of the 1965 Act is, therefore, satisfied.

133. Section 6(1)(b)(i) of the Act is satisfied if certain conditions are found to prevail, or to prevail to a greater extent, as a result of the merger. The two companies' sales of mineral insulated cable in the United Kingdom in the latest periods for which figures are available are given in paragraph 68. Each of the companies separately supplied more than one-third of the mineral insulated cable which was supplied in the United Kingdom in these periods, and their combined share of the supply was over 90 per cent. We conclude, therefore, that the conditions specified in section 6(1)(b)(i) of the 1965 Act prevail to a greater extent as a result of the merger.

The public interest

134. We are next required to report whether the fact of the enterprises having ceased, in the circumstances of the case, to be distinct enterprises operates or may be expected to operate against the public interest and, if so, whether any and if so what action should be taken to remedy or prevent any mischiefs which result or may be expected to result.

135. One of the circumstances of the case which appears to us to be significant is the immediate cause of the merger. This was not, on the one hand, that Pyrotenax's prospects as an independent company were poor, so