Re Queensland Co−operative Milling Association Ltd., Defiance Holdings Ltd. (Proposed Mergers with Barnes Milling Ltd.)

Review of Commission's determination denying authorization.

(1976) ATPR ¶40−012

Trade Practices Tribunal

Decision dated 5 March 1976.

Review of Commission's determination — production of documents — principles governing clearance and authorization — identification of relevant markets — assessment of competitive effects — substantial public benefits — balancing of anti−competitive detriments against public benefits allegedly resulting from proposed mergers.

The applicants QCMA and Defiance made mutually exclusive merger proposals for the control of Barnes. Clearance and authorization of the merger proposals were denied by the Trade Practices Commission and the applicants therefore sought a review by the Tribunal of the Commission's determination denying authorization.

At the preliminary conference, the Tribunal President refused to issue a general order directing the Commission to produce all documents in its possession relevant to the proceedings, including documents which do not form part of the Commission's register kept pursuant to sec. 89 and 95 of the Act.

The Tribunal President ruled that there is nothing in the Act provisions for review, sec. 101 or 102, which requires the Tribunal to consider the Commission's detailed findings and reach conclusions upon them. It is the determination of the Commission which the Tribunal is called upon to review and not the reasons for that determination. The Tribunal is not concerned with any documents on the Commission files, but not on the public register, which the Commission does not see fit to place before it. If the applicants have reason to believe that materials which might assist their case are being withheld by the Commission, a specific remedy is provided by sec. 157 (although this section exempts documents ''prepared by an officer or professional adviser of the Commission'' from disclosure).

On the merits of the case, the Tribunal refused to review and decided to affirm the Commission's determination denying authorization to the proposed mergers.

In its decision, the Tribunal set down principles by which it will grant or refuse authorization of merger under sec. 88(7) and 90(5), considered the meaning of these sections and their relation to sec. 50 (prohibiting anti−competitive mergers) and to the scheme of the Act as a whole, and clarified the relationship between clearance and authorization (i.e. the anti−competitive and public benefit principles governing illegality, exemption and justification under the Act). The Tribunal then proceeded to identify the relevant markets affected by the two proposed mergers, examined the various effects or likely effects on market competition as well as the public benefits claimed for each merger proposal.

The Tribunal reached a substantially different view of the anti−competitive effects of the proposed mergers from that taken by the Commission. Among others, there was some difference of emphasis between the Commission and the Tribunal in assessing the importance of market concentration as against other elements of market structure and the evidence on competitive behaviour. The Tribunal assessed the likely anti−competitive detriments of the proposed mergers to be not as serious as the Commission found them.

However, the Tribunal in its decision found that, on balance, the lack of substantial public benefit outweighs the slight anti−competitive effects of the proposed mergers. It found no measurable benefit resulting to the public, being a benefit that would not otherwise be available, from either applicant (QCMA or Defiance) taking over Barnes' stockfeed and flour packaging businesses.

Before: Justice Woodward, President; J.A.F. Shipton and M. Brunt, Members

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Justice Woodward President; J.A.F. Shipton and M. Brunt, Members.:

A. **Introduction:**

In these matters the two applicant companies have made mutually exclusive merger proposals for the control of a third company, Barnes Milling Ltd. Under the provisions of the Act, the applicants sought, in the alternative, clearance or authorization for their respective proposals from the Trade Practices Commission. All these applications were refused by the Commission and the respective applicants have now asked this Tribunal to review the Commission's determinations refusing authorization.

It is convenient to set out first the President's reasons for a ruling which he gave on an interlocutory application and then to deal with the merits of the case under the following headings:—

1. Description of the industry and the three companies.

2. The merger proposals.
3. Applications to the Commission.
4. Principles to guide the Tribunal.
5. Identification of markets.
6. Present competition.
7. Future of Barnes without merger.
8. Likely effects of QCMA/Barnes merger.
9. Likely effects of Defiance/Barnes merger.
10. Alleged public benefits of QCMA merger.
11. Alleged public benefits of Defiance merger.
12. Decision.

B. **President's ruling on interlocutory application:**

In these matters I directed, pursuant to Trade Practices Regulation 22, that a preliminary conference be held to consider appropriate directions for the future conduct of the proceedings. At that conference the respective applicants and Barnes Milling Ltd., which was given leave to intervene, asked me to order the Trade Practices Commission to produce all the documents in its possession relevant to these proceedings, including documents which do not form part of the Commission's register kept pursuant to sec. 89 and 95 of the Act. The Commission objected to any such blanket order being made.

After hearing argument, I refused the application and said that I would later give considered reasons for this refusal. I now state those reasons.

It is convenient to begin by considering what documents are really involved in this dispute. There are, broadly speaking, two types of documents which would be covered by such an order and which the Commission objects to producing.

The first class of documents are those which come into existence when confidential information, relevant to a particular application, is given to the Commission either by parties interested in the application or by outside persons who have information which the Commission or its officers think may be relevant to its inquiries.

Such information may be given to the Commission in documentary form or it may be given orally and reduced to writing by a member of the Commission or its staff. It may be volunteered or it may be supplied following a request from an officer of the Commission.

There is obviously considerable advantage to the Commission in being able to receive such information on a confidential basis. It may suggest further lines of inquiry or be valuable in itself, depending upon the nature of the information and reliability of the source. The Commission is understandably anxious to be able completely to protect the confidentiality of that information in cases where it deems it necessary to do so. Without an assurance of such confidentiality, information of this type would often not be given to the Commission.

The second class of documents likely to be concerned are those internal to the Commission and its officers. In particular, the Commission is concerned about notes or memoranda in which an officer of the Commission expresses views about an aspect of a matter which the Commission is about to consider or actually has before it in a formal sense.

Again the Commission is anxious to secure a position in which members and officers can communicate freely with each other, in writing, without being inhibited by the fact that such communications could later be compulsorily produced to persons outside the Commission. Even if such production were on some restricted basis, the Commission maintains that the inhibition would exist and could prejudice the smooth conduct of its affairs.

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These points raised by the Commission are clearly valid and carry considerable weight. The question remains whether there are countervailing arguments which are stronger.

The submissions for the applicants proceeded on the basis that the Tribunal cannot review a determination of the Commission without taking account of the reasons for that determination. It is argued that it is appropriate, and perhaps even necessary, for the Tribunal to examine and test the Commission's published reasons. The Tribunal must therefore be made aware of all the material, including information and opinions, which was before the Commission and might have influenced it in its decision.

In support of this view it was pointed out that the Tribunal is empowered to make a determination ''affirming, setting aside or varying the determination of the Commission'' (sec. 102(1)). This was said to be inconsistent with the notion of a fresh start to proceedings before the Tribunal.

It was argued further that the Commission is just as much a party to the proceedings before the Tribunal as is either of the

applicants — that it has the function before the Tribunal of upholding the decision that it has reached.

Mr. McComas, for QCMA, was prepared to have exempted from production communications between officers of the Commission and the Commission itself, but not communications from one officer to another. In reply to a question he said that his client had no particular document in mind which might assist its case or of which it needed advance warning. It was merely trying to discover the basis on which the Commission reached certain of its findings. He was supported by counsel for Defiance and Barnes who, however, had some doubts as to whether any documents in the Commission's possession should be exempted from production.

In reply, counsel for the Commission stated the role of the Commission before the Tribunal as they submitted it to be. They said that, in the absence of special consideration in a particular case, that role is as follows:—

(a) to examine any statement of facts and contentions put before the Tribunal by a party, in order to see if all material facts and considerations are fully and fairly presented, and to submit to the Tribunal the results of each such examination;

(b) to furnish to the Tribunal such additional information as the Commission considers to be material to the issues before the Tribunal;

(c) to assist the Tribunal to evaluate the information furnished to it by such means as are appropriate, including the cross−examination of witnesses and the production of additional information having the effect of correcting, qualifying or contradicting information already supplied; and

(d) to make submissions to the Tribunal as to the considerations which the Commission considers material to the hearing before the Tribunal.

Counsel specifically rejected any suggestion that the Commission comes before the Tribunal as a party, concerned to uphold its own decision.

In my view, this attitude of the Commission is quite correct. While the Commission has an opportunity and an obligation (sec. 90(4)) to explain in writing its reasons for its determinations, it should not be concerned to press the same view of the facts, or of the principles involved, upon the Tribunal.

It should assist the Tribunal, which does not have investigative staff or counsel assisting it, in the ways indicated above. This will normally put counsel for the Commission in a position whereby, to secure a balanced presentation to the Tribunal, they must test the evidence of applicants, present contrary material and make submissions putting an opposite point of view to that put on behalf of applicants. In doing so they will necessarily be tending to support the Commission's decision. But none of this should be done in a partisan fashion. Since instructions are given by the Commission, its counsel are not in the same position as counsel formally appointed to assist the Tribunal would be. In practice, however, the difference should not be very great. In fact the only significant difference which occurs to me is that counsel instructed by the Commission would be in a position to make concessions on behalf of the Commission which the Tribunal would probably be disposed to accept in most cases and which could shorten proceedings.

It would be convenient if the Commission continued to regard its implicit responsibilities to the Tribunal in each case as including those listed above, without the necessity of any express request to that effect under sec. 102(3).

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Section 101 and 102 of the Act are those which provide for reviews by the Tribunal. They are in the following terms —

''101.(1) A person dissatisfied with a determination by the Commission in relation to an application for, or in relation to the revocation of, an authorization, not being a determination granting an authorization in pursuance of the requirements of sub−section 90(9) or (11), may, as prescribed and within the time allowed by or under the regulations, apply to the Tribunal for a review of the determination and, if the person was the applicant for the authorization or the Tribunal is satisfied that he has a sufficient interest, the Tribunal shall review the determination.

(2) A review by the Tribunal is a re−hearing of the matter and sub−section 90(5) applies in relation to the Tribunal in like manner as it applies in relation to the Commission.

102.(1) Upon a review, the Tribunal may make a determination affirming, setting aside or varying the determination of the Commission and, for the purposes of the review, may perform all the functions and exercise all the powers of the Commission.

(2) A determination by the Tribunal shall, for the purposes of this Act other than this Part, be deemed to be a determination by the Commission.

(3) For the purposes of a review by the Tribunal, the member of the Tribunal presiding at the review may require the Commission to furnish such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

(4) For the purposes of a review of a determination by the Commission, the Tribunal may have regard to any information

furnished, documents produced or evidence given to the Commission in connexion with the making of the determination.''

In my view there is nothing in sec. 101 or 102 which requires the Tribunal to consider the Commission's detailed findings and reach conclusions upon them.

It is the determination of the Commission which the Tribunal is called upon to ''review'', not the reasons for that determination. It is specifically provided that the Tribunal's review is a re−hearing of the application for authorization, although the Tribunal may, in a proper case, have regard to information furnished to the Commission or to documents produced or evidence given to the Commission in the course of its consideration of the matter. It is easy to imagine cases, particularly where the Commission has conducted a public hearing, where it would be sensible and proper to use some or all of the material before the Commission as a starting point for the Tribunal's inquiries. This might well be done by consent in some cases.

However the use of such time−saving procedures would not in any way absolve the Tribunal from the responsibilities of getting all necessary material before it and of reaching its own decision on that material. Obviously it will have the Commission's reasons for decision before it and the Commission, through its counsel, should ensure that the significant facts on which it relied are all placed before the Tribunal. But, in my view, it will seldom be profitable or desirable for the Tribunal to attempt to analyse the Commission's decision to show exactly which findings it accepts, which it rejects and which it has reservations about. It may sometimes be convenient to refer to a particular passage in the Commission's reasons for decision and discuss it, but I think the Tribunal will best fulfil its function if it ensures that its own findings are fully and clearly expressed. An additional point−by−point criticism of the Commission's reasons is more likely to be confusing than helpful.

The fact is that the Tribunal could, with the assistance of counsel for the Commission as outlined above, perform its role without ever seeing the Commission's reasons for its determination. The main value of those reasons to the Tribunal is that they alert the Tribunal, at a very early stage in its proceedings, to the issues which are likely to arise before it in the particular case.

There is, in my opinion, no presumption that any particular finding by the Commission is correct. There is no onus on an applicant to show that the Commission is in error. Form 8 requires an applicant to state in which respect it is dissatisfied with a determination by the Commission and this again serves to alert the Tribunal to the main issues likely to be raised in the hearing before it. The particulars given at that point are not in the nature of allegations which an appellant must prove.

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It is not necessary for the applicant to allege any particular error on the part of the Commission or to criticise the Commission's proceedings in any way. Indeed the Tribunal could have no interest in investigating any alleged procedural defect in the Commission's proceedings. It is concerned only to determine the right answer to the question posed by the applicant's request for authorization, and to do so by a fresh hearing.

The essential purpose of the requirement in Form 8 to state in what respects the applicant for review is dissatisfied is, in my view, to draw attention to any situation in which the applicant accepts part of the Commission's finding but disagrees with another part. Thus a company which has a number of different agreements under consideration may wish to review a decision relating to some of them but not others. Another applicant may object to some, but not all, of the conditions which have been attached to the grant of an authorization pursuant to sec. 91(3). A person objecting to an authorization which the Commission has seen fit to grant may wish to argue that some condition should have been attached to it. However in the typical case all that need be said is that the Commission refused to grant an authorization which, in all the circumstances, should have been granted.

It is in the statement of contentions that an opportunity is given, if the applicant for review wishes to do so, to draw attention to alleged defects in the Commission's reasoning or to points as to which the applicant alleges too much or too little weight was given. However there is no need for the applicant to adopt this approach. He may prefer merely to assert the positive case which he wishes to put to the Tribunal and not advert to the Commission's reasons for decision at all. The simple question for the applicant to decide in each case is which is the more convenient way of alerting the Tribunal to the real issues involved.

While it is true that the Tribunal must eventually affirm, set aside or vary the Commission's determination, I see nothing in those words which would alter the view I have taken of the relationship between the Commission and the Tribunal. Obviously something must be done about the existing decision of the Commission and the three choices offered cover the field. They do not make the Commission's decision a starting point for the Tribunal's deliberations. They merely require that, at the end of the hearing before the Tribunal, there will be only one decision applicable to the case and its effect will be clear.

It follows from this approach which I have outlined that the Tribunal is simply not concerned with any documents on the Commission files, but not on the public register, which the Commission does not see fit to place before it. If the absence of that material leads the Tribunal to a different result, the applicant will have succeeded in whole or in part. If the applicant has any reason to believe that material which might assist its case is being withheld by the Commission, a specific remedy is provided by sec. 157 of the Act. It is to be noted however that documents ''prepared by an officer or professional adviser of the Commission'' are specifically excluded from the operation of that section. The existence of that section, and the exception just referred to, both tend to confirm the view I have taken that the Commission should not be required to open its files to the parties, or even to the Tribunal, in order that a search can be made for material on which certain findings might have been based.

As counsel for the Commission submitted, the grant of an authorization under the Act is the exercise of an administrative discretionary power. A review of the exercise of that discretion is quite different from an appeal by way of re−hearing in the strict judicial sense, and so different considerations apply. The commonsense of such a situation would seem to require that any review going beyond that usually provided by the prerogative writs, must not be inhibited by the materials relied on by the authority of first instance or by its express findings. The reviewing body, in this case the Tribunal, must really do the task again from the beginning while using any short cuts provided by the earlier proceedings which may be appropriate in the particular case.

This approach is underlined by the legislature's reiterating, in sec. 101(2), that the Tribunal must have the same regard to the public interest as is required of the Commission. The requirement in sec. 102(3) that the Commission should render the Tribunal any assistance sought is also inconsistent with the notion that the Commission appears before the Tribunal as a party intent on upholding its previous decision.

For all these reasons of statutory interpretation, commonsense and

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convenience, I think the application for a general order for the production of documents by the Commission must be refused. This will not prevent any party from making application for the production by the Commission of any particular document to which attention may later be drawn. If a document which is thought likely to be of assistance to an applicant's case is known to exist, then its production may be sought and, if the Commission resists, the question can then be determined on its merits.

(*Note:* Although leave to apply in these terms was reserved when this application was refused, in fact no such request was made. Any information sought from the Commission was supplied, though often on the basis that it would be disclosed only to counsel and the Tribunal.)

C. **The merits of the respective applications:**

Before dealing with the evidence and submissions presented to us we think it is desirable that we should say something on the subject of confidentiality.

Many of the exhibits tendered, and much of the oral evidence, were received on the basis that confidentiality would be observed. This meant in most cases that counsel undertook, and were directed, not to disclose the contents of such material to their clients.

In some cases the information was supplied by one of the parties and related to future intentions or other matters which would have had commercial value to trade rivals. In other cases similar information was supplied by disinterested third parties who gave it, in most cases to the Commission's officers, on the understanding that it would not be published generally, or to other persons in the trade in particular.

It has often happened that a whole document or sequence of oral evidence has had to be protected by directions of confidentiality although only part of the material really requires such protection. The time required to ascertain the desirable limits of confidentiality was simply not available in this case. There are also considerable practical problems involved in segmenting documents and in constantly opening or closing the Tribunal's proceedings to the public.

In the result, the Tribunal must do its best to apply commonsense to this statement of its reasons, to ensure that no protected material, which could in fact cause commercial harm or personal embarrassment to anyone, is inadvertently set out.

We say ''inadvertently'' because we made it clear on a number of occasions during the hearing that there may be matters on which it is necessary for the Tribunal to set out previously confidential material so that the Tribunal's reasons for decision may be clearly understood. In such cases the legitimate private interest in maintaining confidentiality would have to give way to the public interest in understanding why the Tribunal has reached a particular decision.

We turn now to explain our decision in the present case.

1. Description of the industry and the three companies

(a) The industry:

The flour milling industry in Queensland is carried on by five companies operating, between them, 11 mills. Of these the Queensland Co−operative Milling Association Ltd. (''QCMA'') owns five, Defiance Holdings Ltd. (''Defiance'') owns three and Barnes Milling Ltd. (''Barnes'') owns one. These are the companies directly involved in these proceedings, each of which is described in some detail below. The other two Queensland millers are Gillespie Bros. Pty. Ltd. (''Gillespie''), a N.S.W. company which operates a Brisbane mill and N.B. Love Mills (Qld.)(''Love'') which also operates a Brisbane mill and is a wholly owned subsidiary of the Weston group of companies. These last two millers are closely identified with two brand names of bread produced by subsidiary and related baking companies. These are Cobbity Farm (Gillespie) and Tip Top (Love).

Because Queensland mills sell their produce into Northern N.S.W., particularly the Northern Rivers District, they meet competition in that market from two N.S.W. mills situated at Moree and Narrabri. These mills also sell some flour across the

border into south−western Queensland.

Each of the millers acquires its wheat at fixed prices from the Australian Wheat Board. These prices are fixed about November each year for the following twelve months. They are fixed as at Brisbane or, in the case of northern wheat, at Gladstone. The miller is then entitled to a rebate of the difference between the actual

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freight cost from the silo to his mill and the cost that would have been incurred had the Wheat Board had to pay the freight to Brisbane (or Gladstone). Thus a Dalby or Toowoomba mill acquiring from a silo in that district has a raw material cost advantage over a Brisbane mill acquiring from the same silo.

Wheat is delivered in bulk by rail and the mills vary in the age and efficiency of their handling and storage facilities. There is also some variation in the quality of their milling plants, but most are of a high order in national and international terms. More sophisticated equipment enables a miller to produce a greater range of flours but there would be little difference in the quality of the flour produced. Better equipment and laboratories should make for more consistency in flour types.

Queensland mills produce a variety of flours including premixes containing the necessary additives ready for dough−making. The bulk (between 60 and 70%) of their flour output is sold to bakeries and the remainder is sold for other commercial and industrial use (e.g. starch, glue, semolina) or packaged for household use or sold for export. Little is at present sold to the biscuit trade because this requires softer southern wheats and highly refined production techniques. Several mills would like to capture part at least of this business which now goes to southern mills.

Bread consumption per head of the population has been declining over recent years, although the advent of hot bread shops may be reversing this trend. Flour milling could not be described as a growth industry and export markets have declined as developing countries build their own mills.

There is a substantial level of vertical integration between the flour milling and bread−making industries, but this can best be considered in later sections.

By−products of the milling industry are bran and pollard. These may be sold to the stockfeed industry or used in an associated provender mill to make more sophisticated types of stockfeed.

(b) Barnes Milling Ltd.:

The target company for the two prospective mergers is Barnes Milling Ltd., a public listed company. This company was once one of the largest flour−millers in Queensland but it is now the smallest of the five still operating. The first major step in its decline seems to have occurred about ten years ago when the Weston group of companies, previously a good customer, bought a mill in Brisbane from which they supplied all Weston bakeries.

Soon after that, Barnes closed down its own mill in South Brisbane. The site on which that mill stood was, in any event, marked for resumption by the Brisbane City Council in connexion with its plans for development of the South Bank of the Brisbane River. Negotiations concerning compensation are still proceeding and Barnes expects eventually to receive from the Council an amount in the vicinity of $0.5m. Machinery in this mill has been kept in running order and it is planned to transfer part of that machinery to Barnes' remaining mill in Dalby. It seems likely that about half of the compensation monies, when received, would be used to pay off holders of unsecured notes given by Barnes to cover past loans.

Ten years ago the company also owned another flour mill at Warwick, but this also has closed in the intervening period. It should be noted that a number of factors, including improved technology and the severe falling off of demand for flour for export, have resulted in the closure of many mills throughout Australia during this time.

Also within the last ten years, Barnes, having attempted to diversify its interests by going into the broiler fowl business, found that this venture failed and had to be closed down.

In the result, Barnes is today left with its Dalby flour mill, its stockfeed business and ownership of or interests in six bakery businesses. Even here there has been a recent decline in activity. In particular Barnes has, even since the Commission's decision, closed subsidiary bakeries in Longreach and Brisbane.

A substantial decline in population in the Longreach district meant that the town could no longer support two bakeries. The rival QCMA bakery had recently been modernised and the Barnes bakery was the one forced to close. It appears that there is no demand for the site or the equipment of that bakery.

The closure of the Sunnybank (Golden Bloom) bakery in Brisbane is more significant. Barnes had spent a considerable amount of money on this bakery in recent times and its inability to compete successfully must have

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been a great disappointment to the company. When it became clear that the business would continue to incur losses in the foreseeable future, it was closed down. Some of the equipment, in particular the large oven, is to be transferred to another Barnes subsidiary bakery in Mackay and the site is for sale. In this as in several other cases of recent sales by the company, enhanced property values on the East Coast have served to compensate for business losses and for declining property values inland.

The result of these various transactions has been to increase the company's liquidity, which is not in doubt, and, it is hoped, to improve its operating performance, simply by the closure of unprofitable ventures.

The company's long term decline in profits is illustrated by the comparison of profits over the last twelve years. These are as follows, the years covered being those ending January 31 in the year shown:—

Year	Operating profits (flour−milling) $	Dividends from subsidiary companies $	Income from shares in associated companies $
1964	138,286	29,000	1,500
1965	107,032	37,800	28
1966	65,018	14,200	2,472
1967	(−16,574)	−	4,172
1968	28,224	−	15,640
1969	17,362	−	11,204
1970	39,290	1,720	11,330
1971	44,718	38,500	8,024
1972	23,831	38,900	8,000
1973	49,170	57,300	5,600
1974	44,099	57,510	8,027
1975	12,632	34,600	8,000

In consolidated terms, the operating profits of Barnes and its subsidiary companies have been —

	$
1964	200,606
1965	192,232
1966	31,100
1967	(−17,849)
1968	20,244
1969	89,626
1970	169,679
1971	169,213
1972	90,321
1973	211,104
1974	134,329
1975	70,545
Six months to 31.7.1975	49,815

The present Barnes subsidiary companies, their principal activities and their separate net contribution to the consolidated net profits of the group for the years ended 31 January 1975 and 1974 are as follows:—

	1975 $	1974 $
Barnes Trading Ltd. − Flour processing	2,620	2,330
Blannings Pty. Ltd. − Bread manufacturer	2,171	3,566
Central Queensland Feed Lots Pty. Ltd. − Stockfeed manufacturer and feed lotter	(−1,898)	214
Golden Bloom Bakeries Pty. Ltd. − Bread manufacturer	(−21,024)	(−33,995)
James Bros. & Co. (Mackay) Pty. Ltd. − Bread manufacturer and property owner	15,570	27,544
Nambucca Bakeries Pty. Ltd.		

− Property owner	1,029	−
Pimlico Bakery Pty. Ltd. − Bread manufacturer and property owner	12,695	20,259
Redland Poultry Supplies Pty. Ltd. − Property owner	38,209	706
Superstok Pty. Ltd. − Stockfeed Manufacturer	3,557	3,244

The sale of packaged flour by Barnes is negligible for present purposes, and the stockfeed operation, although quite profitable, and capable of expansion, is rather specialized and no competition with either of the applicants is involved. However both these activities of Barnes will be referred to again when the future of the company and the likely effects of merger are considered in later sections. Before examining the bakery subsidiaries, it is convenient to look at the question of ownership and control of Barnes Milling Ltd.

The company has an authorised capital of 3m. stock units of 50¢ each. The issued capital as at 31 January 1975 was 2,426,160 stock units or $1,213,080.

The shareholding of the company falls into three distinct groups —

C.W. Russell and family (through Baldwins Pty. Ltd. and Grosvenor Nominees (Qld.) Pty. Ltd.)	− 54.6%
QCMA (as at December 11th 1975 420,604 units)	− 17.3%
Others (some 400 shareholders)	− 28.2%

In addition to his shareholding in the company, Mr. Russell holds over $120,000 worth of 7½% unsecured notes issued to cover loans made by him to the company over a number of years. This represents almost half of the total of such notes issued by the company — $257,500.

QCMA has obtained its shareholding in Barnes Milling Ltd. by the purchase of shares from other minority shareholders. Its substantial interest in the company is obviously not welcomed by Mr. Russell and the interests he represents. QCMA has no representation on the Board and Mr. Russell has no intention of conceding any such representation.

At an extraordinary meeting of shareholders held on 11 December 1975 to consider increasing the authorised capital of the company (a necessary step in the scheme for a merger with Defiance) QCMA, with the aid of proxies given by some minority shareholders, was able to muster over one−third of the votes cast. In accordance with the Articles of Association, this was sufficient to defeat the proposal. It is conceded by Mr. Russell that QCMA would be able to repeat this result at any future extraordinary meeting, but the legal advisers of Defiance believe that a way can be found to overcome this blocking by QCMA.

Mr. Russell has, for many years, been Chairman of Directors. In recent years he has not been very active in that role and has delegated much of the responsibility to Mr. E. N. Jobst as Deputy Chairman. Unfortunately Mr. Jobst died in September 1975.

In spite of the reduction in the time which Mr. Russell has devoted to the company's affairs in the last two or three years, it is obvious from his shareholding and his position as Chairman of the Board that his views are of great importance in determining the likely future of the company.

In his prepared statement to this Tribunal, he said that Barnes lacks trade rather than liquidity and it would be most difficult to capture additional flour and bread markets ''because of the intense competition existing in the industries''. He went on ''... it is absolutely essential in flour milling today to possess a powerful marketing function... Barnes... does not possess this facility and the costs of establishing it are beyond the capacity of its existing trade to carry...'' Barnes is operating a business ''....stretched to carry the overhead costs of the business and to service its capital''.

For these reasons, Mr. Russell states, he is personally supporting the Defiance offer. He said in evidence that independent accountants had valued that offer, he thought conservatively, at 43¢ a share. He himself valued it at about 54¢. In his opinion, the only alternative to a merger of some kind was the gradual liquidation of the company's assets. This had already begun and the next issue to be decided was whether there was any future for the Blannings Bakery at Rockhampton.

The day−to−day management of the company is in the hands of Mr. W.R. Costa, the general manager, who is not a member of the Board. He gave evidence at some length as to the present situation of Barnes Milling Ltd. and its subsidiaries. The Tribunal formed a very favourable impression of Mr. Costa's competence and of the care which he gave to his evidence. Much of what

follows is drawn from that evidence, supplemented where possible by other material.

In Mr. Costa's view, Barnes Milling Ltd. may be a viable company, but only because of its diversified interests in flourmilling, bakeries and stockfeed. Flourmilling alone would not be commercially viable for the company.

It is true that the Dalby mill is in good condition and its capacity can quite readily be increased by at least one tonne per hour when the high speed packing equipment is moved there from the South Brisbane mill. However, even with such increased production, the flour mill alone could not support the company's overheads and service interest payments on the $257,518 7% notes referred to earlier.

Until recently it has seemed that the most obvious market for any increased production lay in North Queensland. Barnes has, for a number of years, bought about half its flour requirements for that area from the QCMA mill in Rockhampton. In return, QCMA has undertaken not to build new bakeries in Rockhampton or Mackay. Mr. Russell said in his evidence that the reason Barnes did not try to supply all its own requirements of flour in this area was its fear of QCMA bakeries competing with Barnes' subsidiaries with a

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resulting falling off of bakery business and so no guarantee of a long−term increase in flour trade.

It seems to us to be very significant that Barnes has now (January 1976) purported to repudiate its agreement with QCMA, because it appears to be in breach of the *Trade Practices Act*, and has entered into an agreement with Defiance to take from that company about half the flour it has previously taken from QCMA. It seems that it will continue to take the balance from QCMA, at least as long as QCMA does not move to compete by the construction of new bakeries in Rockhampton or Mackay.

This development raises a number of interesting points but the most significant is that Barnes has not sought to supply the trade with its own flour, although the necessary additional capacity could readily be achieved.

The move puts QCMA in something of a dilemma. On the face of things, a bakery built next to the QCMA Rockhampton mill would enjoy certain cost advantages which could make it a very profitable venture. On the other hand the one substantial independent bakery in Rockhampton, which presently takes its flour from QCMA, has said that it will cease to do so if QCMA builds in opposition. And QCMA still has half the Barnes sub−contracted trade, at least for the time being.

The Blannings Bakery owned by Barnes in Rockhampton has been running at a loss (over $16,000 in the first six months of 1975) and is presently barely breaking even. It is subject to a Health Department notice requiring expensive renovations to be carried out, and, although no decision has yet been made, it seems probable that it will be closed, or at least converted to a hot bread shop, whatever the outcome of merger proposals. No doubt the ''Golden Bloom'' Rockhampton Bakeries, in which Barnes has a 40% interest, would be well placed to secure a good deal of the Blannings trade, but would not wish to have to compete for it with the new QCMA bakery, particularly when there is increased competition from two hot bread shops and bread being baked for government institutions in the local gaol. At present, Rockhampton Bakeries has some 29% and Blannings about 14% of the local trade.

Rockhampton Bakeries also owns a bakery in Biloela having some 30% of the local markets, so it follows that Barnes has a 40% interest in that business.

Moving next to Mackay, the James Bros. Bakery there produces the Golden Bloom brand bread for Barnes. It is profitable and has shown a slight but consistent increase in unit sales in recent years. In money terms they have risen in recent years from $300,000 to a current level almost double that figure. The bakery at present has some 38% of the local bread trade.

In Townsville the Barnes Pimlico Bakery enjoys about 21% of the bread trade in that district and is reasonably profitable in spite of the necessity in that city of baking seven days a week. Because of the competitive pressure and high costs this bakery is no longer the ''flag−carrier'' of the Barnes group, at it once was.

In Dalby a comparatively small bakery, next to the mill and owned directly by Barnes, runs quite efficiently, producing only one−fifth or one−sixth of the quantities produced by James Bros. and Pimlico Bakeries just referred to, and having some 4% of the total sales in the Toowoomba−Dalby−Oakey region, but 25%−30% in the local Dalby area.

Thus the overall picture presented by Barnes Milling Ltd. is that of a company controlled by a family group with a significant minority shareholding held by a trade rival. Management is competent but lacks any developmental drive. The company does not compete aggressively in any of its fields of activity. Liquidity is sound but operating profits are variable and often inadequate when considered in relation to issued capital, shareholders' funds or total funds employed —

Year	Issued capital ratio	Shareholders' funds ratio	Total funds employed ratio
1971	14.3%	6.5%	5.0%
1972	7.6%	2.8%	2.2%
1973	17.8%	6.9%	5.5%

1974	11.3%	2.8%	2.1%
1975	5.8%	2.7%	2.0%

In fact dividends of 5% have been paid in each of these years except 1975, when dividend was omitted. It is expected that a dividend will be paid again in 1976.

The profitable segments of the group's productive operations are the Dalby mill and bakery, the bakeries in Mackay and Townsville and the stockfeed operation.

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(c) Queensland Co−operative Milling Association Ltd.:

QCMA is a flour−milling co−operative which presently owns mills in Brisbane, Toowoomba, Roma, Maryborough and Rockhampton. The Association was established in 1934. The businesses of two companies, owning four mills between them, were purchased in 1938; the mills were at South Brisbane, Maryborough, Toowoomba and Roma. For ten years those companies extended terms to the co−operative and acted as managing agents for it. In 1945 they were paid out.

The South Brisbane mill was built in 1889 and completely remodelled in 1929. In 1965 there was a further modernization programme which included the installation of a high speed packer. The present Toowoomba mill was built in 1915 and had substantial modifications carried out in 1942 and 1953. Wheat storage capacity was greatly increased in 1962.

The Maryborough mill was built in 1885 and completely remodelled in 1906. There were further modifications in the thirties and forties.

The Roma mill is the fourth to be built on the site, the second and third having been destroyed by fire. It was last rebuilt in 1946.

Through the fifties the Association progressed and further businesses, land and buildings were acquired. The first development of significance for present purposes was the opening of a new mill at Rockhampton in 1966. By then, the subscribed capital of the Association had risen to $2.2m.

The mills described were the operating mills at the time this matter was before the Commission. Since then the Roma mill was again extensively damaged by fire in October. Rebuilding is nearing completion and the opportunity has been taken to increase the capacity of the mill.

Construction of a new mill in Brisbane is also well advanced and the old mill has been sold to the Brisbane City Council for extension of parklands. The sale price is about $1.8m. and the old mill will continue to operate for some months until production can be transferred to the new mill. Little, if any, increase in capacity is involved in this changeover because much of the existing plant is being transferred.

Thus, before the end of this year, QCMA will have three modern and efficient mills at Brisbane, Roma and Rockhampton. It will still own two old multi−storied and inconvenient mills at Maryborough and Toowoomba.

The General Manager, in his evidence to the Tribunal, described the Maryborough mill as antiquated and explained the delivery and handling deficiencies at both mills.

It seems clear that, whatever happens in the present hearing, one of these mills — probably Maryborough — will be closed down in the near future. Indeed the three modern mills will theoretically have the capacity to produce the Company's annual requirements of flour without overtime and with a little capacity to spare.

However the Association likes to have some quite distinct reserve capacity so that it can take advantage of Colombo Plan contracts from the Government and other surges of production, particularly the one which occurs regularly in about November, just before wheat price increases are announced by the Australian Wheat Board.

The net operating profits of the Association for the last twelve years have been as follows:—

		$
1963		153,292 (after tax)
1964		5,240 "
1965		205,465 "
1966		172,294 "
1967		314,473 "
1968	735,375 (before tax)	399,252 "
1969	802,505 "	442,505 "
1970	909,451 "	477,451 "
1971	811,636 "	426,636 "
1972	1,005,683 "	545,683 "
1973	901,058 "	501,058 "

1974	640,612	"	539,612	"

These figures represent, in recent years, returns of 10%−13% on shareholders' funds.

The results for 1974 were affected by the writing off of a large amount of bad debts — $354,326 as against $180,546 the previous year — and this, together with $124,000 flood losses substantially reduced tax payable. No dividend was paid. For 1975, before tax profits of $800,000 are expected and a dividend of 8%.

Thus it seems that the results for 1975 will show a significant improvement. The General Manager told the Tribunal that, in addition to its flour milling operations, which produce flour under the brand name ''Seafoam'', the Association carries on a small amount of business as a produce merchant and provender miller.

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In recent years the Association has also spent a considerable amount of money on bakeries, rebuilding those at Mitchell, St. George and Mundubbera, and building new bakeries at Murgon, Blackwater, Mt. Isa and Innisfail. All these and some twenty others are leased to independent operators.

Until the last year or so the policy of the Association has been to assist the baking industry by building and leasing bakeries, by loans and by the provision of equipment. It has welcomed the establishment of such ties and has entered into contracts for the repayment of loans over periods of five, seven or more years. In each case the contract has provided for the purchase of all flour requirements from QCMA during its period of operation. This has applied whether or not the borrower has been able and willing to discharge his indebtedness earlier.

This situation has changed. The new general manager obviously takes a different view of the value of loans which are loosely administered and often result in incompetent bakers going deeper and deeper into debt. Even before the advent of Trade Practices legislation, the value of such ties was becoming doubtful. Now that their legality is being called in question, their value to the Association is declining to a point where the general manager can see no future for them. In 1975 the amount of flour sales guaranteed to QCMA by finance and loan agreements has fallen from about 700 to 300 tonnes per month.

In this situation the Association is seeking to follow the example of the other millers in acquiring larger bakeries as subsidiaries, with the stated aim of giving a secure base to its flour market and leaving the remaining bakery outlets for flour open to competition among millers.

In fact the first three bakeries QCMA acquired, all in the middle part of 1975, were ''wished upon it'' by their own economic circumstances. These bakeries in Ipswich, Toowoomba and Maroochydore were all running at a loss when acquired by QCMA. In two cases they were deeply indebted to the Association, and in the third the Association felt some obligation to assist a long−standing customer who wanted to get out of the business.

There are six other bakeries in which the Association has had a minority interest for some time. These are in Brisbane, Toowoomba, Townsville, Roma, Gladstone and Cairns. It is now acquiring all the shares in the first of these — Pfeffers, a substantial Brisbane bakery. The Townsville and Gladstone bakeries are run entirely by the families that own the majority interests in them, but the Association has some influence on the Boards of the other three bakeries. It is clear that minority shareholding by a milling company does not necessarily guarantee exclusive use of that company's flour.

Now QCMA is actively seeking further plant bakeries for acquisition and there appear to be very few that could be available for sale by their present owners which are not irrevocably tied to one of the other milling companies. The Barnes businesses in Rockhampton, Mackay and Townsville are well suited to QCMA purposes.

Turning next to consider the ownership and management of the Association, it consists of some 4,000 members, all wheatgrowers. The Board of Management also consists exclusively of wheatgrowers. The new general manager has had no previous experience of the flour milling industry. Although his family have been bakers for several generations, his own experience has been as an accountant and company secretary.

Since he joined the Association just over a year ago, a highly experienced manager has also been appointed to the milling division and, with the purchase of subsidiary bakeries, a bakery division is also being established.

The Association sells flour throughout Queensland and New South Wales and trades also to New Guinea and some of the Pacific Islands. However competing mills have recently been built, or are being built, in New Guinea and Fiji and these will result in reduced export opportunities. Exports to Sri Lanka are quite important to the Association whenever the government commissions them.

Marketing is the responsibility of two representatives in the Brisbane area and of the four mill managers outside the metropolitan area. They devote a good deal of their time to these responsibilities.

(d) Defiance Holdings Ltd.:

The Defiance company commenced business in September 1974. It was formed as a holding company, with paid−up capital of

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$1.76m., for the other three main companies in the Defiance group —

Defiance Milling Co. Pty. Ltd.

Dalby Milling Co. Pty. Ltd. and

Tee Pee Wheat Products Pty. Ltd.

The main activities of the group are the manufacture and sale of flour, bread and allied products. Between them the companies own and operate three flour mills, at Toowoomba, Rockhampton and Dalby. They also, as at August 1975, owned fourteen bakeries and had substantial interests in four other large bakeries. In recent years they have pursued an active policy of acquiring larger bakeries. Thus since April 1974 the group has acquired bakeries in Ipswich and Rockhampton as well as a 26% interest in one in Darwin and 67% interest in a Toowoomba bakery which is the largest outside Brisbane and has a subsidiary bakery in Warwick.

The group has traded profitably in recent years, having shown operating profits as follows (years ended 30 November) —

1970	$566,000
1971	628,000
1972	676,000
1973	764,000
1974	713,000

This 1974 result represented a return of 10.3% on shareholders' funds and 6% on total funds employed.

In a circular to Barnes shareholders dated 12 September 1975, Defiance stated that its after−tax profit for the six months ended 31 May 1975 was $316,781.

The control of the company is in the hands of the O'Brien family, who own most of the shares and provide three of the four directors.

The business was founded in 1898. It began as a two−man partnership but soon afterwards became exclusively an O'Brien family concern. The business was first incorporated in 1953. All the shares in the holding company are owned either by members of the family or by beneficiaries of past members, there being some forty shareholders in all.

Control is exercised by three brothers, grandsons of the founder. Mr. P.W. O'Brien is the Chairman of Directors. He is responsible for financial matters and for the co−ordination of the group's activities. Mr. W.W. O'Brien is the director in charge of the operation of the company's mills and bakeries. Mr. T. O'Brien is the director responsible for sales and marketing.

Since these three brothers took over the effective control of the company from the father in the early sixties, there has been a more vigorous trend in the company's activities.

In particular, the company has moved in the packaged flour market with considerable success. Also, while maintaining its emphasise on activities in Queensland country areas, I has tackled the metropolitan flour market and the Northern Territory and export markets with some success. In 1967 it became necessary to build a third mill, at Rockhampton, to add to the two long−established mills at Toowoomba and Dalby.

In fact its policies have enabled the company in recent years to increase its share of the local flour market from 22% to 31%. Its management attributes this achievement to a vigorous sales policy, good quality control and the provision of an unrivalled technical service to its client bakers.

The sales policy is carried out by seven representatives, two of whom are stationed in Brisbane and the others at convenient country locations enabling them, between them, to cover the whole of Queensland and northern New South Wales.

As already stated, Defiance flour is produced at three mills — the largest being at Toowoomba. Its capacity exceeds the combined capacity of the other two. All mills are presently working to their capacity (i.e. 24 hours per day five days per week) and a substantial number of weekend overtime shifts are also worked. Last year the company declined to fill its quota of the available export market because the high amount of weekend overtime involved would have made it unprofitable to do so.

Acquisition of another mill would relieve the strain of the company's mill capacity. The only alternative would be an enlargement of the capacity of the Toowoomba mill by some 25%. This would cost some $200,000.

This question of mill capacity represents a potential problem for the company, but the evidence shows that the directors are more concerned about the group's liquidity.

Being a private company, Defiance is unable to retain in the business any substantial part of its profits without attracting undistributed

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profits tax. The full force of the provisions of Div. 7 of the Income Tax Acts has only hit the company in the last year or two.

Before that it took advantage of a loop−hole in the relevant tax laws to retain some $700,000 of profits in the several years before the loop−hole was closed. It is now anxiously seeking ways of converting to public company status so as to overcome its liquidity problems.

It has been advised by reputable stockbrokers, accountants, merchant bankers and lawyers. The sum of this advice is that the best, and perhaps the only, way of achieving the desired result is by acquiring control of an existing public company which can then become the holding company for the group. The Barnes company fulfils the necessary requirements and is said to be the only company which presently does. Because of its involvement in the same area of business and, in particular, its ownership of the Dalby Mill, there are obvious side benefits to Defiance which would flow from such a merger.

The extent of its problems is illustrated by the following comparisons of the company's situation in 1964 with its situation ten years later. Over that period it has borrowed money for all its expansionary moves and claims to have obtained the maximum possible capital from its shareholders.

	1964	1974
Total Liabilities	$0.63m	$5.16m
Shareholders' funds	$0.78m	$3.35m
% shareholders' funds to total funds	55%	39%
Ratio of current assets to liabilities	1.41	0.87

The increase in shareholders' funds over the period, of $2.57m includes the $0.7m retained profits referred to above and $0.7m derived from revaluation of assets.

2. The Merger Proposals

Although there had been inconclusive discussions about merger possibilities between Barnes and Defiance over a number of years, it seems that the first move in the present merger bids was made when a representative of QCMA approached Mr. C.W. Russell, Chairman of Barnes, early in 1975. At that time the figure suggested for purchase of Barnes' shares was 40¢ per stock unit. In about July this figure was increased, in informal negotiations, to 42.5¢. This offer, so far as it related to Mr. Russell's shares, was declined in a letter written on his behalf by his son and dated 14 August 1975. That letter stated that the main reason for Mr. Russell's refusal was that he was reluctant to forgo his interest in the industry — which would have been the result of a straightout sale to QCMA.

Later, on 26 August, a formal offer of 50¢ was made to the Barnes Board of Directors. It was unanimously refused by the Board and later, for technical legal reasons, it was withdrawn. It seems that the reasons for the Board's refusal included a belief that QCMA would probably make an even higher offer. Since it now seems clear that no higher offer is likely, the Barnes Board, in the view of its Chairman, would probably like an opportunity to reconsider the 50¢ offer.

We are asked to consider the matter on the basis that the offer is likely to be renewed although the amount of the bid may be different. In the circumstances of this case, it is of no concern to the Tribunal whether the QCMA offer is for 50¢ or more or less than that figure. This is a matter for the parties and especially the Barnes shareholders. Our consideration is confined to the fact that the offer has been and would be for the purchase of all Barnes shares, and the offeror is a trade competitor.

The Defiance offer was made in writing, dated 29 August 1975, and has not been varied since, save for the extension of the time for acceptance. It is a complex proposal and it has been suggested that some aspects of it may be contrary to Queensland law. We are clear that this is not a matter of any concern to us. The evidence shows that the offer is made in good faith and on legal advice, so any challenge to its validity must be made in the appropriate court of law. We can only assume, for our purposes, that the offer is made in accordance with all relevant laws.

The Defiance offer is for 50.5% of the Barnes shares. Any individual Barnes shareholder is at liberty to offer Defiance more than 50.5% of his shareholding but Defiance is under no obligation to accept such an offer. The consideration for the transfer of these shares to Defiance is intended to be the issue of unsecured notes to the same face value, paying 12% and to be redeemed after seven years. In a separate agreement with the Russell family companies, Baldwin and Grosvenor Nominees, those companies agree to

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underwrite the offer by making up any shortfall of acceptances to the level of 50.5%. It is understood that Mr. Russell would remain on the Board.

The scheme further provides for an increase in the authorized capital of Barnes from 2,426,160 shares to 5,714,000 shares, which would be used as consideration for the acquisition of certain Defiance subsidiaries. Thus Defiance would continue to control these subsidiaries through its shareholding in Barnes. It would have 50.5% of the old shares and all the new shares — giving it just under 79% of all Barnes shares. Barnes shareholders would have notes paying 12% in place of shares paying

(usually) 5% in the case of shares transferred. In seven years they would receive the face value of their notes. So far as the shares they retain are concerned, their value would depend upon the trading success of the merged venture.

The overall value of the Defiance offer has been variously estimated at between 43 and 55 cents per stock unit.

On the 25 November 1975 QCMA wrote to the stockholders of Barnes urging them not to agree to the increase in authorized capital necessary to enable the Defiance merger to proceed. It stated that the smaller stockholders would be left holding stock units and/or unsecured notes which, because of the increase in capital, would have substantially reduced voting power and saleability. The letter asked for proxies to help defeat the proposed increase of capital at the extraordinary meeting called for December 11.

Solicitors for QCMA wrote to Barnes on 1 December expressing surprise that Barnes intended to go ahead with the meeting in view of the proceedings pending before this Tribunal, and threatening legal action to prevent the holding of the meeting.

On 2 December Barnes sent a circular to shareholders criticising the activities of QCMA as a share raider, minority shareholder and major competitor of Barnes. It also sought proxies to enable capital to be increased and the company's options to be kept open.

On the same day Barnes' solicitors replied to QCMA's solicitors saying that the Board wished to have an expression of shareholders' opinions and that the meeting would therefore proceed. They stressed that the Board was not committed to the Defiance offer but wished to be in a position to accept it if it appeared to be in the best interests of shareholders and was approved by the Tribunal.

In his address to the meeting, on 11 December, Mr. C.W. Russell said the QCMA offer had been rejected by the Board because it was too low. The Defiance offer was still being considered. QCMA had withdrawn its offer and ''commenced large−scale purchasing operations of the company's shares at prices below its former offer''. Mr. Russell went on to give an assurance that he would not sell any of his own shares to QCMA for less than its former offer.

The motion to increase the authorized capital of the company from $1.5m to $3m was put to the meeting and although a majority of votes was cast in favour of the proposal, the proportion was not sufficient to satisfy the requirements of the Articles of Association as they applied to this resolution.

3. Applications to the Commission

There have been eight different applications to the Commission by the two applicants in connexion with their respective merger applications. These can be summarised as follows:—

(i) QCMA application for clearance dated June 1975. Withdrawn.

(ii) QCMA renewed application for clearance (Regn. No. C911) dated 28 August 1975 and refused 19 September 1975.

(iii) QCMA application for authorization (Regn. No. A2600) dated 23 June 1975 and refused on 19 September 1975.

(iv) Defiance application for clearance (Regn. No. C15240) refused on 15 August 1975.

(v) Defiance renewed application for clearance (Regn. No. C15330) dated 29 August 1975 and refused on 19 September 1975.

(vi) Defiance application for clearance of underwriting agreement with Baldwin and Grosvenor companies (Regn. No. C15332) dated 5 September 1975 and refused on 19 September 1975.

(vii) Defiance application for authorization (Regn. No. A13338) dated 29 August 1975 and refused 19 September 1975.

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(viii) Defiance application for authorization of underwriting agreement with Baldwin and Grosvenor companies (Regn. No. A13339) dated 5 September 1975 and refused 19 September 1975.

Of these applications it can be seen that (i) was withdrawn and (iv) was refused by the Commission on 15 August. This led to the making of applications (v) and (vii) and, shortly afterwards, (vi) and (viii). Applications (ii) and (iii) were made by QCMA at about the same time. All these six applications were determined by the Commission on 19 September 1975, (ii) and (v) in a joint decision refusing the primary clearance applications and the other four in subsidiary determinations which referred to the first.

Between the Commission's determination of application (iv) on 15 August and of the other applications on 19 September, it had considered substantial further submissions from Defiance criticising its findings and reasons given in explanation of its earlier decision. It had also received a considerable amount of material from QCMA.

In refusing the respective applications for clearance the Commission said,

> ''The two applicants are competing with each other to acquire control of Barnes. The Board of that Company is resisting both bids. Although there have been assertions that Barnes may not have the resources to survive as an independent miller, Barnes vigorously denies this, and on the evidence before the Commission, there does not appear to be any reason

why Barnes should not remain a viable competitor.''

In considering relevant markets the Commission concluded that the stockfeed market would not be affected by either of the proposed acquisitions to any significant extent. The markets which the Commission found to be important were flour and bread.

In geographic terms the Commission defined the flour market as Queensland and the adjacent Northern Rivers District of N.S.W. and commented that ''it appears to be difficult for New South Wales millers to sell flour (to the Northern Rivers District) because of freight costs''. The Commission also found that the market could be divided into sub−markets of

Northern Queensland (Rockhampton and further north)

South Queensland (excluding Brisbane)

Brisbane

Northern Rivers Districts of N.S.W.

This definition of sub−markets has been attacked before the Tribunal by the applicants and the matter is dealt with further below.

As to bread, the Commission found

> ''because of the perishability of bread and the system of accepting unlimited returns from shopkeepers, bread markets must be fairly localised, despite the fact that the bread making interests of Defiance, Barnes, QCMA and to a lesser extent Gillespie operate Queensland−wide.''

Having noted that 60%−70% of flour sold in the Queensland market is used in bread, the Commission went on to describe the flour sales to bakeries made by the respective milling companies, identifying the sales made to subsidiaries and those made to bakeries tied by contracts arising from financial obligations of one kind or another. The Commission found that 53% of flour was sold through such tying arrangements and that ''leakage from these ties does not often occur'' except in some cases where a bakery is in financial difficulties.

Dealing with the respective shares of the millers in the identified flour sub−markets, the Commission drew particular attention to the North Queensland market where Defiance held 59% and Barnes held 18%, half of which it bought in from QCMA.

In the case of bread markets, the Commission identified seven of interest. Two of these (Brisbane and Longreach) have since become largely irrelvant because of the closure of Barnes bakeries. The Barnes share of the other markets were shown as —

Townsville	25%
Mackay	30%
Rockhampton	15%
Mt. Isa	15%
Dalby	25% or 35%.

In each case competition came from both applicants and, in the cases of Mackay and Mt Isa, from the Gillespie company also.

The Commission gave its reasons for decision in the following terms —

> ''In respect of both applications, the merger is primarily a horizontal one at both functional levels of flour milling and bread manufacture. These levels are vertically
>
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>
> integrated for all competitors and in all geographic markets and sub−markets and because of this the effect of the merger on competition is more significant than would be the case if the market were not vertically integrated.
>
> The acquiring companies are the largest and second largest in the Queensland flour market and the company to be acquired is the smallest. In the case of Defiance, the acquisition would make it the leading seller with about 36% of the market. In the case of QCMA the acquisition would enhance its leading position in the market increasing its market share to about 40%.
>
> Defiance ranks first or second in three of the four flour sub−markets and QCMA ranks first or second in all of them. After the acquisition they would retain those ranks but with increased market shares.
>
> In bread manufacturing both acquisitions would result in a substantial increase in concentration in the smaller markets. In the case of Defiance it would become dominant in four of these, with a market share in Townsville of 65%, Rockhampton 60% and Dalby over 80%. In the case of QCMA it would become dominant in four also, with a market share in Townsville of 70%, Rockhampton 55%, Mt. Isa 55% and Longreach 100%, whilst in Mackay it would be in No. 1 position with 40%. In both acquisitions three of these bread markets are in the flour sub−market of Northern Queensland in which either acquisition has special significance.
>
> It has been put to the Commission by Defiance, that the Commission should not aggregate pre−acquisition market shares to obtain the joint post−acquisition market share. A previous acquisition in the industry is quoted as an example. The

Commission accepts that there will be losses to the merged company but these will be relatively small, particularly in this case where 49% of Barnes' sales are tied or are to subsidiary companies. In fact, whatever other reasons there may be for these acquisitions the ultimate one must be that the acquiring company expects to hold most of Barnes' share.

Ever since the George Weston Group started opening subsidiary bakeries in Brisbane (about 10 years ago) there has been a trend of millers trying to insulate their sales of flour from competition by having subsidiary bakeries or tying agreements with independent bakers. Competition has progressively become less in selling flour to customers free to choose and more in securing outlets that are bound to take it. The result is that at present more than half of the total flour sales in the Queensland market are tied sales. Taken in this context the proposed acquisition of even the smallest of the five millers operating at present is likely to result in a further weakening of competition through the further weakening of the competitive structure of the market.

The Commission therefore finds that either merger would be likely to have the effect of substantially lessening competition in the flour market for Queensland and the sub−market of Northern Queensland, as well as in both cases four of the bread markets.

Clearance of both mergers is therefore denied.''

The refusal of authorization which the Defiance company is asking this Tribunal to review was contained in another decision published on 19 September 1975.

The Commission in that document summarised the arguments advanced by Defiance which, subject only to certain changes to the factual situation, are substantially the same as those put to this Tribunal and dealt with in detail below.

In relation to Defiance's need for public listing to solve its liquidity problems, the Commission accepted that this would improve the company's flexibility in the use of funds available to it. However it pointed out that it had already found that the proposed merger was likely substantially to lessen competition and said, ''this must be considered in deciding whether the public benefit is substantial and whether it is otherwise available''.

The Commission went on to say that Defiance had attained a strong position in the market without public listing; liquidity would no doubt improve as the general economic situation improves; and there were other ways of achieving liquidity without the cost to competition involved in the Barnes merger.

Defiance arguments that it could promote competition and generally advance the public interest by conducting the various Barnes

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business better than they were being conducted at present, were answered by the Commission accepting as reasonable ''Barnes' claim that they can remain a viable competitor''. The Commission also said that any question as to a lack of managerial expertise in the company was a matter for its Board to consider.

Other matters dealt with in the decision were peripheral to these main arguments. It can be seen that crucial to the Commission's reasoning was the likely continuation of Barnes as an active and effective competitor in its present fields of activity. As will be seen later in these reasons, the detailed evidence presented to this Tribunal has led us to a rather different view of the future activities of Barnes.

The Commission's reasons for dismissing the QCMA application for authorization proceeded along similar lines. The Commission was not impressed by the argument that a takeover by QCMA would enable it, and thus the industry, to rationalize milling capacity by closing down the two oldest mills. It was not clear that the takeover was necessary for this purpose.

So far as competition in the flour market was concerned, the Commission said that QCMA, Defiance and Barnes ''are the major competitors in areas outside Brisbane and are actively competitive. The Commission fails to see how a more efficient trade service throughout Queensland would result from the acquisition''.

As will be seen below, to equate Barnes with the applicants in this way, and to exclude Gillespie, could be misleading. But to say this is not to invalidate the conclusion expressed in the last sentence.

With regard to QCMA's expressed fears that too much of its trade depended upon dubious contractual ties and it needed the Barnes subsidiary bakeries to give it a more secure base, the Commission said that strengthening the biggest of the Queensland millers in this way would not be a public benefit.

In its statement of facts and contentions to this Tribunal, the Commission stressed the facts that the flour milling industry in Queensland is already highly concentrated and in large measure has become vertically integrated with the baking industry by acquisitions and contractual ties. Both these circumstances ''increasingly limit the opportunity for competitive behaviour''. The acquisition of Barnes by either of the applicants would merely serve to increase the degree of concentration and vertical integration.

4. Principles to Guide the Tribunal

The main provisions in the Act directly governing the principles by which the Tribunal will grant or refuse an authorization of merger are sec. 88(7) and 90(5). The effect of an authorization is to grant immunity from the prohibition contained in sec. 50. We shall consider the meaning of sec. 88(7) and 90(5) and their relation to sec. 50 and to the scheme of the Act as a whole. This consideration may also afford some clarification of the relation between authorization and clearance (which, in the case of merger is governed by sec. 94). In this, our first determination under the 1974 Act, it seems particularly appropriate to spend some time on matters of principle; and, speaking very generally, we have felt the need to set down our views on the relationship between the anti−competitive and public interest principles governing illegality, exemption and justification under the Act.

Section 88(7) creates the power to grant an authorization of a prospective merger: The Commission or, on review, the Tribunal may

> ‘‘grant an authorization to the corporation to acquire shares in the capital, or to acquire assets, of a body corporate and, while such an authorization remains in force, section 50 does not prevent the corporation from acquiring shares in the capital, or from acquiring assets, of the body corporate in accordance with the authorization.’’

Section 50(1) prohibits ‘‘anti−competitive’’ mergers:

> ‘‘A corporation shall not acquire, directly or indirectly, any shares in the capital, or any assets, of a body corporate where the acquisition is likely to have the effect of substantially lessening competition in a market for goods or services.’’

Section 90(5) sets down the ‘‘public interest’’ criterion to be applied by the Commission or Tribunal in determining whether an authorization should be granted: The Commission or Tribunal

> ‘‘shall not make a determination granting an authorization unless it is satisfied that the contract, arrangement, understanding
>
> [17241]
>
> or conduct to which the application relates results, or is likely to result, in a substantial benefit to the public, being a benefit that would not otherwise be available, and that, in all the circumstances, that result, or that likely result, as the case may be, justifies the granting of the authorization.’’

Section 94, governing clearance of a merger, states that an acquisition of shares or assets which ‘‘may be in contravention of sec. 50’’ may, upon application to the Commission, be deemed for the purposes of this Act ‘‘not to have the effect of substantially lessening competition in a market for goods or services’’.

The first question is this: What is to be authorized? Section 88(7) speaks merely in terms of the acquisition. It provides for an authorization ‘‘to acquire shares in the capital, or to acquire assets’’. Yet if the granting of an authorization is to give immunity from sec. 50, should the Tribunal first inquire whether the acquisition is ‘‘likely to have the effect of substantially lessening competition’’ or, in case of an acquisition of assets, whether such acquisition is (in the language of sec. 50(2)) ‘‘in the ordinary course of business’’? We think not. The issues for determination by the Court in the event of prosecution are different from those for determination by the Tribunal when authorization is sought. Nor do we think it appropriate for the Tribunal to express an opinion on these matters.

We agree with the view put forward by the Commission in the *Shell case* (par. 9.3(b); [¶35−220]):

> ‘‘Where a party believes, on what appear to him to be good grounds, that his conduct (if not authorized) may be in breach of the Act and he applies for authorization accordingly, the Commission’s duty is to decide the application on the public benefit grounds spelt out in the Act. It is not one of those grounds that the application might appear to be unnecessary.’’

Furthermore we do not believe that the mere act of application for authorization should carry with it any presumption as to liability under sec. 50 or, more generally, as to the presence of ‘‘significant’’ or ‘‘substantial’’ anti−competitive effects. The mere fact of merger carries with it no implications for competition one way or the other or, indeed, for public benefit or detriment. Thus the starting point for our deliberations must be ‘‘mere merger’’ and not anti−competitive merger.

We turn now to a consideration of sec. 90(5). At the outset we indicate two particular issues which have concerned us greatly. Both of these were raised by Mr. Brennan Q.C. (appearing for the Commission). First, he submitted, the questions which the sub−section commits to the Tribunal are three, which should be treated as independent and cumulative:

> (1) Will a substantial public benefit result or be likely to result from the merger?
>
> (2) Would that substantial public benefit otherwise be available?
>
> (3) Does that substantial, and not otherwise available, benefit to the public justify the granting of an authorization for the merger?

Question (2) arises only when Question (1) is answered affirmatively; Question (3) arises only when Question (2) is answered appropriately.

Secondly, Mr. Brennan submitted that the Tribunal’s task should be viewed as one primarily of assessing public benefits, not of

assessing competition. The section (he said) says nothing about competition. The Tribunal is called upon to deal, in the first instance, only with public benefits and (in its weighing up under Question (3)) with public detriments. Competition becomes relevant only as it gives rise to benefits or as lack of it, or impairment of it, produces detriment; and most often the analysis of competition in the market can be reserved to the third stage, if that stage is reached. He said,

> ‘‘By the Act, public benefit issues are remitted initially to the Commission and finally to the Tribunal (s. 101) for determination, but lessened competition is an issue reserved initially to the Commission and finally to the Court.’’

The Tribunal notes that, the Commission’s own practice in applying the triple test of sec. 90(5) has sometimes been different in some respects from the course advocated by Mr. Brennan. In its determination upon the Defiance application for authorization of 19 September 1975, the Commission said this:

> ‘‘The Commission has already found that the acquisition is likely to have the effect of substantially lessening competition and this must be considered in deciding whether the public benefit is substantial and whether it is otherwise available. (par. 6)’’

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And in the *Shell* determination (on application for authorization) the Commission said:

> ‘‘the whole question of competition in the industry could be debated in the authorization proceedings as it was clearly a part of ‘the circumstances’ (section 90(5)) in which any substantial (and not otherwise available) benefit shown to accrue to the public might be seen as justifying authorization. (par. 9.3(c))’’

Moreover we observe that in writing that determination the Commission found it appropriate to set down its analysis of Competition before its analysis of Public Benefit, and then to assess the claimed public benefits against the background of the competitive functioning of the industry.

Mr. McComas (appearing for QCMA) urged upon the Tribunal a somewhat different view of sec. 90(5) from that put by Mr. Brennan. Section 90(5), he said, could not be isolated from the scheme of the Act including sec. 50(1). The Tribunal ‘‘is able, and indeed should, conduct its review on an authorization determination with a mind preoccupied, as it were, with the competitive impact which the proposed merger will have’’. In particular, he said, what constitutes substantiality should be determined by reference to the criteria of justification and the facts of the particular case:

> ‘‘One should approach the whole matter, in our submission, from the point of view of [anti−] competitive impact. If there is a considerable impact the onus would be correspondingly heavier. If slight, the degree of substantiality required in our submission is much lower.’’

Putting these problems to one side for the moment, we proceed to comment on the elements of the test.

We do not think it profitable to pursue the meaning of ‘‘benefit’’ taken in isolation. The sub−section instructs us to appraise the likely effects upon public benefit.

One question that arises is whether by the public is meant the consuming public. One submission to us was that, in the context of the objectives of the Act, we should direct our attention to that part of the public concerned with the use or consumption of flour in the Queensland market. This would be to interpret the phrase as pointing to much the same considerations as those raised by sec. 21(1)(b) of the British *Restrictive Trade Practices Act* 1956, which asks whether withholding approval would ‘‘deny to the public as purchasers, consumers or users... specific and substantial benefits or advantages...’’. However this is not what the Australian Act says; and we cannot but think that the choice of a wider expression was deliberate, as pointing to some wider conception of the public interest, though no doubt the interests of the public as purchasers, consumers or users must fall within it and bulk large.

Another question raised is whether public benefit must be contrasted with private benefit. Can a benefit to some of the private parties to the merger — for example the shareholders of Barnes — be claimed as a public benefit? Must a benefit which accrues to the private parties be ‘‘passed on’’ to members of the wider community before it can be considered? The Commission has expressed its view in its *First Annual Report* (Year Ended 30 June 1975) that the test requires ‘‘benefits to the public and not merely to the applicant or some other limited group’’. (p. 41). While agreeing with this statement as far as it goes, we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress. If this conception is adopted, it is clear that it could be possible to argue in some cases that a benefit to the members or employees of the corporations involved served some acknowledged end of public policy even though no immediate or direct benefit to others was demonstrable.

At the same time this wide conception of public benefit must be severely qualified by reference to the requirements that (1) it is the result or likely result of the acquisition, (2) that it is not otherwise available, and (3) that it is ‘‘substantial’’.

As to the first, it is plain that there must be established a causal relationship between the acquisition and the claimed benefit.

Further, we may look only to benefits flowing from the specific acquisition — the ‘‘conduct to which the application relates’’ — and not to benefits which might be supposed to flow from a policy of dealing with similar applications (e.g. in respect of ‘‘failing firms’’) in a particular way.

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We are to be concerned with probable effects rather than with possible or speculative effects. Yet we accept the view that the probabilities with which we are concerned are commercial or economic likelihoods which may not be susceptible of formal proof. We are required to look into the future but we can be concerned only with the foreseeable future as it appears on the basis of evidence and argument relating to the particular application.

The requirement that the public benefit should ‘‘not otherwise be available’’ is a severe one. It carries with it the requirement that the acquisition be a necessary and sufficient condition for the probable achievement of the claimed benefit. Nevertheless we think the requirement should be interpreted in a practical rather than an absolute sense, taking into account the commercial realities so far as the parties are concerned and the possible social costs of some alternative course of action so far as the public is concerned.

The benefit must be ‘‘substantial’’. It must be ‘‘considerable’’, ‘‘large’’, or ‘‘weighty’’. It need not, it is plain, be necessarily capable of quantitative assessment; but it should be sufficiently definable — have sufficient substance — as to permit some factual judgment of its relative importance.

The term ‘‘relative’’ is used deliberately. One thing can be large only in relation to another. We cannot know whether something is ‘‘substantial’’ until we have established the scale by which it is to be measured. Almost necessarily the requirement of substantiality calls upon us to compare the importance of the probable benefits with — something else. What is that something?

Given our approach to the term ‘‘public benefit’’, one possibility would be to assess that substantiality relative to society’s ends: we should look for a ‘‘large benefit to society as a whole’’; we might require that benefits should be spread ‘‘across a broad spectrum of the public’’. The difficulty, however, with this approach is that it rules out of authorization most small mergers (small in terms of such criteria as the assets, numbers of employees or total sales involved), and more generally the conduct of most small industries or of industries catering to small markets. To illustrate, the net assets of Barnes Milling Ltd. and subsidiaries at 31 January 1975 appeared in the balance sheet at less than $2m. The employment and value added of all flour mills in Queensland is in the order of 0.5% of the figures for all manufacturing industry in Queensland. The bread markets that feature in this case are local markets such as Rockhampton, Mackay and Townsville (the largest of which has a population in the vicinity of 85,000).

We do not believe such an approach makes sense. It would make authorization available only to a limited category of firms and industries. It would result in a lack of symmetry of treatment as between authorization and clearance, in that the Commission is required to consider whether an acquisition would be ‘‘likely to have the effect of substantially lessening competition in a market...’’. It would place undue weight upon the clearance procedure in that ‘‘small mergers’’ not granted clearance would have little prospect of gaining authorization.

An alternative approach, which we follow here, is to take into account the size and significance of the merger and the markets under contemplation. Substantiality is then assessed by reference to notions of what is achievable, given the size and significance of the merger and markets. Furthermore, whether or not the net benefits are ‘‘substantial’’ must depend in large measure upon whether the positive benefits are of sufficient public importance to outweigh any detriments, including anti−competitive effects flowing from this merger taking place in these markets.

This brings us to the balance that must be struck if the Tribunal is to find that ‘‘in all the circumstances’’ the substantial and not−otherwise−available benefit ‘‘justifies’’ the granting of the authorization. We accept that the statute calls upon us to adopt a balancesheet approach: we must balance the likely benefits and detriments flowing from the acquisition. We accept that the notion of detriment falling for consideration under ‘‘all the circumstances’’ is wider than the notion of anti−competitive effect. But at the same time, given the policy of the Act and the subject−matter under consideration, the most important of these potential detriments will normally be the anti−competitive effects.

We are now in a position to spell out the implications for the present applications of the Tribunal’s observations in *Re Queensland Timber Board* [¶40−005]:

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> ‘‘The policy of the Act is clearly opposed to arrangements in restraint of trade and other anti−competitive practices. An applicant for final authorization has a substantial onus to discharge in satisfying s. 90(5). ((1974) 24 F.L.R. 205 at 210)’’

That onus of satisfaction refers not to the merger itself — ‘‘mere merger’’ — but to the merger with its associated anti−competitive detriment whatever it may be. It is not sufficient for an applicant to point to a clear public benefit and then leave it to others to try to show that, nevertheless, the authorization would not be justified. The onus is upon the applicant to satisfy the Tribunal that there is sufficiently substantial public benefit to outweigh the detriment, especially any anti−competitive detriment, and so justify authorization. Given the value placed upon the promotion and preservation of competition by the Act as

a whole, it is a heavy onus.

We return to the two problems raised at the beginning of this discussion of sec. 90(5). Are the three questions posed by the sub−section to be treated as independent questions? It is plain that we think the answer is no. Can the task of the Tribunal be viewed as one primarily of assessing public benefit, with competition becoming relevant mainly at the final stage of its deliberations? Again we think the answer is no. Some of our reasons for thinking this appear from what has already been said. Some have yet to be expressed. At risk of some repetition it may be useful to summarize them all at this point.

(1) A merger may positively enhance the competitive process and thus give rise to a substantial benefit. In the instant case Defiance has submitted that the improvement in its liquidity which would follow public listing would enable it to continue and develop its role as a strong and useful competitor in the flour milling and bread industries. QCMA also has submitted that the acquisition of the Barnes Dalby mill would enable it to phase out the Maryborough and Toowoomba mills and so structure flour supply from the four modern and well−located mills at Rockhampton, Brisbane, Dalby and Roma as to improve QCMA's competitive position and make it a more effective presence in the flour milling industry. Without expressing a view at this stage on the worth of these particular contentions we accept their relevance. More generally we note that the ''strong and useful competitor'' argument should have especial relevance to oligopoly. First, in those oligopolistic settings in which barriers to entry of new firms are necessarily high and thus numbers of competitors necessarily restricted (by reason, for example, of the incidence of economies of large scale in relation to the size of the market), we are reliant to a considerable extent upon the competition generated by existing firms. Here competition may be promoted by the nurturing of useful vigour on the part of existing firms as well as (at times) the achievement of ''market balance'' on the part of the contenders. Secondly however, it may be that changing technology and market limits do not create an impenetrable barrier to entry into a particular market. Here competition may be promoted through acquisitions which aid the entry of a ''strong and useful competitor'' from outside.

(2) But the benefits claimed may not mention competition. They may, as in this case, refer to such results as: lower costs through ''rationalization'' of mill capacity; a containment of price increases in the present inflationary situation; the supply of technical advice and finance to small bakers; the more productive utilization of the resources of a failing firm; and the enhancement of industry stability through the forging of stronger vertical links between miller and bakers. Nevertheless, our appraisal of all the listed claims must depend upon our appreciation of the competitive functioning of the industry, with and without merger. We have said that we are concerned with commercial likelihoods. We have to judge whether, in the absence of merger, the results could be achieved by other means (and means, moreover, permitted by the policy of the Act). And we have to consider, finally, whether the claimed results are truly of benefit to the public (see (3)). Every one of these claims contains predictions as to the market behaviour and market performance of the companies involved, with and without merger. However the validity of such claims will rarely be self−evident. To illustrate: consider the contention that, to the extent QCMA achieves cost savings, this will result in the containment of price increases. We have to ask whether the evidence on competition suggests that QCMA's own costs play, or might be likely to play, a direct role in the determination of QCMA's prices. Another illustration is found in the submission of Defiance that a firm fails when it can no longer

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pay the market price for its resources (that is, the value of the takeover bid exceeds the value placed upon the company's assets as presently controlled); and that the assets of such a firm (Barnes) should go to those who can obtain the highest return upon them, for this would then constitute the most productive use of those resources. Whether this chain of argument is correct, however, depends upon whether there is likely to be effective competition in the relevant markets. For otherwise the takeover bid may contain within it a capitalization of some portion of future ''monopoly profits'' which the acquiring firm may expect from the acquisition or enhancement of market power.

(3) A claimed benefit may in fact be judged to be a detriment when viewed in terms of its contribution to a socially useful competitive process. To illustrate: is the supply of technical advice and finance to small bakers a benefit, or does it serve rather to tie bakers to a miller in a way which enhances the market power of the miller in the flour industry, diminishes the independence of the small baker, and makes it more difficult for new milling firms to enter? Would it be preferable for technical advice and finance to come from an independent source? On the other hand, how practical is it, given the functioning of the capital market, to expect appropriate advice to be made available in an efficient manner? Are there economies to be achieved through the close linking of millers and bakers, economies in such matters as handling the throughput of flour, improving technology and developing new products?

(4) As explained above, we think the substantiality of benefits needs to be measured against likely anti−competitive effects (and other detriments). In this balancing process there are presumptions and weights which flow from the overall policy of the Act. While there is thus necessarily some potential overlap in evidence and argument before Court, Commission and Tribunal, it hardly needs to be said that it is not for the Tribunal to reach some ultimate verdict of competitive effect in terms of sec. 50 or sec. 94.

(5) Quite generally, the Tribunal's role is seen as forming one of the means of achieving the policy objective of the Act, namely the preservation and promotion of useful competition.

Since we give such importance to the relevance of competitive considerations in proceedings for authorization, we add a few

comments on how the Tribunal views competition. However, ‘‘competition’’ is such a very rich concept (containing within it numbers of ideas) that we should not wish to attempt any final definition which might, in some market settings, prove misleading or which might, in respect of some future application, be unduly restrictive. Instead we explore some of the connotations of the term.

Competition may be valued for many reasons as serving economic, social and political goals. But in identifying the existence of competition in particular industries or markets, we must focus upon its economic role as a device for controlling the disposition of society’s resources. Thus we think of competition as a mechanism for discovery of market information and for enforcement of business decisions in the light of this information. It is a mechanism, first, for firms discovering the kinds of goods and services the community wants and the manner in which these may be supplied in the cheapest possible way. Prices and profits are the signals which register the play of these forces of demand and supply. At the same time, competition is a mechanism of enforcement: firms disregard these signals at their peril, being fully aware that there are other firms, either currently in existence or as yet unborn, which would be only too willing to encroach upon their market share and ultimately supplant them.

This does not mean that we view competition as a series of passive, mechanical responses to ‘‘impersonal market forces’’. There is of course a creative role for firms in devising the new product, the new technology, the more effective service or improved cost efficiency. And there are opportunities and rewards as well as punishments. Competition is a dynamic process; but that process is generated by market pressure from alternative sources of supply and the desire to keep ahead.

As was said by the U.S. Attorney−General’s National Committee to Study the Antitrust Laws in its Report of 1955 (at p. 320):

> ‘‘The basic characteristic of effective competition in the economic sense is that no one seller, and no group of sellers acting in concert, has the power to choose its level of profits by giving less and charging more. Where there is workable competition, rival sellers, whether existing competitors or new potential entrants into the field, would keep
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> this power in check by offering or threatening to offer effective inducements....’’

Or again, as is often said in U.S. antitrust cases, the antithesis of competition is undue market power, in the sense of the power to raise price and exclude entry. That power may or may not be exercised. Rather, where there is significant market power the firm (or group of firms acting in concert) is sufficiently free from market pressures to ‘‘administer’’ its own production and selling policies at its discretion. Firms may be public spirited in their motivation; but if their business conduct is not subject to severe market constraints this is not competition. In such a case there is substituted the values, incentives and penalties of management for the values, incentives and penalties of the market place.

Competition expresses itself as rivalrous market behaviour. In the course of these proceedings, two rather different emphases were placed upon the most useful form such rivalry can take. On the one hand it was put to us that price competition is the most valuable and desirable form of competition. On the other hand it was said that if there is rivalry in other dimensions of business conduct — in service, in technology, in quality and consistency of product — an absence of price competition need not be of great concern.

In our view effective competition requires both that prices should be flexible, reflecting the forces of demand and supply, and that there should be independent rivalry in all dimensions of the price−product−service packages offered to consumers and customers.

Competition is a process rather than a situation. Nevertheless, whether firms compete is very much a matter of the structure of the markets in which they operate. The elements of market structure which we would stress as needing to be scanned in any case are these:

(1) the number and size distribution of independent sellers, especially the degree of market concentration;

(2) the height of barriers to entry, that is the case with which new firms may enter and secure a viable market;

(3) the extent to which the products of the industry are characterized by extreme product differentiation and sales promotion;

(4) the character of ‘‘vertical relationships’’ with customers and with suppliers and the extent of vertical integration; and

(5) the nature of any formal, stable and fundamental arrangements between firms which restrict their ability to function as independent entities.

Of all these elements of market structure, no doubt the most important is (2), the condition of entry. For it is the case with which firms may enter which establishes the possibilities of market concentration over time; and it is the threat of the entry of a new firm or a new plant into a market which operates as the ultimate regulator of competitive conduct.

How decisive is it, then, that the acquisition of Barnes by either Defiance or QCMA would raise market concentration ratios in some markets in some degree? Evidently, provided markets have been defined appropriately, it is relevant but not decisive. While the equation of anti−competitive effect with enhanced concentration is tempting in its mechanical simplicity, there is much more to the idea of competition than this. No doubt, other things being equal, significantly lower market concentration is

preferable to a high level. But other things are rarely likely to be equal, as we discover below. Moreover, the very significance of the change in the concentration ratio will depend upon other competitive characteristics of the industry.

5. Identification of markets

It follows that the identification of markets must be the essential first step in assessment of present competition and likely competitive effects. In our view the usefulness of the ‘‘market’’ concept goes beyond the determination of market concentration to the identification of rivalrous relationships between sellers. Yet we stress that market definition can be but a first step; and we agree with Mr. Brennan when he said that mere specification of markets cannot be determinative by itself of some ultimate issue.

In our view the relevant product markets are two, flour and bread; but there is one very important sub−market for consideration, namely that in bakers flour. In our view, secondly, the market in flour encompasses geographically what may conveniently be termed the Greater Queensland region, that is

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Queensland plus the Northern Rivers District of N.S.W. But there are four very important sub−markets for consideration, namely Brisbane, Northern Queensland, Southern Queensland, and Northern Rivers. As to the geographic extent of bread markets, we agree with the altogether uncontroversial submission of all participants that they are ‘‘local’’ or ‘‘fairly local’’.

Before giving our reasons we should explain our understanding of the market concept, and of the relationship between ‘‘markets’’ and ‘‘sub−markets’’. We take the concept of a market to be basically a very simple idea. A market is the area of close competition between firms or, putting it a little differently, the field of rivalry between them. (If there is no close competition there is of course a monopolistic market). Within the bounds of a market there is substitution — substitution between one product and another, and between one source of supply and another, in response to changing prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive. Let us suppose that the price of one supplier goes up. Then on the demand side buyers may switch their patronage from this firm’s product to another, or from this geographic source of supply to another. As well, on the supply side, sellers can adjust their production plans, substituting one product for another in their output mix, or substituting one geographic source of supply for another. Whether such substitution is feasible or likely depends ultimately on customer attitudes, technology, distance, and cost and price incentives.

It is the possibilities of such substitution which set the limits upon a firm’s ability to ‘‘give less and charge more’’. Accordingly, in determining the outer boundaries of the market we ask a quite simple but fundamental question: If the firm were to ‘‘give less and charge more’’ would there be, to put the matter colloquially, much of a reaction? And if so, from whom? In the language of economics the question is this: From which products and which activities could we expect a relatively high demand or supply response to price change, i.e. a relatively high cross−elasticity of demand or cross−elasticity of supply?

The distinction between markets and sub−markets can be merely one of degree. Sub−markets are the more narrowly defined, typically registering some discontinuity in substitution possibilities. Where the defining feature of a market is the existence of close substitutes (whether in demand or supply), the defining feature of a sub−market is the existence of still closer and more immediate substitutes. Sub−markets may be especially useful in registering the short−run effects of change; but they may be misleading if used uncritically to assess long run competitive effects.

The indicia of sub−markets listed in the American case *Brown Shoe Co. Inc.,* v. *U.S.* (1962) 370 U.S. 294 are suggestive:

> ‘‘The boundaries of such a submarket may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product’s peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.’’

But although it may be helpful to refer to such a list, it does not follow that it is exhaustive, nor that an area or product must meet all or a large number of these tests to be classified as a sub−market. And indeed the precise content to be given to such phrases as ‘‘the product’s peculiar characteristics and uses’’, ‘‘unique production facilities’’, ‘‘distinct prices’’ depends upon more fundamental economic ideas.

We come now to our reasons for our finding. The products falling for attention initially are flour, bakers flour, packaged flour, bread and stockfeed. But while reference was made in the course of these proceedings to ‘‘the market for packaged flour’’ and ‘‘the market for stockfeed’’ we do not feel able to distinguish them as such on the basis of the very limited evidence before us. We can say very little more of packaged flour other than that it is an important product for Defiance (and for Love and Gillespie), though not so for QCMA and Barnes. Virtually all we can say with confidence of stockfeed, is that none of the three firms with which we are concerned is in the conventional stockfeed industry, though the raw materials for this industry are a by−product of milling and Barnes operates a provender mill at Dalby which produces specialty feed.

This leaves us with flour, bakers flour and bread. We are clear that it must be first and foremost to the flour market that we give our

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attention. All the firms involved are primarily millers. They all produce a range of flours from their mills, with proportions capable of adjustment by reference to commercial considerations. Yet bakery flour is by far the most important product, certainly for all five Queensland mills and especially for Barnes.

COMPOSITION OF FLOUR OUTPUT OF QUEENSLAND MILLERS SOLD IN GREATER QUEENSLAND MARKET 1974−1975

	QCMA	Defiance	Barnes	Five Qld. Millers
Bakery flour	67%	72%	81%	68%
Packaged flour	3	17	4	13
Other flour	30	11	15	19
	100%	100%	100%	100%

Moreover bakery flour has its own special characteristics and is sold to a distinctive set of customers who proceed to turn it into the distinctive product bread.

It was suggested to us by one of the economists who appeared that, in view of the close links between millers and bakers (both by way of shareholdings and trade ties), it could be more useful to think in terms of a flour/bread market (or possibly just in terms of a bread market since bread is the ultimate product). However we do not think the links so strong and pervasive as to justify this treatment. The types of links used by millers in the bakery flour business are as follows:

SALES OF BAKERS FLOUR BY FIVE MILLERS TO SUBSIDIARIES, AFFILIATES AND TIES 1974−1975

Subsidiary	Minority Interests	Tie by leases	Tie by finance or machinery	"Free"	Total Sales	
QCMA	9%	33%	11%	24%	23%	100%
Defiance	30	6	6	29	28	100
Love	98	−	−	−	2	100
Gillespie	86	11	−	−	3	100
Barnes	32	11	2	18	37	100

(The recent change in QCMA’s interest in Pfeffers bakery in Brisbane from a minority to a majority position would alter the picture somewhat.) Not all links are equally binding; and the effectiveness of legally binding ties is declining (see below). We should wish to draw a strong distinction, in particular, between subsidiary trade and tied trade; and we note that for none of our three firms is the percentage of trade to subsidiary bakers in excess of 40%.

It is plain, nevertheless, that we must give special attention to bread markets. The acquisition of Barnes would carry with it the acquisition of a number of bakeries and what might be described as the ‘‘goodwill’’ of tied bakeries and other stable customers. The proposed acquisitions have ‘‘horizontal’’ implications for competition in both the flour and bread markets; in addition, there may be ‘‘vertical’’ implications arising from the manner in which customer−supplier relationships could be changed and consolidated.

We turn now to the geographic extent of markets, beginning with flour. There is no doubt that distance operates to fragment this market to some degree. But there are no

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watertight compartments in which the trade can be divided. And while the incidence of transport costs will give a particular mill an advantage in supplying a particular region they are not so high, we believe, as to isolate any one region from inter−penetration from another. Moreover it was explained to us how the complexities of the Queensland rail freight and subsidy arrangements for wheat can give a country centre, such as Dalby, some unexpected advantages even as far north as Cairns.

It is true that Queensland mills are of varying designed capacities ranging from 1 ctph (capacity in tons per hour) up to 7 ctph, and that with modern technology there can be significant economies of scale to be achieved at least up to 7 ctph. It was put to us by counsel for the Commission that such a size distribution of plants was inconsistent with the ‘‘one market’’ hypothesis. If transport costs were not important, he suggested, the one Greater Queensland market could be supplied from a smaller number of larger mills designed to take advantage of economies of scale. Essentially his argument was that the very fact that small mills can co−exist with large must mean that the small mills have some spatial protection.

On Mr. Brennan's line of argument one might equally well say that the implication is that competition is not very intense, which indeed is a possibility not to be dismissed. We can think of numbers of other reasons for such a size distribution of plants. Most important it would seem is that existing mills are a legacy of history; mills may be gradually reconstructed, but at any one time they represent a combination of old and new equipment between which a balance must be struck. Secondly, even for newly constructed mills, we were told by an expert, there may be something of a range of optima in the sense that the larger mills are capable of producing a wider range of products than the small. We heard that fire is such a frequent occurrence there can be advantages in operating more than one mill in a market. A small mill may yet survive because of its access to superior quality wheat, or its association with a complementary business, or its use in meeting surges of demand, or its ability to contribute to supply when the roads are out by reason of flood.

If we look to the present reality of where the flour consumed in country areas is in fact coming from we find a rather complex picture of overlapping supply. This can be most easily seen by scanning the destinations of the flour produced by the five Queensland millers:

DESTINATION OF FLOUR TRADE OF FIVE MILLERS IN GREATER QUEENSLAND AND SUB−MARKETS 1974−1975

	QCMA	Defiance	Love	Gillespie	Barnes
North Qld.	16%	30%	1%	8%	43%
South Qld.	35	50	(a). . .	. . .	9
Northern Rivers	4	5	. . .	9	15
Brisbane	45	15	98	82	32
Greater Qld.	100%	100%	100%	100%	100%

(a) . . . indicates less than 1%

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We also set down the corresponding figures for bakers flour:

DESTINATION OF BAKERS FLOUR TRADE OF FIVE MILLERS IN GREATER QUEENSLAND AND SUB−MARKETS 1974−1975

	QCMA	Defiance	Love	Gillespie	Barnes
North Qld.	23%	33%	1%	12%	55%
South Qld.	45	47	1	−	8
Northern Rivers	5	7	...	11	18
Brisbane	27	13	98	77	19
Greater Qld.	100%	100%	100%	100%	100%

Love, Gillespie and Barnes each have only one mill. So all Love's supply must come from Brisbane as must Gillespie's. All Barnes' supply must come from Dalby, apart from that portion of its northern supply that it has been getting from QCMA by virtue of the Rockhampton agreement. While Defiance has 3 mills, 80% of its capacity is in the 2 mills operating in the adjacent towns of Dalby and Toowoomba. While both Love and Gillespie's sales are largely to the Brisbane sub−market, Gillespie has significant business in three or four northern centres. The production of the Barnes Dalby mill is despatched to south of Port Macquarie and the Northern Rivers District in N.S.W. and to the most northern and western parts of Queensland such as Mt. Isa and Cairns. And if Barnes present trade difficulties raise questions as to whether this pattern of trade might be altogether rational, we observe that Defiance, by all accounts a highly successful, firm, ranges widely over Queensland from its Dalby and Toowoomba mills. We were told, for instance, that the Defiance mill in Rockhampton would very rarely supply anybody north of Townsville. That trade, and even most of Townsville, would be supplied from Toowoomba and Dalby.

The figures calculated by the Trade Practices Commission of the shares of flour sales in particular towns are also confirmation of this general line of argument:

SHARES OF TOTAL FLOUR SUPPLIED TO INDIVIDUAL TOWNS — 1975

	Barnes	Defiance	QCMA	Gillespie	Other
Rockhampton	47%	43%	11%	−	−
Mackay	39	36	8	17%	−

Townsville	22	41	38	−	−
Cairns	18	35	30	16	−
Mt. Isa	18	8	31	43	−
Toowoomba etc.	3	70	27	−	−
Coffs Harbour	10	26	1	−	63%
Port Macquarie	48	−	−	−	52
Mareeba	42	59	−	−	−
Grafton	−	22	21	6	51

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It is true that sub−market shares present a rather different picture from shares in the total market:

MARKET AND SUB−MARKET SHARES IN FLOUR TRADE 1974

	North Qld.	South Qld.	Northern Rivers	Brisbane	Total Market Sales
QCMA	28%	42.0%	17.5%	30%	32%
Defiance	49	55	19	9	29
Love	1	0.8	0.5	37	18
Gillespie	5	0.2	13	19	11
Barnes	17	2	14	5	7
N.S.W. mills	−	−	36	−	3
	100%	100.0%	100.0%	100%	100%

We also set down the corresponding figures for bakers flour for the three sub−markets for which they are available:

SUB−MARKET SHARES IN BAKERS FLOUR TRADE 1974

	North Qld.	South Qld.	Brisbane
QCMA	29%	45%	21%
Defiance	44	52	10
Love	1	. . .	41
Gillespie	6	−	23
Barnes	20	2	4
	100%	100%	100%

But this is merely to say that particular firms currently have some competitive advantage in particular areas, with which we would agree. Indeed, this is an important reason why we think it relevant, in this case, to specify sub−markets as well as markets. Yet we do not think we could understand the current and likely strategies of Defiance, QCMA and others in these sub−markets unless viewed as an element in the total Queensland picture.

Going to the other extreme, there is a sense in which the metropolitan area and country town is the battle ground for flour market shares. This is where the bread is sold. The miller’s sales depend upon which bakers become its regular customers in the town and how well they prosper. Certain it is that the firms watch each other’s shares of flour trade within individual towns very keenly; and that their local shares can vary quite widely as between towns (even within the one sub−market). Yet we would do no more than suggest that competition for these local trade shares is an element in the total market strategy, just as is competition for regional (sub−market) shares.

No doubt the impact of the merger can be most easily discerned by studying the immediate effects upon sub−markets and particular towns. But the likely long run response may be rather different.

The determination of the geographic extent of bread markets is, by contrast, a rather straightforward matter. It is governed essentially by the perishability of bread, together with the prevalent system of accepting liberal returns from retailers. While we were

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told that Gillespie’s may despatch bread 200 km. to places west of Toowoomba and Dalby and north another 200 km. to south of

Gympie, this is evidently the exception rather than the rule. It appears that markets for bread are indeed local. Outside the metropolitan area they appear to be largely confined to particular towns (prominent exceptions being the Gold Coast and the Toowoomba−Oakey−Dalby areas). While we asked for evidence of inter−town trade in the areas of interest in these proceedings, we were given very little. Yet if bakers were to become largely owned by millers, these local markets would assume less significance.

At the same time we should note that there are different types of local market in bread. The Brisbane market with a population approaching a million is clearly very different from Mt. Isa with its population of 32,000. In the Brisbane market we find not only the largest number of bakeries but also the widest range of types. There are fully automated plant bakeries with an average monthly tonnage in excess of 200 tons; at the other end of the scale we find over 50 hot bread shops, with a tonnage perhaps in the vicinity of 15 per month. On the other hand, a provincial town may be able to support only a couple of family bakeries.

While there are in excess of 150 towns in which there is at least one bakery, the Greater Brisbane metropolis, together with 10 provincial cities (or towns), between them account for 70% of the Queensland population. The particular bread markets of interest in studying competitive effect in these proceedings are Townsville, Rockhampton and Mackay. The percentage of the total flour trade that they account for (i.e. in the Greater Queensland market) amounts to only 6%, a figure which needs to be kept in mind when attempting to strike a balance between the likely benefits and detriments of the proposed mergers.

6. Present competition

We have already indicated that an examination of the present state of competition, in the relevant flour and bread markets, requires an examination both of the structure of the industries and of the behaviour of the firms engaged in those industries.

So far as their structure is concerned, we have said that the bread and flour industries are to some extent integrated, but it would be a mistake to think of them as one. We have already set out in section 4 the factors which we think are important in any study of market structure.

In the case of the flour industry there is a high degree of *market concentration*, in that QCMA and Defiance hold 61% of the Greater Queensland market between them, and if Love and Gillespie are added, the four companies have 90% of the market.

It is instructive to see how the respective trade shares of the five Queensland millers have changed over time. This is indicated in the following table, the 1964 estimates having been supplied by Defiance:

	1964	1974
QCMA	42	33
Defiance	18	30
Love	7	19
Gillespie	10	11
Barnes	19	7
(Bunge)	4	−
	100%	100%

It will be seen from these figures that there is nothing static about the relative positions of the millers in the market. Love has taken a large slice of the Brisbane market, a process which was just beginning ten years ago, and Defiance has also increased its share. These advances have been largely at the expense of Barnes and QCMA.

In our view it is not surprising that a concentration such as this has been achieved. The market is not growing to any significant extent and, indeed, consumption per head of the population has generally declined over recent years. With mills in southern Queensland able to serve all markets, supplemented by two modern, though small, mills at Rockhampton, it is indeed a little surprising that economies of scale have not led to the construction of even fewer, larger mills than presently exist, though there may be numbers of reasons for this, as explored in section 5 above.

So far as barriers to entry are concerned, it is obvious that, in the early sixties, there was no barrier to the entry of the Weston group into the market. But Love has succeeded because it bought an existing business, established a chain of subsidiary bakeries first, and

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concentrated on the Brisbane region. Today it would be much more difficult for a new entrant to emulate that success.

In the first place there is, as the evidence showed, a good deal of excess capacity in the industry already. Certainly QCMA has a great deal of unused capacity and it seems likely that neither Love nor Gillespie is operating at, or even very close to, their respective capacities. Secondly, a new entrant would need to obtain some association with bakeries in view of the existing vertical integration in the industry. Thirdly, there are the difficulties posed by the necessity for scale in a static market.

Turning next to product differentiation and sales promotion, it seems that there is little of either in the case of the types of flour with which we are primarily concerned. Some bakers will have a preference for one brand of flour over another, but the millers themselves do not claim any great difference between themselves in either the range or the quality of their product.

With regard to sales promotion it seems that there is little if any advertising of bulk flour and all the companies with which we are immediately concerned rely upon direct contracts with customers by sales representatives, agents or mill managers.

It is interesting to note that of some 40 bakers who were asked to state what they put first in choosing between one miller's flour and another's, 18 said quality, 16 said financial assistance, seven said service and only one said price.

We shall consider the questions of service and price when we deal with competitive behaviour below.

In the meantime, it is convenient to look now at the important question of vertical relationships with customers.

This has loomed large in the present case because both Defiance and QCMA have in the past relied heavily upon continuing contractual ties to give them a secure share of the market. Several years ago Defiance saw that these ties might fall foul of the Trade Practices legislation. They then modified their agreements, with the result that their customers were only bound to purchase Defiance flour so long as they leased premises or plant from Defiance or owed the company loan monies. QCMA has continued to attempt to bind its customers for a term of years even though borrowed monies may be repaid earlier.

However, as noted elsewhere, the new general manager of QCMA sees little future in these ties, and now, like Defiance, is seeking to acquire subsidiary bakeries so that a reasonable share of the market is assured by means of vertical integration. He has adopted this approach because ties have proved both costly and ineffective. Thus in 1974 QCMA wrote off from trading debts $589,000, and between January and November 1975 the monthly tonnages of flour secured by different types of agreements fell off to the extent shown by the following table:—

Ties by "Purchase and sale" agreements	Jan. 1975	Nov. 1975
Fixed term loans	293 tonnes	199 tonnes
Property ownership	255 tonnes	241 tonnes
Plant hire agreements	200 tonnes	200 tonnes

It will be noticed that agreements arising from the leasing of property or plant held steady while those arising from financing arrangements declined markedly.

The move towards greater reliance on subsidiaries was started by Love and Gillespie and has now reached the stage where the following are the percentages of sales of bakers' flour which go to outlets in which the millers have at least a majority interest:—

QCMA	Sales to subsidiaries		=	32%
Defiance	do.	do.	=	30%
Love	do.	do.	=	98%
Gillespie	do.	do.	=	86%
Barnes	do.	do.	=	32%

The change of emphasis by Defiance and QCMA is, in our view, a justified response to the policies of the other two companies. Moreover we do not believe that such a degree of vertical integration as we have described will do any harm to the industries concerned.

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With improved technology in the baking industry, there is an inevitable trend towards labour−saving equipment for small family bakeries. It is reasonable that this equipment should be supplied, or at least financed, by milling companies in return for orders. In the provincial cities there is a natural progression towards the establishment of two or three semi−automated plant bakeries. Such bakeries can achieve economies of scale which make it difficult for the remaining family bakeries in such places to compete in the price−conscious bread market represented by supermarkets and stores. These plant bakeries are expensive to establish, having capital costs running into hundreds of thousands of dollars, and the competing millers are the obvious firms to undertake expenditure of this order. The evolving practice in the industry that financial ties will bind only so long as the loan is outstanding seems to us a most valuable control over any potential abuse.

It seems that, as ties become less popular, and as opportunities to acquire profitable plant bakeries diminish as they fall into milling ownership, the proportion of the free market to be contested for should remain reasonably constant. It is represented by bakeries in smaller towns and by the comparatively recent phenomenon known as the hot bread shop. These are being established in many shopping centres to satisfy a demand for fresh, crisp bread. This demand has apparently arisen as a reaction

against the typical sliced and wrapped loaf turned out by the larger bakeries, which has excellent keeping qualities and is convenient, but lacks the smell and texture of a crusty loaf.

These hot bread shops have been made possible by the development of compact and highly efficient doughmixing equipment and ovens, which take up comparatively little space and require less skill to produce reasonable results than does traditional baking. These hot bread shops are capable of attracting 10%−15% of the bread sales in a given area. Like the smaller family bakeries, they are (in Queensland at all events) usually owned independently, although they may be subject to plant hiring ties. Defiance, in particular, has encouraged their development.

The 1974−5 levels of free sales of bakers flour to the respective millers were:—

QCMA	23%	free sales
Defiance	28%	do.
Love	2%	do.
Gillespie	3%	do.
Barnes	37%	do.

The final question to be considered under the heading of flour market structure is arrangements between firms.

The only evidence of such arrangements related to agreements by Barnes to take flour from the two Rockhampton mills of QCMA and Defiance. Until January the agreement was with QCMA only. Now Barnes takes flour from both mills and has also offered to supply flour from its Dalby mill to Defiance. However it seems that Defiance has no present intention of buying in flour from Barnes.

There was no evidence of any agreement between the remaining Queensland millers which would in any way limit competition between them.

How then do they compete? In the first place it is clear that they do not compete among themselves in price. If they want to sell in northern New South Wales, they may have to lower their Queensland prices to compete with the levels set by N.S.W. mills. But in Queensland itself it is clear that none of them sees any advantage to be gained by price cutting.

The price of wheat plays the major part in determining the price of flour. It is fixed by the Australian Wheat Board as described in Section 1 above.

A miller which is able consistently to buy wheat from silos close to its mill, will enjoy some cost advantage over another which has to bring wheat over greater distances. This advantage will, however, sometimes be off set by the closer proximity of the latter mill to its markets. The position is further complicated by a system of freight rates for flour which reduces freight differentials over longer distances and, for example, makes it possible for a mill in Toowoomba or Dalby to compete (though not on equal terms) with a Rockhampton mill in markets such as Townsville and Cairns.

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The prices at which flour is offered to the purchaser are based on nearest mill−town prices, which are uniform throughout Queensland, except that they are a little higher in Maryborough and higher still in Rockhampton. This is apparently designed to compensate for higher freight costs for wheat and to give southern mills a better opportunity to sell at a profit in markets north of Rockhampton. The town price is then the mill−town price plus freight.

At all events it is, as we have said, clear that though prices vary throughout the state for freight reasons, this basing−point approach results in prices which are the same for all millers selling in particular towns.

Until quite recent years their prices were controlled by a Commissioner for Prices. When this ceased, about 1967, millers continued the practice which had applied under the Commissioner of applying uniform increases once a year based on changes in costs of wheat and costs of production. In more recent years, Love and Gillespie have been allowed by the Prices Justification Tribunal to adjust their prices on December 1st each year, in accordance with announced increases in wheat prices. They have thus acted as market leaders and other millers have followed suit. It seems that each miller makes its own calculation but this produces closely similar results. If one miller’s prices are noticeably higher than another’s in any town, it will soon hear of it from its representatives, and, to keep its business, will adjust accordingly.

It can thus be said that price competition is almost non−existent. We were told that here or there a price might be marginally lowered for a particular reason, but this is rare, because the nature of the industry is such that it would be likely to become known quite quickly. This could lead to other customers demanding similar concessions and, more importantly, any other miller who had suffered as a result would be quick to retaliate in some area where the first miller was vulnerable. We were told that N.S.W. flour has been sent to Goondiwindi, Julia Creek and Cloncurry at N.S.W. price levels; Defiance at least has been prepared to reduce prices to some extent to meet this competition, which may not last.

With these isolated exceptions the rule about absence of price competition remains, and so we turn to examine competition by way of service. This takes several forms. In the first place there is the financial assistance already referred to. It seems that, in the

past, this has been liberally offered by QCMA, which has even advertised to that effect. The results have not been entirely happy, as we have noted above, and QCMA may be expected to administer a tighter credit policy in future. Defiance has, it seems, always been strict in this regard. The result has been fewer financial problems, but some loss of goodwill. The company has tended to take the view that this has been goodwill it could afford to lose.

In spite of its stricter approach to the subject, Defiance's loans to customers have increased greatly in recent years, even allowing for inflation, as the following table shows:

			Increase
30 Nov. 1972	Total loans	$740,000	
30 Nov. 1973	" "	$884,000	+$144,000
30 Nov. 1974	" "	$1,084,000	+$200,000
30 Nov. 1975	" "	$1,248,000	+$164,000

The attitude of both QCMA and Defiance now seems to be that, while not seeking such arrangements, they will endeavour to assist any existing or potential baker who needs help and appears to have a future in the industry. They will do so in return for his custom as long as the assistance continues. Both companies regard this as a necessary service to the bread industry, but of diminishing value to millers.

The next service offered to bakers by millers comprises technical and other services. Thus a baking expert may assist a baker who is having trouble getting his dough right. Or a telephone call may lead to a checking with the laboratory for the characteristics of the particular batch of flour and consequent oral advice on its use. Defiance has so far developed the on−the−spot assistance more fully than QCMA or Barnes. All companies, however, will give technical advice about the use of their flour.

With no price competition there must be a risk that service competition will become over−emphasised and get out of hand, leading to wasteful and costly arrangements. The evidence on this is not altogether easy to interpret, but the possibility should not be overlooked.

In dealing with the flour industry, we have concentrated on bakers' flour because no evidence was given as to competition for starch−making or other industrial outlets. We can only assume that similar considerations apply.

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Turning then to the bread industry, it will be appreciated that some of the competitive aspects of this industry have already been noted because of its degree of integration with the flour industry. There are however other aspects which are confined to the bread industry.

So far as the competitive structure of the bread industry is concerned, an inevitable limitation upon numbers of competitors in local markets is set by economies of scale. These are very important, as shown in the following table:

Estimates of Indices of Production Costs	
Hot bread shop	Index
10 tonnes a month	110
15 tonnes a month	100
Family bakery	
5 tonnes a month	112
15 tonnes a month	98
Plant bakery	
50 tonnes a month	86
100 tonnes a month	71
200 tonnes a month	67
500 tonnes a month	60

We were told that a fully automatic plant bakery would be of a minimum scale of approximately 80 tonnes a month. Such a scale could serve a population of 20,000. This may be contrasted with a family bakery of, say 15 tonnes a month which could serve a population of approximately 4,000. (The approx. conversion factor is one tonne per week equals 1,000 population, assuming a consumption of 1½ units of bread per person per week.)

The significance of these cost indices is apparent when we consider the population of various Queensland cities and towns (as at 30 June 1974):

Greater Brisbane	941,000
Gold Coast	79,000

Townsville	80,000
Rockhampton	51,000
Mackay	20,000
Toowoomba−Dalby	71,000
Mt. Isa	33,000

A hot bread shop, it appears, would usually look for towns with a population of from 8,000 to 10,000 at least. A viable scale appears to be in the vicinity of 12/15 tonnes a month.

The investment cost of a plant bakery of 100 tonnes a month capacity (plant and building excluding land) would be in the vicinity of $500,000, as compared with a figure of approximately $100,000 for a family bakery of 15 tonnes a month capacity.

On the other hand, the investment cost of a hot bread shop (plant and capitalised cost of premises, usually leased) would be in the vicinity of $150,000.

We have already noted a tendency for smaller family bakeries to fall by the wayside whenever they have to face competition from a larger plant bakery. On the other hand there still seems to be a reasonable choice of bakeries in all but the most isolated markets; and even these are adequately served. The family bakeries seem to change hands fairly frequently and so there is constant movement in the industry. In this sense there are no barriers to entry, but newcomers would normally take over an existing business rather than try to create an entirely new one. The main exception to this rule is the hot bread shop. Here the market is still developing, and it seems that there is still plenty of scope for such initiatives in many areas.

Apart from these shops, which operate in a shopping centre and sell directly across the counter to the consumer, bakeries sell little bread to the consumer. They deliver mostly to supermarkets, milk bars and other food stores. Some sales are made through vendors by way of house delivery. Although still important in some areas, these deliveries are becoming very costly and are declining.

Advertising by bakeries, particularly through local radio and television stations and on theatre screens, is quite common. This is particularly so when a new line is being introduced. Most bakers make a wide range of types and sizes of loaf as well as buns, rolls and other smaller items.

However advertising is probably less important than the direct personal relationship between a baker and his major customers and between vendors and shopkeepers, We were told of a number of cases in which a bakery manager, having moved from one bakery to another, took much of the best custom with him.

The tendency is for supermarkets to stock up to three different brands, and even smaller shops normally have at least two bakers delivering, although this would not be true of those having only a small bread trade. The

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bread vendor usually puts the bread on the racks, removes any unsold bread from the previous day and charges the shopkeeper for the difference between the two. In other words, bread is always sold on a sale or return basis and the baker must rely on the judgment of his vendors to keep his returns to a reasonable level. One witness expressed this level as 8%.

In the case of Tip Top, Cobbity Farm and, to a lesser extent Regal (Defiance) and Golden Crust (Barnes) it is possible to indulge in state−wide or regional advertising and promotional campaigns to push a common name and wrapper used by different bakeries. Now that it is moving into bakery ownership, QCMA would like to be able to do the same.

Apart from the hot bread shops and the fact that some small bakeries may have a retail counter, we were told of no cases of bakers owning bread outlets to the public. Nor were we told of any arrangements between bakers to share markets in any way. Indeed we were left with the impression that the bread industry, at least in the larger centres of population, is fairly competitive.

In particular, the supermarkets have such large sales that they are in a strong position to dictate the prices which they are prepared to pay for the bread they take, and bakers will still vie for their custom.

We were told that each baker fixes his prices in accordance with changes in his costs of flour and labour. He will then offer discounts of varying levels to his larger customers. These may range around 20%−25% in the case of supermarkets and between 10%−20% for food stores. The vendors will soon discover if others are offering bread at lower basic prices or higher discounts. However, we were told that, in some cases, the shopkeeper may simply increase all his bread prices in line with the increase by one baker, thus increasing his overall margin of profit.

Summary:

To sum up briefly our findings on the subject of competition, we believe that competition in the bread industry is active and there is no evidence of bakeries being able to exact monopoly rents. On the contrary, any bakery which is not advanced in its technology, alert in its pricing policy and active in promoting its product, particularly by personal contacts, is likely to be in difficulties. Bread is a retailer’s market in which the supermarket and shopkeeper get excellent terms from the bakery trade.

In the case of the flour trade, there is virtually no price competition, little to choose in quality between the millers (although

bakers have their preferences) some competition in the form of technical services, and sales are in fact mainly dependent on vertical integration and industry ties. Of these ties the ones based on leasing of premises and plant appear to be most valuable. The future of financing arrangements is doubtful.

While this industry is highly concentrated, there appear to be a number of factors at work to moderate the market power that might otherwise flow from this. There seems to be limited ability for millers to choose their levels of profits by giving less and charging more. In any event some high level of concentration is inevitable given the technological and demand characteristics of the industry. Any barriers to entry are raised not by concerted conduct, but by the static nature of the industry, the incidence of economies of scale, and existing excess capacity. There may well have been some significant detriment to the public flowing from the practice of tying in the past, but the ties of today are not those of yesterday. Competition for any new or vulnerable outlets in the Brisbane region is keen and, in country areas, both QCMA and Defiance are actively opposed to each other, Gillespie is present in some places and Love could decide to take an interest in any substantial sub−market.

In these circumstances we do not feel that any great significance attaches to the change of some 4%−5% which would occur in concentration ratios if Barnes were merged with either of the applicants. One additional choice for bakers is removed but choice still remains and, in economic terms, no significant adverse results to the respective industries or the public are apparent.

7. Future of Barnes without merger

In this and the next two sections we shall consider the results which would be likely to flow from each of the three possibilities about Barnes' future — no merger, a QCMA merger and a Defiance merger.

At this stage we are not concerned to make any judgment about the desirability or otherwise of those results, merely to record what they are likely to be.

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We have outlined above, in Section 1, the recent history of Barnes. This may be summarised by saying that profits have been erratic and generally represent a poor return on funds employed but, except in 1974−75, have been sufficient to maintain a 5% dividend. A number of losing ventures have been closed in recent years and the resulting sales of assets have put the company in a position of sound liquidity.

The company already has a little excess capacity in its mill at Dalby but is considering increasing that capacity by at least 50% by installing plant from its closed mill at Brisbane. In view of this proposal it is surprising to find in the last few weeks that Barnes has foregone its only obvious market for such increased production. It has done so by repudiating its agreement with QCMA to take at least 170 tonnes of flour per month from that company to help supply Barnes' northern markets, only to leave half of that order with QCMA and give the other half to Defiance.

Even allowing for the competitive advantage of the Rockhampton mills, particularly in their immediate vicinity, the apparent unwillingness of Barnes to attempt any increase in sales from its Dalby mill to North Queensland is significant.

We were not told of any plans afoot to attempt to expand flour sales. As the general manager told the Tribunal, what the company lacks above all else is an aggressive sales manager.

On the management side, it seems that following the recent ill−health of the Chairman, Mr. C.W. Russell, and the death of Mr. Jobst, the Deputy Chairman, the conduct of the company's affairs has been left more and more to one man, Mr. W.R. Costa, the general manager. If he were to leave the company for any reason its future would seem bleak indeed. It is quite clear that there is none of the drive generated at Board level such as is found in the Defiance company.

At the bakery level there are only two substantial subsidiaries which appear to be viable. These are the James Bros. bakery at Mackay and the Pimlico Bakery in Townsville. Even the Pimlico company has a downward profit trend.

It seems clear that Blannings' bakery in Rockhampton will be forced to close because of its unprofitability and quite inadequate premises. Barnes might turn it into a hot bread shop and would certainly try to direct its business to Rockhampton Bakeries in which Barnes has a 40% interest.

The stockfeed business appears to be reasonably sound although small. There are no particular plans to develop it further and it is at present going through a lean period due to the downturn in the cattle industry.

All in all the Tribunal was left with a very clear impression that Barnes is a failing company — not in terms of liquidity, but in terms of the will to compete, the absence of managerial skills at Board level and the inability of the few remaining profitable ventures to support the loan commitments and the overheads of the company and still show a normal return on capital.

There was nothing in the evidence of Mr. Russell, Mr. Costa or any other witness to suggest that Barnes has anything more than a short−term future in either the milling or bread industries.

Mr. Costa stated that Barnes had not acquired any new outlets in recent years and had burned its fingers when backing independent bakeries trying to start up. So far as the free trade to bakers is concerned, he said that the effort put into sales promotion ''has done no more than maintain sales''. Without its subsidiary outlets the position of Barnes ''would be a grim

one''. He said also that he could not be expected to offer a final judgment as to whether the company was viable. This was a matter for the Board.

Mr. C.W. Russell was asked, ''Do you see Barnes Milling expanding in the milling and baking business throughout Australia''? He replied, ''No, I think we have lost that race''. He later explained, ''It is difficult to acquire capital now. I am not prepared to put any more into it. To expand our activities would require more capital''.

He later said, ''There has been a gradual process of liquidation; that is the point we would make''.

Counsel for Barnes submitted to the Tribunal — ''We do not run away from the fact that Barnes Milling is viable... The Board of Directors... as recently as November, resolved to authorize Mr. Costa to say to the Tribunal the Board considered Barnes Milling to be viable in its present operation''.

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He went on, ''Barnes Milling may... continue a trend in which it will be restricting its operations and... the reduction in competition... will, in our submission, continue as a commercial fact, and it would be on that basis that Barnes Milling would seek to urge the Tribunal to permit authorization of both these takeover offers...''.

Later he said, ''... the trend is likely to be that Barnes Milling will have to be realizing on its assets by degrees.... We say we are a company which is financially sound, but there is a trend by reduction particularly in the bakery side of the business and therefore the trend in the reduction of the flour milling business must of necessity continue''.

We believe this to be an accurate forecast. We would only add that the very fact that mergers have been so widely discussed, and the future of Barnes canvassed so fully, must have had an adverse effect on the company's ability to survive by itself. Board, management, employees and customers must all have been affected to some extent by the events of the last year. It is unfortunate, but unavoidable, that a proper statement of our views must add to this tendency. However we think the end result is so clear that nothing we say is likely to influence it.

8. Likely effects of QCMA/Barnes Merger

The general effect of a QCMA/Barnes merger would be most significant in the bulk flour and bread markets. Whilst both companies operate in the stock feed market, Barnes' share represents a very small part of the total Queensland market, with QCMA supplying even less.

The general manager of QCMA said that, in the event of a merger, all QCMA mills would be integrated with the provender mill ''and QCMA would take this over with the objective of increasing its capacity and its importance... we have a strong rural base in our company ownership — something like 4,000 people — and they are a good potential customer list''. He went on to explain that in his view QCMA should be directing its interests into new fields ''and provender is probably a suitable venture''. At the same time he made it clear that there was little chance of QCMA entering the stockfeed market except as the result of acquiring a provender mill along with Barnes' other assets. There had been no careful assessment of opportunities offered by the stockfeed market for enlarged production from the Barnes provender mill.

It was conceded by counsel for QCMA that the effect of the proposed merger on the stockfeed market would be of no real significance to the Tribunal's deliberations.

Similarly whilst both companies operate in the packaged flour market, this provides only a small amount of each company's sales volume (3%−4%) and therefore again a merger would have no real effect. In fact QCMA would have no use for the Barnes packing operation at Dalby which would be closed down.

Flour market:

QCMA would gain Barnes' Dalby mill which has a present production capacity of just under two tonnes per hour. QCMA, by the end of this year, will have a total capacity to produce about 15.5 tonnes per hour. Whilst the merger would give QCMA on paper a production capacity of 17.5% tonnes per hour, their mills are only operating to approximately 65% capacity and with QCMA plans to phase out one or two older mills, the overall capacity of QCMA would probably not alter greatly and might even be reduced.

Thus from the point of view of flour milling capacity, a merger would have no significant effect. It would merely give QCMA more reserve capacity to cope with production surges after closing down the two older mills. The substitution of the new mill would, however, contribute to QCMA's cost efficiency.

At present QCMA flour sales represent 32% of the market. Assuming the Barnes' 7% share could be held after the merger, this would give QCMA 39% with Defiance remaining at 29%. However Defiance could be relied upon to mount a strong campaign to capture part of the 44% of Barnes' sales which are made in the free market. In the result QCMA would probably only hold 4%−5% of Barnes' share of the market.

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The market shares as estimated by the Commission in the sub−markets it identified are as follows:

	North Q'land	South Q'land	Brisbane	Northern Rivers N.S.W.	Total
Barnes	17%	2%	5%	14%	7%
Defiance	49%	55%	9%	19%	29%
QCMA	28%	42%	30%	17%	32%
Others	6%	1%	56%	50%	32%
Sub−market as a % of total market	18%	28%	48%	6%	100%

A QCMA/Barnes merger with all Barnes' business retained would affect these market shares as follows:

North Queensland:		
QCMA/Barnes	45%	A rivalrous market, with
Defiance	49%	QCMA and Defiance
Others	6%	having almost equal shares, but one significant contender eliminated.
South Queensland:		
QCMA/Barnes	44%	A rivalrous market with
Defiance	55%	Defiance still somewhat
Others	1%	ahead. Very little change resulting from merger, but a possible third choice eliminated.
Brisbane:		
QCMA/Barnes	35%	QCMA's position is
Defiance	9%	apparently strengthened
Others	56%	but others still retain the major share in this market. With the closure of Sunnybank Bakery some of Barnes' share would be lost to "others".
Norther Rivers N.S.W.:		
QCMA/Barnes	31%	A competitor market
Defiance	19%	even after the elimination
Others	50%	of a significant competitor. QCMA might not try to keep all Barnes' outlets; some would go to "others".

Bread market:

Whilst both QCMA and Defiance have bakery interests and ties through most of Queensland and the Northern Rivers district of New South Wales, the markets where Barnes also has a substantial interest are the only ones of significance in any merger situation.

The flour sales in these markets are as follows:

	Barnes	Defiance	QCMA	Gillespie
Rockhampton	47%	42%	11%	
Mackay	39%	36%	8%	17%
Townsville	22%	41%	37%	
Mt. Isa	18%	8%	31%	43%

Toowoomba−Dalby	3%	70%	27%

The market shares of bread sales are:

	Townsville	Mackay	Rock−hampton	Mt. Isa	Toowoomba Dalby
	%	%	%	%	%
Defiance links	35	36	39	12	58
QCMA links	33	8		43	21
Barnes links	21	38	43	15	4
Gillespie links		18		30	
Free	11		18		17

From a comparison of these two tables it can be seen that the free trade for flour is roughly divided between QCMA and Defiance in Townsville, QCMA gets two−thirds of it in Rockhampton, and Defiance gets two−thirds in Toowoomba−Dalby. Barnes gets a little in both Townsville and Rockhampton.

We now proceed to analyse these five bread markets in more detail. In doing so it should be remembered that the evidence suggests that some 10%−15% of Barnes' flour sales in any particular place are likely to be lost in the event of a merger. Such losses can occur for a variety of reasons including, for example, personal

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loyalties that are severed or personal clashes which are introduced as a result of staff changes. But perhaps the most frequent occurrence is that an independent baker finds that his traditional supplier now owns an opposition bakery. In this situation he is quite likely to change his supplier even if it means obtaining fresh finance to pay out a tied arrangement. Such possibilities cannot be quantified and so are ignored in the figures that follow, unless there is some specific evidence to support the likelihood of a change.

Townsville:

The superficial picture here is that if QCMA and Barnes merged they would together command 59% of the flour sales to bakeries while Defiance would have 41%.

Looking at the individual bakeries, the picture becomes more complex. The present bread market shares are approximately as follows:

Midtown (premises owned by QCMA)	17%
Walker's (40% owned by QCMA)	14%
Pimlico (Barnes subsidiary)	21%
Regal (premises owned by Defiance)	35%
Smith's (QCMA tie)	2%
Hot bread shops	11%

It would seem from these figures that a QCMA/Barnes merger would give QCMA 54% of the bread sales in Townsville. However QCMA's general manager said in evidence that he had been told by the owner of the Midtown business that he would sell his trade to Defiance if the QCMA merger took place. Smith's small family bakery would seem to have a doubtful future.

Other changes are likely to occur, whether or not the Barnes company disappears.

It can be confidently expected that more hot bread shops will open in Townsville. To some extent they may create new sales, but they will also take some trade from existing hot bread shops and some from conventional bakers. More importantly, the population of Townsville is reaching a size (upwards of 80,000) where the trade would expect Love to introduce Tip Top bread into the market in the foreseeable future.

Mackay:

In Mackay the present break−up of the flour market is:

Barnes	39%
Defiance	36%
QCMA	8%
Gillespie	17%

The bakeries, with their shares of bread trade, are:

James Bros. (Barnes subsidiary)	38%
Tortoras (Gillespie has half interest)	18%
Regal (Defiance subsidiary)	36%
Alcorn’s (QCMA tie)	8%

The position here is more straightforward than in Townsville and the Tribunal was told that competition, as might be expected, is less intense. However planning approval has been given for the erection of two hot bread shops and more could well follow. Experience would suggest that they might eventually capture 10%−15% of a slightly expanded market. Obviously QCMA would like to acquire James Bros. to give it a secure and substantial share of the market. If this occurred it is possible that Alcorn’s might try to sever its tie with QCMA and obtain flour from Love or, perhaps, Gillespie.

Rockhampton:

The position in Rockhampton is particularly difficult to predict because of the mixed nature of the Barnes’ interest in that city, the likelihood that Barnes’ Blannings bakery will have to close anyway, the presence of QCMA and Defiance mills in the city, and the present strong rivalry.

Recent flour sales have been:

Barnes	47%
Defiance	42%
QCMA	11%

Most, if not all, of this Barnes flour was bought in from QCMA until recently. Now about half of it is purchased from Defiance and the other half from QCMA.

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Bread sales are divided as follows:

Golden Bloom (Barnes owns 40%)	29%
Blannings (Barnes subsidiary)	14%
Rickarts (Defiance subsidiary)	21%
Capricornia (Defiance subsidiary)	18%
Ewing’s and Worthington (Independent)	18%

(There are also two hot bread shops but their share of the market is not known.)

It would be very convenient for QCMA to build a new bakery next to its mill in Rockhampton. This would enable it to save handling and delivery costs for flour, which could simply be blown through from the mill to the bakery. It seems reasonable to assume that this development will eventually take place whatever the merger outcome may be. It would simply mean that, if QCMA were successful, and could buy out the majority shareholder in Golden Bloom, it as well as Blannings might be closed and as much of the trade as could be held transferred to the new bakery. Certainly Blannings would be closed by QCMA.

On the other hand, the general manager of QCMA did say that, for this company to build a new bakery now, without merger and with present levels of competition, the results for the local industry could be very serious. There would be a great deal of excess capacity.

Mt. Isa:

In Mt. Isa, market shares for flour are:

Barnes	18%
Defiance	8%
QCMA	31%
Gillespie	43%

The bakeries are:

Leichhardt (premises owned by QCMA)	43%
Abels (Gillespie subsidiary)	30%

Golden Bloom (premises owned by Barnes' interests)	15%
Wotley's (premises owned by Defiance)	12%
Hot bread shop (just opened).	

No special considerations apply to Mt Isa. It is clear that QCMA does not need the Barnes premises to be a force in the trade.

Toowoomba−Dalby:

The Barnes Dalby bakery, beside its mill, is so small that it is hardly worth spending time over this part of the bread market. It has 4% of the total sales in the area which is served by a number of other bakeries, including one in Dalby. Dalby is about 60 kms from Oakey, where there is a larger bakery than the barnes Dalby bakery and 85 kms from Toowoomba where several large plant bakeries serve the city and surrounding districts.

Summary:

In summing up the likely effects of a QCMA/Barnes merger, the following points can be made:

(i) QCMA would use its wide membership in an attempt to boost production from the Barnes provender mill.

(ii) The Barnes packaged flour operation at Dalby would be closed down and its markets supplied by QCMA from Brisbane.

(iii) QCMA would absorb most of Barnes' 6% share of the total flour market, giving it almost 40% of that market. The effect of Barnes' disappearance would be most marked in North Queensland and Northern N.S.W. In each of these areas QCMA and Defiance would continue to vie strongly, although QCMA would have a substantially larger share of the Northern N.S.W. market. Gillespie would still be present in North Queensland, and N.S.W. mills would still have half the market in their area.

(iv) There would be little overall effect on the respective production capacities of the remaining millers, but QCMA would find its excess capacity rather easier to remedy and its production efficiency enhanced.

(v) In the bread markets, QCMA might be able to achieve a leading position in Townsville but rivalry would remain intense. There should be no noticeable effect on competition in Mackay. QCMA would immediately be able to build a modern bakery in Rockhampton, where strong competition would continue with Defiance at least. QCMA would achieve a dominant position in Mt. Isa, but would still face competition from Defiance and Gillespie. The Dalby situation is insignificant.

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(vi) Yet all these immediate changes should be viewed against the competitive environment explored in the preceding section. Some high degree of market concentration is inevitable both in flour milling and bread baking. Some degree of vertical integration between millers and bakers is inevitable and useful. This concentration is met in many instances by the buying pressures generated by supermarkets and chains, often in a position to play one baker off against another. The industry is undergoing some changes, of which the most important seem to be: the new technology of the fully automated bakery and the hot bread shop, the substitution of store distribution for delivery and the changing legal environment in which firms operate.

(vii) Finally, we are very conscious that market shares themselves cannot be static in an industry such as this. It is inevitable, we think, that any initial dominance by one miller in a market, sub−market or town will call forth a response — both from rivals and customers.

9. Likely effects of Defiance/Barnes merger

Just as in the case of a QCMA/Barnes merger a Defiance/Barnes merger would have its greatest impact in the bulk flour and bread markets. However the effects on the stockfeed and packaged flour market of a Defiance merger would probably be greater than in the case of a merger with QCMA.

So far as *stockfeed* is concerned, it is clear that Defiance is anxious to move into this area. With dynamic management and more active selling techniques it would probably make more of this activity than Barnes has sought to do. However the Tribunal has so little information as to the present state of the stockfeed industry, that any prediction as to the likely competitive effects of such a Defiance venture would be sheer speculation.

In the case of *packaged flour*, Defiance would hope to continue Barnes' Marvel brand as a second string to its already successful operations in this field. Once again it is reasonable to predict that it would compete more effectively than Barnes could, but the difference and its likely effects are not capable of assessment.

In the *bulk flour market*, the really important consideration to Defiance is that it would gain the capacity of Barnes' Dalby mill,

thus giving it both mills in that town.

Defiance's present total capacity of about seven tonnes per hour would be supplemented by the just under two tonnes per hour of the Barnes mill. This figure could be increased to about four tonnes by the expenditure of about $35,000. Such a total of 11 tonnes per hour would be of great benefit to Defiance as at present their mills are working at full capacity. The alternative of enlarging the capacity of its Toowoomba mill would be less effective and much more costly.

The QCMA/Barnes arrangement regarding the supply of flour to North Queensland would be finally cancelled. The loss to QCMA of what remains of this supply arrangement would be serious; however at present Defiance sells considerably more flour in North Queensland than its Rockhampton mill can produce. In consequence, Defiance would be required to supply all Barnes' North Queensland requirements from capacity gained in the merger. While Defiance's position would be strengthened, its market share of 29% with most of Barnes' 7% would give an overall figure of not more than 36% of the market, with QCMA having 32%. However, in certain areas spoken of as sub−markets, the position would alter, with Defiance predominant in North Queensland and having the largest market share in Northern Rivers N.S.W.

FLOUR SALES MARKET SHARE AS CALCULATED BY THE COMMISSION

	North Q'land	South Q'land	Brisbane	Northern Rivers N.S.W.	Total
Barnes	17%	2%	5%	14%	7%
Defiance	49%	55%	9%	19%	29%
QCMA	28%	42%	30%	17%	32%
Others	6%	1%	56%	50%	32%
Sub−market as % of total market	18%	28%	48%	6%	100%

On the somewhat unreal assumption of no loss of Barnes' business following merger, market shares would be as follows:—

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North Queensland:		
Defiance−Barnes	58%	Defiance becomes
QCMA	36%	predominant.
Others	6%	
South Queensland:		
Defiance−Barnes	57%	Little change, but a
QCMA	42%	possible third choice
Others	1%	eliminated. Defiance goes further ahead.
Brisbane:		
Defiance−Barnes	14%	Little change,
QCMA	30%	particularly as Barnes'
Others	56%	share would decline following sale of Sunnybank bakery. Very competitive market.
Northern Rivers N.S.W.:		
Defiance−Barnes	33%	While Defiance gains
QCMA	17%	significantly in this
Others	50%	market and a significant competitor disappears, the position is still very competitive.

Bread market:

The present position as to flour sales to the bread trade and bread sales, in the relevant local markets, has been set out in the previous section.

In the event of a Defiance/Barnes merger, the following positions would apply:

Townsville:

Superficially it would seem that the two Defiance subsidiaries would have 56% of the bread trade between them. This possibility is viewed with considerable concern by QCMA particularly because the merged flour sales could be even higher at 63%. With the final loss of the Barnes contract to buy flour from the Association, QCMA could have some trouble in finding convenient markets for the production from its Rockhampton mill.

In fact there would be some doubt as to whether Defiance would want the Barnes' bakery to continue to compete with its own recently extended Regal bakery. It is not averse to such competition normally (as in Rockhampton at present), and would probably maintain Pimlico's separate identity, but that is not certain.

Allowing for hot bread shops and the possible entry of Love, there is no reason to think that the bread market in Townsville would not remain reasonably competitive even after a Defiance/Barnes merger.

Mackay:

In this market a Defiance/Barnes merger would place Defiance in a dominant position, holding three−quarters of the trade. Defiance would probably use present excess capacity at its own bakery to rationalize work between the two, leaving James Bros. to make a limited range of products which do not require much handling. QCMA would have to try to compete through its small tied family bakery, or build a new bakery and hope to capture enough of the trade to warrant the capital outlay involved.

Rockhampton:

Here again a merger with Barnes would put Defiance in a very powerful position with 87% of the flour sales (if all were retained) and potentially 82% of bread sales. In practice matters would probably not evolve quite in this way. Defiance would probably not be able to acquire a controlling interest in the Golden Bloom bakery or dictate its flour purchases. Blannings would no doubt be closed and not all its business, by any means, would go to the existing Defiance subsidiaries. QCMA would probably proceed to build a bakery beside its mill. In the event Defiance might finish with not much more than half the market for both bread and flour.

Mt. Isa:

Defiance has only a small share of this market at present and competition would not suffer and might be enhanced by a merger with the Barnes' interests.

Summary:

The points to be made about likely results of a Defiance/Barnes merger are—

(i) Competition in the stockfeed and packaged flour markets is likely to be enhanced but the differences might not be great and their effects cannot be assessed.

(ii) In the flour market a significant Barnes' presence in the North Queensland and Northern N.S.W. areas would

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disappear. Defiance and QCMA would generally be well balanced and there would still be strong competition from N.S.W. mills in their district and a Gillespie presence in parts at least of the North. The effect on present competitive behaviour would be negligible.

(iii) The productive capacity of the industry would be distributed better if Defiance had the use of the Barnes' Dalby mill.

(iv) In the bread markets the immediate effects would be that Defiance would be the leader in a rivalrous Townsville market, very dominant in Mackay and potentially dominant in Rockhampton. The competitive situation in Mt. Isa would not suffer as a result of the merger and, as stated earlier, the Dalby change would be insignificant.

(v) However, once more we caution that all these changes should be viewed in the light of the competitive environment of the industry.

10. Alleged public benefits of QCMA merger

At the outset of these review proceedings QCMA, in its Further Statement of Facts and Contentions, listed the public benefits which it said would flow from its proposed merger with Barnes. These can be conveniently summarised as follows:—

(a) The merger would improve industry efficiency in production and distribution of the products which are presently manufactured by both companies. It will also provide milling technology not presently available to Barnes due to the size of its operation.

(b) QCMA lacks a stable base for its flour trade in the form of subsidiary bakeries. Trade ties are proving to be an inadequate alternative. QCMA has a lower level of sales through controlled subsidiaries than any other miller.

(c) In the absence of a stable base of subsidiary companies, QCMA has to maintain its present unsatisfactory tie arrangements as best it can. In many cases this involves the commitment of substantial funds which could be much more efficiently employed in other ways. A stable sales base would enable it to rationalize these ties by means of a more stringent credit policy.

(d) The acquisition of Barnes' Dalby mill would enable the Association to rationalize its milling capacity in a way which would save some $0.3m. per year and make its operations generally more efficient.

(e) If QCMA cannot acquire Barnes' bakeries, it will be forced to build bakeries in some places, thus tending to create over−production and instability in the baking industry in those places.

(f) Barnes is a failing company and it is generally in the public interest that such a company should be taken over by a more vigorous company rather than that it should go to the wall.

(g) Barnes minority shareholders should not be locked into the company as they are at present and would be by the Defiance offer.

We now proceed to consider each of these arguments in turn, to see whether QCMA really can point to public benefits which are likely to flow from its merger proposal.

(a): So far as overall industry efficiency is concerned, there is nothing to show that Barnes is any less efficient than QCMA in the areas in which they both operate. In the case of flour milling, it is clear that Barnes turns out a good quality flour which is praised by those who use it. Although it does not have QCMA's laboratory facilities, it makes use of independent facilities when necessary, and there is no suggestion that, on average, its end product is in any way inferior to that of QCMA. Even if some slight improvement could be achieved in that 6% of the market supplied by Barnes, it would barely merit classification as a substantial public benefit.

In the case of bread manufacture it is true that several subsidiaries have recently failed and that another is likely to go soon. This would only leave two substantial subsidiary bakeries of Barnes. They are both doing quite well, and their future is likely to depend more on the quality of local management and circumstances of local competition than on any change of ownership. QCMA is comparatively inexperienced in the management of bakeries and is now in the process of establishing a bakery division. It is clear that Mr. Costa presently gives these bakeries his close

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attention and we have no reason to think that QCMA could do better.

(b): There is much less in this point today than there was when it was made in November last. At that time it was claimed that the takeover would lift QCMA's sales through subsidiaries from 12% to 24%. Since about that time a major Barnes subsidiary has been closed and a major QCMA subsidiary has been acquired. Thus a merger today would not affect the relevant percentage, which stands at 32%.

(c): The point made in dealing with argument (b) is again relevant here. QCMA now has a stable base larger than it originally hoped for. The acquisition of Barnes would add little. We accept the fact that ties are becoming less valuable and that because of a generous (or lax) credit policy QCMA is saddled with a number of unprofitable ties. We are, however, unable to see any necessary connexion between the acquisition of Barnes and the rationalizing of these ties.

(d): In our view there is also a doubtful link in the causal connexion between acquiring Barnes' Dalby mill and retiring the mills at Maryborough and Toowoomba. When its present renovations in Roma and construction in Brisbane are complete, the Association will have a total mill capacity of over 15 tonnes per hour. On the basis of a five day week and a fifty week year, capacity would exceed production by 70%, taking production as the average of the last three years for which figures are available.

If the Maryborough mill were closed, the level of excess capacity would be 48% and if the Toowoomba mill were also closed it would be 4%. The general manager has said that he would like to have a reserve capacity of the order of 20% or 25% in order to cope with surges of production — particularly for export. This would be roughly achieved if the two old mills were closed and the Barnes Dalby mill were taken over with most of its trade, and its capacity were doubled — as it readily could be.

It can be seen from these figures that it would be convenient for QCMA to take over Barnes' Dalby mill and some increased efficiency would be achieved as a result. However the Maryborough mill could be closed anyway and the Toowoomba mill used at a reduced rate except during production surges. It may be that the capacities of either the Roma or Brisbane mills could be increased, if necessary, to cope with surges. It may be more efficient to close the Toowoomba mill and work overtime, during production surges, at Brisbane and Roma. These possibilities were not adequately explored in the evidence before us.

We are not satisfied that the acquisition of the Barnes Dalby mill by QCMA would represent a substantial public benefit which could not otherwise be obtained.

(e): We think there is something to be said for QCMA's argument that, in order to compete vigorously in the bakery trade in Mackay and Townsville it needs subsidiary plant bakeries and it would be wasteful of resources if it were forced to build new

bakeries. The same cannot be said for Rockhampton because there would be obvious economies in building next to the mill there.

However in Townsville QCMA already owns the Midtown bakery and has a 40% interest in Walkers. There is nothing to show that there would be a public benefit to the bread−buyers of that city if QCMA were to acquire Pimlico rather than develop one or other of its existing interests. There is no evidence that such development is impossible or impracticable.

Mackay presents a different picture, and here a QCMA takeover of the Barnes subsidiary would be a logical development if the Barnes company were to fail. Defiance already has a substantial subsidiary; Gillespie is quite well represented and QCMA has only a tie with a small family bakery. However the James Bros. bakery is being well managed by and on behalf of Barnes. Whatever may happen to Barnes' other activities, this should continue to be fully viable in the foreseeable future and there would be no public benefit in a transfer to QCMA.

(f): Looking more generally at Barnes' future in the integrated flour and bread markets, we believe, for reasons given earlier, that Barnes is a failing company in the sense that we have explained. We think that it will continue to lose ground in the area, as it has done for many years. It will probably turn more and more to the investment field.

If it continues to be unable to obtain clearance for a merger, we would expect that further assets would be sold and, eventually, even the mill and the two major remaining competitive bakeries would go.

But this is likely to occur in a rational fashion, not in such a way that public detriment is caused. We accept that in the

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typical case of a failing company an argument can often be made out to the effect that the public would benefit from a takeover by a more vigorous operator. But this is not the typical case. Here the company is financially sound, is operating profitably and can continue to do so in the short term at least. There may come a time in a few years when its departure from the flour and bread scenes is more clearly imminent. Then the public benefit might well be invoked to justify a complete takeover. But that time has not yet arrived.

In looking at the future of Barnes we feel that the argument that a takeover would not significantly reduce competition is much stronger than any argument that the public benefit requires a takeover. But we are only concerned with the first argument as an element of the second, not as a separate contention which we have to rule upon.

(g): We do not find any public benefit involved in the contention concerning the ''locking−in'' of minority shareholders. It is hard to imagine the concept of public benefit ever being successfully invoked in such a case and we certainly do not think the Barnes shareholders are ''locked−in'' either at present or by the Defiance offer.

11. Alleged public benefits of Defiance merger

Before considering what benefits the public may derive from the proposed Defiance merger, it is convenient to consider what benefits are expected to flow to Defiance itself. Four separate benefits can be identified.

In the first place the merged companies would; through Barnes, have public listing. In the long term this would enable the group to seek funds from public sources, but it seems that there is no intention to do so on any substantial scale in the immediately foreseeable future. The real benefit, as stated earlier, arises from the fact that the group will be able to retain substantial profits for use in the business without having to hand over half the amount retained to the Commissioner of Taxation. The Defiance Board is confident of its ability to pay good dividends — of the order of 8% — while at the same time ploughing up to hundreds of thousands of dollars each year back into the expansion of its business.

Its directors said in evidence that without this facility they would almost certainly have to halt any expansionary plans and, indeed, would have great difficulty in maintaining their present levels of service to customers and thus their present volume of sales.

In our view the picture painted for the Tribunal by Messrs. O'Brien, of the future of Defiance if the merger were not permitted, was unduly pessimistic. Naturally they were concerned to make the contrast between this, and the rosy future of the group following a merger, as clear as they properly could. However, even allowing for some exaggeration, we are satisfied that the benefit to the Defiance company from the merger would be quite real. In simple money terms it would seem that, on the most recent year's results, the group would be able to spend some $166,000 a year in expanding its business, which would otherwise go in tax.

The other main advantage of the merger to Defiance would be its acquisition of the Barnes' Dalby mill. As stated earlier, the Defiance mills are working to their capacity, including levels of overtime which are putting a strain on their employees. This has led to the company declining some export under Colombo Plan arrangements.

So far this has not led to any relaxation of the Defiance marketing effort, but if it continues to increase its share of the market, and to help to increase the size of the market, particularly through its sponsoring of hot bread shops, problems must soon arise. These could be alleviated for a time by spending $200,000 on extensions to its Toowoomba mill. This would increase the total capacity of the group by some 14%.

A far more convenient alternative would be the use of the Barnes mill. This is not working to full capacity at present, although not many week−day shifts are missed. Its weekend overtime capacity is hardly ever called upon at present. Further, there would be bound to be some loss of Barnes' customers following a Defiance merger and this would provide some further capacity to supply Defiance customers. Even some Defiance customers could be lost following the merger.

More important, however, is the ready ability to increase the capacity of the Barnes mill at moderate cost. It is estimated that the capacity could be approximately doubled at a cost of about $35,000, by using equipment presently lying idle in the disused Brisbane mill owned by Barnes.

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This would give approximately twice as much increased capacity to the group as would the extension to the Toowoomba mill. It is not possible to be precise in these figures because there is some doubt as to the true capacity of the Barnes mill at present. The doubt may be caused or contributed to by the 9% difference between a tonne and a short ton which are the two measures used in recent years to describe mill capacity. It should be noted in passing that the Barnes mill, even after the proposed additions had been made, would not have all the facilities of the three Defiance mills. In the result it might not be able to achieve quite the same range of flour types as is possible at the other mills. However there seems to be no suggestion that Barnes flour is not of a high quality and able to compete in quality with Defiance and other flours on the open market.

The third distinct advantage flowing to Defiance from the merger would be its acquisition of the Barnes stockfeed business conducted by its subsidiary company Superstok. Through this company, Defiance would secure entry to a market which, although somewhat depressed at present, Defiance believes to have possibilities. It would be a logical form of diversification for the Defiance group.

Finally the Barnes flour packaging business, producing the Marvel brand, could be a useful adjunct to the present Defiance activity in that area.

Thus it can be seen that the benefits to Defiance of a Barnes merger would be quite substantial. What, though, of benefits to the public?

The company submitted to the Commission twelve different heads of public benefit which it claimed. Some of these overlapped and some have since ceased to be relevant, particularly as the result of the closure of the Barnes Brisbane bakery at Sunnybank.

We think the following arguments are the ones which are worthy of consideration:

(a) Because Defiance is taxed as a private company its flexibility and ability to expand are restricted. It is put at a competitive disadvantage with its rivals and so the public suffers because one major competitor cannot give of its best.

(b) Defiance is more efficient generally than Barnes, as it gives a better service to bakers and competes more aggressively in the market. This would be a benefit to Barnes customers and, through them, to the public.

(c) A Defiance/Barnes merger would provoke QCMA to greater activity, particularly in the field of bakery ownership. This would promote more active competition.

(d) Defiance has a policy of investment in and assistance to bakeries which is an integral part of the establishment of that industry. If it is forced by liquidity problems to curtail its activities as a financier of the baking industry, many independent bakers would suffer and potential new entrants to the industry would be denied their opportunity. The public would, as a result, get poorer service, particularly in outlying areas.

(e) Barnes is a failing company. In particular, its bakery subsidiaries need to be revitalized if they are to survive. Benefits from their retention would flow to the public.

(f) Defiance's decentralization policy would be continued and enhanced by the merger, to the benefit of the State generally and country areas in particular.

(g) Defiance would enter the stockfeed market actively if it took over Barnes' operation. This would be good for competition in that area.

(h) Defiance would improve on Barnes' performance in the packaged flour field and so further enhance competition in that area.

We make the following findings on these respective points.

(a): Defiance has competed most effectively in the flour, packaged flour and bread markets. What it has lost because of tax inhibitions it has more than made up in efficient management. We think that QCMA and Defiance are well matched in this industry, and it is no part of the Tribunal's function to attempt to give either a competitive advantage over the other. Defiance has bought a number of subsidiary bakeries and so has a liquidity problem. QCMA has failed to buy as many and so has a less secure base for its flour trade. There can be no clear benefit to the public in assisting either to overcome its problem at the expense of the other's opportunity to solve the one it sees. It can be bad for competition for one company to become too strong and the Tribunal could not see the end result of

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assisting one company at the expense of the other.

(b): While it may be generally true that Defiance gives a rather more comprehensive and efficient service to its customers than does Barnes, the fact remains that on the open market a number of free bakeries prefer to deal with Barnes (or QCMA). It would not seem that Defiance's service superiority can be so marked as to raise the elimination of one choice to the level of a public benefit.

(c): This claimed benefit is purely speculative and we are not satisfied that the present level of competition would be improved in this way. In the short term, Defiance's dominance in Townsville, Mackay and Rockhampton would have anti−competitive results.

(d): We think that there is some substance in the argument that Defiance as a public listed company, subject to the scrutiny which that status involves, would be more appropriately placed to act as a merchant banker for the bakery industry that it is at present. We are prepared to accept for the sake of this argument that such assistance, which might not be so readily available through other lending institutions, could constitute a public benefit. It seems that Defiance administers a strict credit policy. The money may be repaid at any time. And any other aspects of the resulting ties which are not in the public interest may be able to be dealt with under existing legislation. On the whole we think there may be an element of public benefit in this contention, but we are not satisfied that it can fairly be described as substantial, even in the limited context of the Queensland bread industry. We have reached this conclusion because we are not satisfied that public listing would in fact make any substantial difference to the size of the revolving fund which Defiance presently uses for this purpose.

(e): The question of Barnes as a failing company has already been dealt with in relation to the benefits claimed by QCMA (see paragraph (f) in the previous section), and the same considerations apply here.

(f): Whatever may be the merits of encouraging decentralisation in this industry, we do not think that Defiance's observance of such a policy would be materially affected by the Barnes merger. Again we can find no ''substantiality'' in the contention.

(g) & (h): We do not have enough evidence of the present state of the stockfeed and packaged flour markets to be able to say that any substantial benefit would flow to the public from a substitution of Defiance for Barnes in these areas.

12. Decision

It will be apparent from what we have said above that in this matter we have reached a substantially different view of the anti−competitive effects of the proposed mergers from that taken by the Commission.

We think there are a number of reasons for this. In the first place the principals of Barnes somehow conveyed to the Commission a different impression of the company's future from that which they conveyed to us. The Commission spoke of Barnes ''resisting both bids'' and said that Barnes ''vigorously denies'' that it does not have the resources to survive as an independent miller. As we have already indicated, this was not the evidence given to the Tribunal.

Secondly, the closures of the bakeries at Longreach and Brisbane since the Commission gave its decision are both important in themselves and illustrate a trend in the company's affairs.

Thirdly, the unwillingness of Barnes to attempt to supply more of its own markets for flour in North Queensland following the repudiation of the QCMA contract appears significant.

Finally, there appears to be some difference of emphasis between the Commission and this Tribunal in assessing the importance of market concentration as against other elements of market structure and the evidence on competitive behaviour.

For all these reasons, and for the other reasons set out in detail above, we have not assessed the likely anti−competitive effects of the proposed mergers to be as serious as the Commission found them to be.

This of course affects the balance which we have to draw up in resolving the questions posed by sec. 90(5), as explained in section 4 above.

However, even though the anti−competitive detriments weigh lightly, in our view, so do the alleged public benefits dealt with in the last two sections.

In the result we can find no measurable public benefit in either applicant taking over

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Barnes' stockfeed and flour packaging business. Defiance might run them more energetically but we suspect the public would notice no difference and if Defiance were really anxious to expand in these areas, it could do so by other means. No great point was made of these heads of benefit.

With regard to the two substantial and profitable bakeries, Defiance does not need them and although it would suit QCMA's purposes to own them, there is nothing to suggest that the public would benefit from such a change in ownership — at least as things stand at present.

The ownership of the Dalby mill would be of some advantage to QCMA, but, while there could be some improvements in cost

efficiency, we were not satisfied that these would be substantial benefits that would not otherwise be available.

Defiance does need the mill and, if it had it, that would represent a more efficient use of Queensland's milling resources. Here some public benefit appears, but, when weighed even against the mild anti−competitive effects of the disappearance of Barnes from the field, we are unable to say that it is a substantial public benefit. This is the question which has given us most concern but, on balance, we find that Defiance has not discharged the substantial onus referred to in section 4 above.

We are not impressed by the remaining Defiance argument about liquidity and its competitive difficulties. We find that Defiance has competed and will continue to compete most effectively in its chosen fields. It has a liquidity problem caused by its rapid expansion in recent years. We are not satisfied that the public would receive any benefit from the lower rates of taxation which Defiance would have to pay if it were a public listed company. Such monies saved might go in financing more independent bakeries in return for more flour sales, or it might go in the purchase of more bakeries, or it might simply be used to reduce present borrowings. In none of these cases is the public likely to receive any substantial benefit.

For all these reasons we refuse these applications to review and affirm the determinations of the Commission.
