

Commissioners' Decision

Case 3328

Tank Weld Metals Ltd on Unfair Pricing

August 10, 2001

Public Version

Confidential information omitted. The omissions are indicated by a note or by the symbol ✂

1. The Allegation

- 1.1 On January 28, 2000, ARC Systems Limited ("ARC") lodged a complaint with the Fair Trading Commission (FTC) against Tank-Weld Metals Limited ("TWM"). AT the same time, ARC also made a complaint to the Ministry of Industry, Commerce & Technology (MICT) regarding the same issue. This was forwarded to the FTC on April 3, 2000.
- 1.2 ARC alleges that TWM has been engaging in predatory pricing, in that it has been selling wire nails, zinc and alu-steel roofing sheets and welded wire fabric (construction or fabric mesh) at 'unfair' prices.
- 1.3 Specifically, ARC contends that:
 - TWM has been deliberately attacking ARC's core manufactured products, viz.: wire nails, zinc and alusteel roofing sheets and welded wire fabric (construction or fabric mesh);
 - TWM has brought zinc sheets at \$27 per feet and sold them for as low as \$24 per feet in some cases;
 - Wholesale prices for head nails in Trinidad range between TT\$1.92 and TT\$1.96 (J\$12.95 – J\$13.17) per pound while ARC's prices ranged between J\$8.50 and J\$9.50 while ARC's "local competitor" (referring to TWM) which sources from Trinidad, has been selling nails at prices ranging between J\$7.50 – J\$8.00 per pound.
- 1.4 The complaint provides very little of the information that would be necessary for a thorough investigation of all the items mentioned. Specifically:
 - the informant supplied no time period during which the respondent allegedly has been engaged in unfair pricing;

- no cost and price information for alu-steel roofing sheets and welded wire fabric were provided to support the allegation;
 - the information submitted relating to the wholesaling of nails does not necessarily support the allegation of predation. A comparison of wholesale prices of nails in Trinidad with those in Jamaica is not *per se* relevant to the predatory pricing accusation in Jamaica as wholesale prices may differ between Trinidad and Jamaica for various reasons – high distribution costs or the lack of competitive pressures in Trinidad may, for example, explain the wholesale price differences. Such alternative explanations are supported by the fact that ARC’s wholesale prices are also significantly lower than wholesale prices in Trinidad.
- 1.5 By letter dated April 17, 2001 the FTC sought additional information from ARC. There was no response this letter. In a subsequent telephone conversation, ARC informed the FTC that ARC’s nail production is approximately [⌘] [⌘] -pound cases ([⌘] pounds) per month.
 - 1.6 Due to the scantiness of the information provided by the Informant and the Respondent’s failure and/or refusal to supply answers to questions submitted by the FTC following an initial analysis of the complaint, the Senior Legal Council of the FTC sought a Warrant for obtaining more information. It was felt that because of the nature of the information that was available, it was advisable to seek the Warrant in respect of nails only.
 - 1.7 The Respondent later co-operated however, and the information was ultimately obtained without the Warrant being executed.
 - 1.8 In an attempt to obtain additional information from the Informant, a final letter was sent to ARC on July 23, 2001. ARC was given a specified time range (seven working days) within which this information should be provided. ARC has failed to provide said information within the requisite time, and the investigation has therefore been restricted to nails.

2. The Fair Competition Act

- 2.1 The allegation falls under Section 20 of the Fair Competition Act (FCA) which prohibits the abuse of dominance. Under Section 20(1), an enterprise would be considered to have abused a dominant position if it impedes the maintenance or development of effective competition in a market. For the purposes of the Act an enterprise holds a dominant position in a market if by itself or together with an interconnected company, it occupies such a position of economic strength as will enable it to operate in the market without effective constraints from its competitors or potential competitors.
- 2.2 Subsection 20(1)(d) states that an enterprise abuses a dominant position if it “directly or indirectly imposes unfair purchase or selling prices or other uncompetitive practices”. The Commission interprets section 20(1)(d) to include “predatory pricing”.

- 2.3 The remainder of this report is organized as follows. Section 3 discusses behavior that may constitute predatory pricing and the general methodology of investigating the issue. Section 4 then applies this methodology to the analysis of the allegation of predatory pricing against TWM.

3. Predatory Pricing under the Fair Competition Act

- 3.1 Predatory behavior constitutes a class of anti-competitive behavior where prices are set so low so as to eliminate some undertakings and threaten the competitive process itself. In these circumstances, consumers may benefit in the short run from lower prices, but in the longer term, weakened competition will lead to higher prices, reduced quality and less choice.
- 3.2 Distinguishing predatory behavior from legitimate competition is difficult. Since the main objective of competition policy is to create conditions where consumers benefit from effective competition, the distinction must be drawn between low prices that result from predatory behavior, and low prices that result from legitimate competitive behavior. Indeed, it must be noted that *structural* conditions in most markets do not allow for predation. As summed up by the OECD:

“Perhaps all that can be said is that cases of predation may arise but at most only very infrequently. Complaints of predation, however, are presented to competition authorities with some regularity, although the great majority of these cases involve nothing more than healthy price competition. Thus, competition authorities need some method to separate systematically the occasional violation from numerous complaints.”¹

- 3.3 In Canada, for example, some 550 complaints alleging an offense under the predatory pricing provisions were lodged between 1980 – 1990. Of those complaints, only 23 resulted in formal inquiries under the Competition Act, four were referred to the Attorney General and only three resulted in the laying of charges.² This observation is supported by the U.S. Supreme Court who notes that “predatory pricing schemes are rarely tried, and even more rarely successful”.³
- 3.4 There are three key elements to predatory behavior:
- *Intent*—Predation does not happen ‘by coincidence’. There must be first an intention to predate. Nevertheless, intent is a subjective concept and difficult to determine. Sometimes intent is inferred if an incumbent reduces price upon entry of new competitor, therefore forcing the new competitor to exit, and subsequently raises price back to its original level. Such behavior, however, may also obtain under competitive circumstances. After all, new entry raises overall market output and forces the incumbent to decrease its price or else concede market share. Such a price reduction often is not predatory but is

¹ OECD, *Predatory Pricing* (1989).

² Director of Investigation and Research, *Predatory Pricing Enforcement Guidelines*. Competition Act. Canada (1992).

³ In *Matsushita Electric Industry Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 589 (1986).

instead a natural response to the increased competition. If the new entrant is, for example less efficient than the incumbent, such that its costs are higher than the new market price, it will exit the market. The exit of a new entrant in this manner, commonly observed in reality, is part and parcel of the natural workings of the free market. That is to say, not all entry is efficient and not all exit is inefficient, even in an industry with a dominant incumbent.

Besides, boardroom talk and statements in internal memos revealing the intentions to “squish rivals like a bug” or “pound them into the sand” – phrases that at times show up as evidence in predation cases – are also entirely consistent with fierce but healthy competition.

- *Feasibility*—certain structural conditions of the market must exist for predation to be feasible. Specifically, successful predation requires market power during the predation period. This is because the predator must expand output in order to depress the overall market price and put pressure on his rivals. To have a strong impact on market price, the predating firm would need a sufficiently high market share from the start. Otherwise the predating firm itself will not be able to survive through the predation period. Moreover, if market demand is elastic, the predator must take on extra sales at a loss to satisfy the new demand that is created at the lower price, apart from the extra sales it has to take over from its victims. All this makes predatory pricing in fact more costly – at least in the short term – for the predator than its victims. For this reason, predatory pricing almost always comes under the category of abuse of dominance, where dominance must first be established.

Furthermore, predation involves the predator incurring short run losses so that it can increase profits in the long run. In the short run, it incurs losses in order to eliminate competitors. In the long run, it will expect to recoup the losses by charging higher prices (or offering less favorable terms). Predation works only if the firm will be able to recoup its short run losses by charging higher prices in the future – which will be possible only if the undertaking will not face significant competition *in the future*, from new entrants, for example.

While *future* market power is distinct from *current* market power, a currently dominant undertaking can be expected to retain future dominance and to recoup losses following predatory action. In other words, the market structure is likely to be retained. A scenario in which current market power may differ from future market power could arise where a dominant undertaking is alleged to be engaging in predation in a *related* market, but one in which it is not currently dominant. Even so, if future dominance in the related market arises following successful predation, the undertaking would have an ability to recoup its short-run losses.

- *Execution*—Finally a pricing policy that is in some way below cost in a manner that is consistent with the intention to predate must be implemented.

3.5 All these three elements must be present for a genuine case of predatory pricing to exist. A methodology for investigating allegations of predatory pricing is discussed below.

Predatory pricing: investigation guidelines

- 3.6 Many competition authorities apply a two-step method in investigating predatory pricing.⁴ The first step is to determine the feasibility of market structure for predation. If the structural conditions are considered not to be feasible for successful predation, the conclusion drawn is that there is no predation and the investigation terminates.
- 3.7 If the structural conditions suggest that successful predation is feasible, however, then the second step is implemented whereby a price-cost comparison is carried out to determine if below cost pricing has been implemented in a manner that could be considered predatory. Both these steps – market structure and price-cost analyses – are further explained below. Intent is normally not taken into consideration in the analysis as it is highly improbable that strong evidence would exist.

Step 1: Analysis of market structure

- 3.8 For reasons discussed above, a pre-condition for successful predation is a market structure in which the undertaking has sufficiently large market share. It is common practice amongst competition authorities to apply the test of dominance as a pre-requisite for predation. Dominance is commonly defined as a position of economic strength that enables an undertaking to operate in the market without effective constraints from its competitors or potential competitors.⁵ Put differently, a dominant firm is one that is able to behave to an appreciable extent independently of its competitors, customers and ultimately of consumers.⁶ Therefore, the first step in the investigation is to determine if the undertaking is dominant in the *relevant* market. Dominance is usually determined by consideration of market shares and barriers to entry.
- 3.9 *Market shares*—a market share of between 40 – 50% is commonly used by competition authorities as a guideline threshold for dominance. The European Court, for example, has stated that dominance can be presumed in the absence of evidence to the contrary if an undertaking has a market share persistently above 50%.⁷ The Office of Fair Trading in the UK considers it unlikely that an undertaking will be individually dominant if its market share is below 40%.⁸

These are, however, guideline thresholds that are not set in stone. Dominance could be established even below the 40% threshold if other relevant factors, such as weak position of competitors in that market provided strong evidence of dominance. If, for example, the largest player in the market has 30% market share and many other small firms, none possessing more than 3% of the market, sharing

⁴ For example, in the United Kingdom and Canada.

⁵ See section 19 of the Fair Competition Act.

⁶ See, for example, the definition taken by the European Court in Case 27/76 United Brands v EC Commission [1978] ECR 207, [1978] 1 CMLR 429.

⁷ see Case C62/86, *AKZO Chemie BV v Commission* [1993] 5 CMLR 215

⁸ OFT (1999), *The Competition Act 1998: The Chapter II Prohibition*, March.

the remainder of the market. In this scenario, 30% market share could be sufficient to meet the dominance test.

Consider another scenario in which a market is equally shared between two players, each accounting for 50% of the market. In this case, collusive behavior aside, neither of them can be said to be truly dominant as neither is therefore likely to be able to act independently of the other. Actions of one player are likely to be met by equally forceful reactions from the competitor who himself commands a similar degree of market power. In this case, a competition authority may see it appropriate to raise the dominance threshold level to between 70 – 80% market share.

- 3.10 *Barriers to entry*—the ability of an undertaking to dominate a market is constrained to the extent that new entrants may easily enter the market. Put differently, a firm is said to dominate a market if it is able to act independently of competitive pressures, allowing it to charge higher prices profitably. If, however, barriers to entry are low, any action by the firm to increase prices – and therefore profitability – would attract new entrants who would put competitive pressures onto the undertaking, forcing it to reduce prices again. In this case, the firm cannot be considered to be dominant. On the other hand, if barriers to entry are high, entry is unlikely even if the market is highly profitable. In this case, the firm will be able to sustain high prices and profitability and can therefore be said to be dominant. High barriers to entry could exist for various reasons including licensing and regulatory requirements for entry (including patent rights) and high sunk costs.⁹ Factors that would constitute barriers to entry would differ according to the case and circumstance.
- 3.11 In sum, a firm can be considered to be dominant if it has a market share of approximately 50% - the guideline threshold being dependent on circumstance – and there are high barriers to entry. An undertaking must be dominant for it to be able to predate successfully. Therefore, the investigation should continue on to the second step only if the undertaking is found to be dominant. If not, the investigation should stop and the conclusion would be that there is no predation.

Step 2: Analysis of prices and costs

- 3.12 If a firm is found to be dominant, the next step is to analyze the price-cost relationship so as to ascertain if predation did indeed take place. Following the guidelines set out by the competition authorities in the UK and Canada, it would be reasonable to use the following rules:
- A price at or above average *total* cost will not be regarded as unreasonably low;

⁹ Sunk costs refer to the investments that have to be made to enable production of a good or service. These costs are incurred even before a single unit of good or service is produced. An example of sunk costs can be found in telecommunications where the cable network has to be put in place – at a high cost – before any voice or data transmission can be made.

- A price below average *variable* cost is likely to be considered predatory unless there is a clear justification such as the need to sell perishable inventory;
- Prices in the “gray range” between average total and variable cost require further investigation into the surrounding circumstances. Findings would be based on a case-by-case analysis. For example, a price in this range may be reasonable in situations of declining demand or excess capacity. It may be predatory if there was direct evidence of the undertaking’s intent to predate. Other evidence on costs may also be considered, for example, whether the undertaking is covering its long-run avoidable costs.

Long run avoidable costs are costs that could be avoided if the undertaking were to cease the activity in question (the activity being the part of the business accused of predating). It would include both fixed and variable costs, but would not generally include:

- common costs (costs which may be attributed to a number of different activities). The undertaking may, however, be expected to cover common costs through the activities to which these costs contribute; or
- sunk costs, although sunk costs may be included in avoidable costs if they are incurred as part of the alleged predatory strategy, since the undertaking could then have avoided them by not incurring them.

3.13 In addition, an analysis of pricing behavior should also take into account the period and extent of predation. Specifically, below-cost pricing must be in effect for ‘long enough’ so as to be sufficient to inflict material harm upon competitors; otherwise it cannot be considered to be predation. Indeed, what is considered to be ‘long enough’ a time period differs from market to market. Similarly, below cost pricing on only a fraction of a product line cannot drive competitors out of a competitively meaningful market consisting of the entire product line. Such ‘limited’ action, therefore, would not constitute predation.

4. ARC vs TWM: An analysis

4.1 This section analyses the allegation of predatory pricing in the nail market by TWM. The investigation is carried out as follows: Following a definition of the relevant market and the description of the industry structure, the two-step approach outlined in section 3 is implemented. Then, the dominance of the respondent is assessed and the price-cost relationship analyzed.

Defining the Relevant Market

4.2 Before assessing whether a firm is dominant, the relevant market must be determined. This relevant market will have two dimensions - the relevant goods (ie., the product market); and the geographic extent of the market (the geographic market).

- 4.3 *The product market*—the boundaries of the market are determined by taking the products relevant to the investigation and looking at the closest substitute products, those products which consumers would switch to if prices of the relevant products rose. These substitute products are included in the market if substitution by consumers would prevent prices of the products relevant to the investigation from rising above competitive levels. The alternative products do not need to be perfect substitutes, but alternatives which would fill a similar role to the goods in question, and to which consumers would switch to in the event of a price increase. Essentially any similar goods that would prevent price-setting above competitive levels should be included in the definition of the relevant product market.

In addition to this substitution by customers (so-called “demand substitution”), prices can also be constrained by the potential behavior of suppliers producing other products (“supply substitution”). Businesses that are not currently supplying a particular product might switch some of their existing facilities to supplying that product (or close substitutes) if prices rose significantly.

An example of supply substitution may be found in the paper industry. Although low quality paper is often not considered to be a substitute for high quality paper from a consumer’s point of view, the different grades of paper are almost perfect substitutes from the producer’s point of view. This is because the production methods are identical across all grades of paper where only the input (pulp) has to be changed in order to change the output from low to high quality paper. In this example, even though there is no demand substitutability, a rise in the price of high quality paper is likely to see paper manufacturers switching from low quality paper towards producing more high quality material. In other words, a similar product should be included in the same relevant market as the product in question as long as either demand or supply substitution apply.

- 4.4 *The geographic market*—Similar methods are used to define the geographic boundaries of a market. The geographic market will sometimes be the area supplied by the informant, or the parties to the conduct concerned. However, consideration should also be given as to whether customers could easily obtain similar products from suppliers in other areas on reasonable terms. If so, those other areas may form part of the geographic market. The geographic market may be a part of Jamaica, the whole of it, or may even extend beyond Jamaica.

The relevant market for nails

- 4.5 There are two major types of nails – head nails and finishing (headless) nails. Each type comes in six different sizes – 1, 1.5, 2, 2.5, 3 and 4 inches. While there may be other types of nails, such as roofing nails, these are not – from a consumer’s point of view – close substitutes for head and finishing nails. In contrast to the limited demand substitutability, there is high supply substitutability between different types of nails from a production point of view. Only minimal adjustments have to be made to the production line in order to make different nails. In other words, even though different types of nails may not be substitutable from a demand point of view, high supply substitutability is reason for including

all types of nails within the same market definition (indeed, supply substitution factors may be a reason for widening the market definition beyond nails).

- 4.6 From a geographic perspective, it is reasonable to define the market at the national (Jamaica) level. This is because the major distributors (including the respondent) have distribution channels throughout the country.

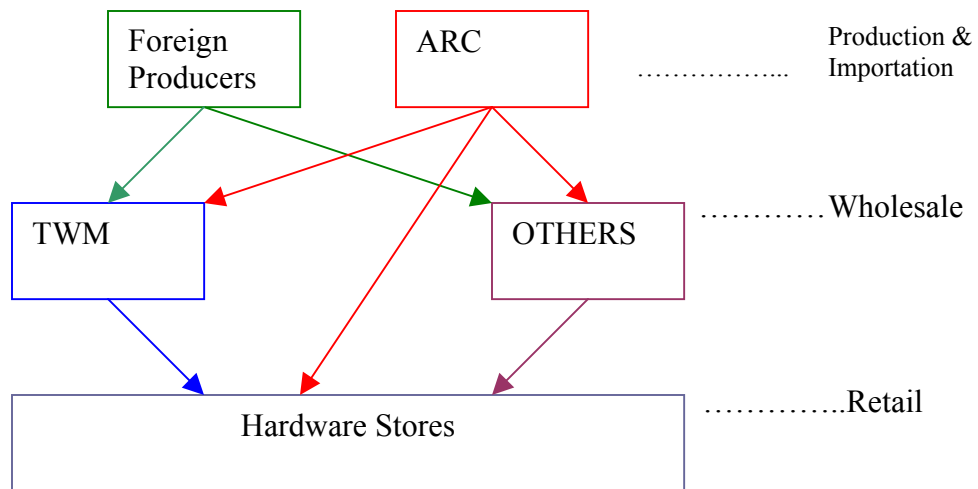
Industry structure of nails¹⁰

- 4.7 The production, importation, distribution and sale of nails take place through a series of stages. The manufacturing market and the importation market may be considered to be at the same level of the supply chain.
- 4.8 ARC is the sole producer of nails in Jamaica. There are, however, several enterprises, included the respondent, TWM, that import nails into Jamaica. For example, another importer of nails is Mainland International.
- 4.9 TWM sources its nails from suppliers in Trinidad and from ARC. Information from the Statistical Institute of Jamaica,¹¹ reveals that there are two categories of nails imported into Jamaica. These categories are:
- ‘masonry and roofing nails of iron or steel whether or not with heads of other material, but excluding such articles with heads of copper’; and
 - ‘other nails of iron or steel’
- 4.10 The relevant category for this investigation is the latter for which Trinidad is the largest exporter to Jamaica. In 1998 and 1999, 65% and 85% respectively of noted category of nail exported to Jamaica came from Trinidad.
- 4.11 The wholesaling market, that is the market between the wholesalers and the retailers, appears to be the market in question of any anti-competitive practices. As can be seen in the Figure 1, both ARC and TWM, alongside other players in the market, participate in the wholesale market.

¹⁰ The Informant, ARC, is a producer and distributor of the all items implicated in the allegation. The Respondent, TWM, produces, imports and distributes alu-steel roofing sheets. TWM does not produce any of the other mentioned items – it solely imports and distributes them.

¹¹ External Trade 1998: Provisional – Part2, p 319, Statistical Institute of Jamaica.
External Trade 1999: Provisional – Part 2, p 446, Statistical Institute of Jamaica.

Figure 1: Structure of the nail industry in Jamaica



Step 1: Assessment of dominance

4.12 Dominance in the wholesaling market for nails is assessed for the periods January – December 1998 and January – December 1999, prior to complaint (that of January 25, 2000) and for the period January – October 2000, after the complaint.

4.13 As shown in Table 1, total market size is estimated using:

- production data provided by ARC (the sole producer of nails in Jamaica); and
- import data provided by TWM and the Statistical Institute of Jamaica.¹²

Table 1: Estimated market size of nails in Jamaica (Jan - Dec 1998)

	Total	ARC	TWM	Others
Production Importation Distribution Locally Sourced	{	Figures omitted. See note on page 1.		
Total Market Share				

¹² External Trade 1998 and External Trade 1999, *op. cit.*

Table 2: Estimated market size of nails in Jamaica (Jan - Dec 1999)

	Total	ARC	TWM	Others
Production	{	Figures omitted. See note on page 1.		
Importation				
Distribution				
Locally Sourced				
Total Market Share	}			

Table 3: Estimated market size of nails in Jamaica (January 2000 - October 2000)

	Total	ARC	TWM	Others
Production	{	Figures omitted. See note on page 1.		
Importation				
Distribution				
Locally Sourced				
Total Market Share	}			

4.14 As can be seen from Tables 1, 2 and 3, ARC was the largest player in the wholesaling market in 1998 with a market share of [x]%, while TWM's market share is estimated to be [x]%. 1999 saw a 54% increase in the amount of nails exported to Jamaica in comparison to the amount in 1998. Also in 1999 TWM imported from Trinidad [x]% more nails than it imported from Trinidad in 1998. In the same year, TWM's market share rose to approximately [x]% of the wholesaling market for nails; and so was the dominant player for that year.

- 4.15 For the period January to October 2000, there has been a reduction in the amount of nails imported by TWM. Approximately [x] % of its purchases of nails for this period are from ARC. TWM's share of the wholesaling market remained more or less the same at about [x] %.
- 4.16 In sum, TWM can be considered to be dominant in the market for nails.

Step 2: Price-cost analysis

- 4.17 Pricing data was obtained from a sample of TWM's sales and purchases invoices and from information supplied by TWM. All sizes of finishing nails and 1 and 1.5 inch head nails ("S-N") are equally priced and cost more than head nails of sizes ranging between two to four inches ("L-N").

Table 4: Summary of TWM's nail operation (Jan 1998 – Dec 1999)

Types of Nail	PURCHASES		SALES	
	Quantity	Unit Cost (Ja \$)	Quantity	Unit Price (Ja \$)
S-N	{	Figures omitted. See note on page 1.		
L-N				
Total				

- 4.18 As shown in Table 4, over the period January 1998 to December 1999, TWM purchased:
- [x] pounds of S-N at an average unit cost of \$[x]; and
 - [x] pounds of L-N at an average unit cost of \$[x].
- 4.19 This translates to a total of [x] pounds of nails which were purchased at an average unit price of \$[x]. In the same period TWM sold [x] pounds of nails at an average unit price of \$[x]. Therefore, between January 1998 to December 1999, the period prior to when the complaint was made, TWM's selling price of nails exceeded its purchase price on average.
- 4.20 Tables 5 and 6 show the dis-aggregated purchases and sales information for each month for 1998 and 1999 respectively.

Table 5: Schedule of TWM's monthly nail operation (Jan – Dec 1998)

DATE	PURCHASES			SALES		
	# of cases	Total pounds	Unit cost/lb. (Ja \$)	# of cases	Total pounds	Unit price/lb. (Ja \$)
January 1, 1998 balance b/f						
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
December 31, 1998 Balance c/f						
Total						

{
{

Figures omitted. See note on page 1.

Table 6: Schedule of TWM’s monthly nail operation (Jan – Dec 1999)

DATE	PURCHASES			SALES		
	# of cases	Total pounds	Unit cost/lb. (Ja \$)	# of cases	Total pounds	Unit price/lb. (Ja. \$)
January 1, 1999 balance b/f						
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
December 31, 1999 Balance c/f						
Total						

Figures omitted. See note on page 1.

4.21 For the period January 1998 – December 1999, inspection of the information supplied by TWM show only two months where TWM’s average monthly purchase price was found to be below its average monthly selling price. Specifically, in [] 1999 TWM purchased [] pounds of nails at an average unit price of \$[] and sold [] pounds [] at an average unit price of \$[]. In [] TWM purchased [] pounds of nails at an average unit price of \$[] and sold [] pounds at an average price of \$[]. This is based on an assumption of a “last-in first-out” system.

4.22 A monthly average selling price that is lower than the monthly average purchase price may be due, amongst other reasons, to selling of old stocks which were bought at a lower price. In other words, there may actually be a “first-in first-out” system instead of a “last-in first-out” system. Technically speaking, a “first-in first-out” system may require a comparison of current selling price with some weighted average of *previous months’* purchase price, depending on when the

stock was actually purchased. Nevertheless, it is reasonable to use only the *previous* month's purchase price as an approximation of this weighted average. Therefore, as explained below, the selling prices in the months of [] and [] 1999 were compared with the purchase prices of the preceding months, i.e., [] and [] 1999 respectively:

- [] 1999—the opening balance, on a first-in first out basis, is [] pounds at an estimated average unit price of \$[], based on the average unit purchase price for []. This cost, \$[], is still slighted higher than the average selling price of \$[].
- [] 1999—In contrast, the opening balance, on a first-in first-out basis, for [] is [] pounds at an average unit price of \$[], based on the average unit purchase price for [], This cost is below the average selling price for [].

Conclusion

- 4.23 For the year 1999 and the period January to October 2000 TWM's estimated share of the Jamaican wholesale nails market is sufficiently large for TWM to be classified as dominant in that market.
- 4.24 An analysis of TWM's price-cost relationship for two years up to the time of complaint suggests very little evidence that TWM's prices are below average variable costs (purchase costs). There was some indication of below cost pricing in only two months of the period analyzed. Even then, for one of those months, the observation could be explained by selling of old stock from the preceding month such that it was really not a case of below cost pricing.
- 4.25 That leaves only one month when there may have been below cost pricing. However, this is not considered to be firm evidence of predatory pricing as it is for a limited time only (a month) which is hardly likely to be sufficient to drive out competition from the market.
- 4.26 In sum, although TWM is dominant in the wholesale nails market in Jamaica, there is little evidence of predatory behavior by TWM.