CWIU's submission to the Competition Board

Tanya van Meelis highlights extracts of a successful CWIU submission to the Competition Board and spoke to Welile Nolingo.

In November 1998, the former CWIU made a well researched and detailed submission to the Competition Board to oppose the proposed acquisition of Pharmacare (a subsidiary of South African Druggists Ltd – SAD) by Adcock Ingram. CWIU based much of the submission on the new Competition Act (which was still a bill at that stage), because the Competition Board would be influenced by the direction taken in the bill. The Competition Board quoted large parts of the submission in its report. CWIU (now CEPPWAWU) was and still is organised in both SAD and Adcock Ingram.

Welile Nolingo, CWIU president and shopsteward at Pharmacare, explains why they decided to oppose the acquisition: 'There were two main reasons why we decided to oppose the take-over. Firstly, the take-over would ultimately have had negative results in terms of job security. When Adcock Ingram had taken over Prempharm it had closed plants and shed jobs.

Secondly, it would have been a problem if most of South Africa's pharmaceutical industry was owned by one company. There would have been a monopoly and price of drugs would have increased. This would have been against the spirit of change Minister Zuma is trying to drive. It would have had a negative effect for all but especially for the poorest of the poor.'

The former CWIU regards its submission and the Competition Board ruling as a success. The Competition Board did not allow the acquisition to take place. One of the reasons given by the Competition Board was that the acquisition would not be in the public interest.

After the Competition Board ruling was made, Investec bought SAD. Investec has since been selling off the different divisions of SAD, for example it sold Pharmacare to Aspen. This poses new challenges for the union, as Nolingo explains: 'We are planning to meet Aspen to discuss issues. We are concerned about job security and the status of current agreements and disputes. The company is also decentralising operations.' However, Nolingo still thinks the union took the correct decision to oppose the acquisition by Adcock Ingram.

The following are extracts from CWIU's submission to the Competition Board:

Mergers

'The basis of mergers should be the drive for expansion, new investment and employment creation. CWIU recognises the huge potential for developing the pharmaceutical industry in South Africa based both on the domestic market and exports. Price and availability are crucial for the health of all people in South Africa

CWIU recognises the need for restructuring given historical ownership patterns, a lack of democracy in the workplace, exploitation of workers and a complete disregard of workers' interests in the zealous pursuit of profits However, the motivation of firms involved in restructuring does not take into account the concerns of the country as a whole, and workers in particular. In this respect, the Competition Board mandate is to ensure that development, product choice at competitive prices and job creation goals are followed instead of the narrow profitability criteria driving the restructuring of conglomerates'

Promoting employment

'One issue the Competition Board is bound to consider is the impact that the proposed acquisition will have on job creation or job loss.. one of the purposes of the Competition Bill is to 'promote employment'. (Chapter 1, Section 2) The Competition Board is also obliged, in terms of Section 16 of the Competition Bill, to determine whether or not the merger can be justified on substantial public interest grounds which include the effect the merger will have on employment.

CWIU believes the proposed acquisition will result in substantial job loss This belief is based on the following:

- ❑ Adcock Ingram in a News Brief (9 September 1998) has already hinted at job loss in its statement 'It [ie, the acquisition] will also enable us to affect further cost savings and eliminate duplication' In our experience this means job loss
- ❑ Jobs were lost following the last merger Adcock Ingram effected with Prempharm Adcock Ingram's 1997 Annual Report contains the following statement from the Chief Executive's Review:'The restructuring and rightsizing process resulted in significant savings and a reduction of the group's total staff complement by 15% Excluding the acquisition of the remaining 50% shareholding of Savvet, total staff complement was reduced by 18%'
- ❑ Adcock Ingram's reduction of the number of people it employs may be contrasted to a rise in the number of jobs in SAD The following table clearly shows:
  - a steady rise in employment at South African Druggists;
  - a rise in employment at Adcock Ingram in 1996 when it absorbed Prempharm,
  - a decrease in employment at Adcock Ingram over a number of years (1995 and the year of the merger excluded),

Employment levels

Year	Employment at SAD	% Change	Employment at Adcock	% Change
1992	5 448		2 846	
1993	5 539	1,7%	2 630	-7,6%
1994	5 687	2,7%	2 402	-8,7%
1995	6 270	10,3%	2 519	4,9%
1996	6 374	1,67%	3 898	54,7%
1997	7 135	11,9%	3 311	-15%

(Figures obtained from the Annual Reports of Adcock Ingram and SAD)

- a substantial drop in employment at Adcock Ingram after the merger in 1996.

❑ There is no evidence that the trend of Adcock Ingram reducing employment, specifically after a merger, will not be repeated in the proposed acquisition. Adcock Ingram has not issued any public statements that we have seen that guarantee no job loss will take place or that there will be job creation.

❑ A reputable industrial analyst's view is that for the acquisition to enhance earnings for 1999 an after tax return of 11% in 1999 is needed This means that the activities following the acquisition must contribute at least R340-million before tax and R220-million after tax. The analyst's view is that R110-million will need to be saved to justify the purchase price – a saving that is probably achievable. Given this analysis, CWIU questions where such large savings will come from. In our experience and from statements issued by Adcock Ingram, we believe that savings will be made by cutting, among other areas, labour and production facilities.

Any loss of employment is neither in the interests of the workers retrenched nor the economy as a whole. Should 2 000 jobs be lost (as CWIU estimates), the unemployment rate will increase in South Africa and the fiscus will be further stressed by workers claiming UIF.

Limitation of facilities

'CWIU believes that Adcock Ingram will close down a number of production facilities for the following reasons:

❑ Adcock Ingram in a News Brief (9 September 1998) has stated that it will 'eliminate duplication'... Our interpretation of this wording is that where similar production facilities exist, one of them will be closed. There are several such facilities between Adcock Ingram and Pharmacare which may be targeted for closure...

Critical care
- Al Critical Care
- Intramed

Pharmaceuticals/ Generics
- Wadeville
- Lennon
- Clayville

Consumer Healthcare/ OTC:
- East London
- Clayville

Antibiotics
- East London
- Adcocks

❑ CWIU's experience is that Adcock has already been closing sites over the last few years. We believe that this precedent will continue both for the reasons listed in this section and the company's history in this regard.

Closure of sites is highly undesirable for a number of reasons including:

❑ concomitant job loss (see section 4.1);

❑ a decrease in the manufacturing capability of the pharmaceutical industry in South Africa;

❑ a potential furthering of decline in the Eastern Cape region in which SAD has three manufacturing facilities.

CWIU would agree with the view held by the Competition Board (Report 68) that the need to rationalise is often overstated although it remains the most common argument put forward to justify anti-competitive merger.'

Choice and affordability

Choice of product

'The Competition Board needs to consider the impact that the acquisition will have on the range of product choices and the affordability of the products.

CWIU believes the choice of products produced in South Africa may be limited by the acquisition The reasons for this are outlined below:

- Numerous products are currently produced by both Pharmacare and Adcock Ingram in individual therapeutic categories For example.
  Therapeutic Category: Anti-ulcerants
  Molecule: Cimetidine
  Products and marketers: Lenamet (Pharmacare), Cyml (Pharmacare), Adco-Atenolol (Adcock Ingram)
- Given Adcock Ingram's commitment to eliminating duplication, there is no guarantee that it will keep on producing certain 'duplicated' products once it has acquired Pharmacare.
- It is the view of a highly reliable and reputable source that a streamlining of the portfolio of products will offer substantial benefits in terms of economies of scale. This will result in a strong improvement in margins. According to the reputable industry analyst, this would mean streamlining the product portfolio by retaining certain brands and discarding others. The example the analyst sites to support this trend is the rationalisation of Adcock's enlarged range of products following the merger with Prempharm. The consolidation would also facilitate a shift to fewer larger production facilities.
- Adcock Ingram's chief in 1997, Phil Nortier, was reported to favour production of higher margin products with less regulation 'Internationally there is a clear trend towards self-medication. We believe that SA is no exception and this provides enormous opportunities, because this sector is less regulated and margins are better than in other sectors of the pharmaceutical industry, for example generics.'

Welile Nolingo, president of the former CWIU.

A newspaper further reports that Adcock Ingram has little interest in government tenders for generic drugs as the margins are too poor Adcock will however pursue niche opportunities for generics that present innovative opportunities in new combinations or applications (*Business Day*, 15/1/1998)

Besides providing consumers with a wider range of products to choose from, it is also essential for pharmaceutical companies to have a broad range of products to counter the cyclicality within the industry. In order to perform consistently a pharmaceutical company must continually develop new products so that when one is reaching the end of its life cycle the company is able to generate revenue from another product in the early phase of its life cycle.

Should research and development decline, or there be a reduction in the range of products, the company is at risk

'The basis of mergers should be the drive for expansion, new investment and employment creation.'

for depressed earnings. This in turn threatens the viability of the company, its ability to embark in new R&D and moves the company towards rationalisation to cut costs.

While products may be imported into the country, a reliance on importation of products as opposed to diverse production in South Africa by a number of companies would weaken South Africa's manufacturing base.

This has implications not only for availability of product, choice of product, employment but also for the ability of South Africa to compete on the international market.'

Affordability of product

'Section 3 of the submission has shown that the acquisition will result in Adcock Ingram's market power increasing substantially. Adcock Ingram would also be a dominant supplier to state tenders.

CWIU believes that the price of products sold by Adcock Ingram would increase. The reasons for this are listed below:

- CWIU has evidence from the IMS-SANDS report that the price of a product increased following the merger between Adcock Ingram and Prempharm:

Product:	Alcophyllex Syrup
Price:	9,50 (Oct '96); 14,25 (Nov '96)...
Increase:	50%

- Given this substantial increase in price, CWIU strongly suggests that the Competition Board investigates this further. If this price increase following a merger is a signal of future activity, we can expect a substantial increase in Adcock Ingram's selling price of products and a concomitant decrease in the affordability of products in South Africa.
- While substantial savings may be made

through the implementation of Adcock Ingram's plan - there is no guarantee that these savings will be passed on to the consumer. Adcock Ingram will be under immense pressure to enhance earnings (as outlined above) and savings made in production may be used to boost shareholder profits

- As stated above, Adcock Ingram's chief in 1997, Phil Nortier, has already been reported to favour production of higher margin products The company clearly favours maximising profits.'

Competing internationally

'Chapter 1 Section 2 specifically states that one of the purposes of the Competition Bill is to expand opportunities for South African participation in world markets and recognise the role of foreign competition in South Africa It is thus incumbent upon the Competition Board to evaluate whether the acquisition will promote expansion into foreign markets or not.

CWIU believes that the acquisition will not successfully expand opportunities for South African participation in world markets. The reasons are outlined below.

- When Adcock Ingram merged with Premier Pharmaceuticals, Adcock Ingram's chief operating officer Mike Norris stated that the new group would continue its push into sub-Saharan Africa, but that growth potential was restricted by the limited financial resources of the countries in the sub-continent. (*Business Day*, 14/11/96) For CWIU, this illustrates a lack of commitment to developing the region in favour of a fetishisation with increasing profits.
- CWIU believes that if South African exports are to be increased this would best be done by having Adcock Ingram and Pharmacare operating as two separate companies A reputable industry analyst has concluded that while both Adcock Ingram and SAD have sought opportunities to acquire offshore operations and to boost exports, SAD has been more successful in this regard

  The acquisition would give Adcock Ingram greater exposure to offshore operations and exports rather than growing this aspect of their business organically CWIU believes that if Adcock Ingram is only successful in breaking into offshore operations and exports through acquisition and not organic growth, there can be no guarantee that they will have the ability to maintain or increase the advantage they acquire through the acquisition This should be considered by the Competition Board in terms of the obligation placed on it by the new Competition Bill which states that the Competition Board is bound to consider, among other things, 'whether the business, or part of the business, of a party to the merger or proposed merger has failed or is likely to fail'. (Competition Board Report 68)
- Professor Porter of Harvard University has found that 'enterprises fare best on international markets where their efficiency and effectiveness have been honed as a result of strong competitive pressures on the domestic markets'. (Competition Board Report 68) Market dominance by Adcock Ingram (as outlined in section 3 of this submission) has shown that Adcock Ingram would be the dominant South African company and that there would be a lessening of competition on the South African market '★