

Rebates

268. Having received representations from independent makers about the effect on their competitive position of C.M.A. and C.C.A. exclusive and other aggregated rebates, we obtained information about the amounts actually allowed by way of rebate, as shown by the following table:—

<i>Year</i>						<i>Rebates allowed</i>
						£'000
1947	...	...	...	...	...	2,450
1948	...	...	...	...	...	2,200
1949	...	...	...	...	...	1,950

Net sales (i.e. after deducting the amount of rebate allowed and cash discount) which attracted rebates in 1948 were just under £20 million. We are unable to give similar information for 1947 and 1949. It is clear that rebates are an important feature of the trading methods of the C.M.A. and the C.C.A. for certain types of cable.

CHAPTER 15 : CONCLUSIONS AS TO THE CONDITIONS DEFINED IN THE ACT

269. Under our terms of reference we are required to report whether conditions to which the Act applies in fact prevail as respects the supply of insulated electric wires and cables in the United Kingdom. The members of the C.M.A. and of the C.C.A. in 1948 together supplied approximately 76·5 per cent. by value of the total supply of cables in the United Kingdom. In 1950 the figure was 74·1 per cent. In addition, there are 7 companies either associated with the C.M.A. or C.C.A. or collaborating with members of those associations who, together, supplied at least 6·2 per cent. in 1948 (6·0 per cent. in 1950). All these manufacturers together supplied about 82·7 per cent. of the total supply in the United Kingdom in 1948 and 80·1 in 1950. From what we say in Chapters 5 to 9 it is clear that the members of the C.M.A. and the C.C.A. and their associated and subsidiary companies so conduct their affairs as to restrict competition in connection with the supply of cable. For these reasons, we conclude that the conditions to which the Act applies prevail in that the members of the C.M.A. and the C.C.A. together supply more than one-third of the total supply of insulated electric wires and cables in the United Kingdom, and that they so conduct their affairs as to restrict competition in the supply of these goods.

CHAPTER 16 : CONCLUSIONS ON THE PUBLIC INTEREST

270. In an industry in which quality is of supreme importance, British cable makers have gained a reputation which is world-wide. The United Kingdom has been the leader in cable development and production, and to-day the British industry claims to have the biggest cable export trade in the world—a trade which produces large sums in foreign exchange, not only directly, but also from installation work. Though the production of first-quality cable is by no means confined to C.M.A. companies, the C.M.A. has played a predominant part in establishing the reputation and the export trade of the British industry.

271. The members of the C.M.A. and C.C.A. are to-day responsible for some 80 per cent. of British production. The main practices of these associations which we consider to be restrictive of competition have been described in Chapters 5 to 9. We now turn to consider their bearing on the public interest.

Agreement on types and standards

272. A common price has always been a leading feature of the C.M.A. and C.C.A. systems, but the associations claim with truth to be something much more than price rings. Both associations have established minimum standards and insist on a high level of quality. The C.M.A., in particular, has for many years supervised the quality of its members' products by arranging regular performance tests and has by this means built up the immense prestige that lies behind its certification marks "C.M.A." and the Roman Warrior. We are satisfied that this high standard of control of quality has been of great benefit and that the restriction of members' freedom which is involved in their having to submit new designs and types to the C.M.A. or C.C.A. for approval before they are put on the market is a necessary concomitant and has been reasonably administered.

Common Prices

273. It is the claim of the C.M.A. that the achievements of its members both in standards of quality and in volume of trade have "resulted from the co-operation of members in the many complicated processes of manufacture" and that "no one company could by its own individual efforts have encompassed the acknowledged technical developments which have been achieved by their collaboration together through the C.M.A.". Both the C.M.A. and the C.C.A. argue that common minimum standards and the exchange of information and technique are dependent upon agreement in price. We see some force in the argument that collaboration on standards of quality and in techniques of manufacture would be likely to be less close if the members were engaged in price competition with each other and that there might be some consequential danger that present high standards of quality might not in all cases be maintained. On the other hand it must not be assumed that price competition would necessarily prevent the continuance of valuable co-operative work on standards and research: the B.S.I. standards are now a very considerable safeguard of quality and much useful research can be and is, in this industry as in others, carried on by individual concerns and by research associations.

274. The prices which are agreed by the C.M.A. and C.C.A. are not merely minimum prices; they are common prices, and members are as much precluded from charging higher prices as from charging lower prices. The consequences of the common price system in this industry are not only that a common price is charged to the consumer, but also that everyone who puts out a contract to tender is faced with agreed tenders, with the result that the whole system of competitive tendering, with all its accepted advantages from the point of view of the consumer, is vitiated so far as tenders from association members are concerned. These disadvantages have to be weighed against the danger, to which we have referred, that price competition might reduce collaboration and cause a deterioration of quality. They must also be assessed in relation to (i) the strength of independent competition, (ii) the level at which the common price is maintained and the relation of this price to the costs of the different makers, and (iii) the bargaining strength of the buyer. The incidence of these various factors differs considerably from one

section of the cable industry to another. We have therefore felt it necessary to examine the main types of cable separately for this purpose. The more important of the figures which bear on our assessment are set out in the following table:—

Type of Cable	Home Sales in 1948	Average net profit on sales earned by C.M.A. & C.C.A. members and associates		Percentage by value of supply made by independents in 1948	Names of any large buyers	Large buyers' purchases as percentage of total supplies of each type in 1948
		1938	1948			
	£'000	Per cent.	Per cent.	Per cent.		Per cent.
Mains (not exceeding 33 kV)	16,789	7·0	5·4	21·0	Electricity Authorities	73·1
Super tension (over 33 kV)	403	10·8	3·8	Nil	Electricity Authorities	87·3
Rubber and plastic	18,254	11·5	15·1	24·0	Utilities .. Govt. Depts. Electricity Authorities	12·6 7·4 5·9
Submarine ..	821*	20·5	11·0	Nil	Cable and Wireless Ltd. Govt. Depts.	68·2 31·8
Telephone ..	5,343	23·0	8·7	Nil	Govt. Depts.	90·6
Cables insulated with cotton, silk, art silk, enamel, glass and asbestos†	8,299	11·4	7·8	8·8	Govt. Depts.	5·1

(i) *Super Tension and Mains Cable*

275. It is in super tension cable that there is probably the greatest scope for technical collaboration, and that a failure in quality could be most serious. The production of this cable is a developing industry and calls for special techniques. There are a number of current patents. Only seven members of the C.M.A. have quotas for super tension cable and only six have so far produced it, and there is no production of this type of cable by independent makers. If the tariff were not sufficient protection the international arrangements to which C.M.A. members are parties would apparently ensure that home prices were respected and consequently that there was no competition, at least from European cable makers. The buyers are a near monopoly since the B.E.A. takes a high proportion of the total amount supplied to the home market.

276. The situation is different in lower voltage mains cable. Over most of this field techniques of production have varied little for many years; the products are largely standard types which have been in production for

* Includes sales to Cable and Wireless Ltd. which for the purpose of preparing other tables in the report have been classified as export trade (see para. 252, Chapter 14).

† This heading covers some but not all C.C.A. products and also includes some non-C.C.A. products. The rest of the C.C.A. products are included in the balancing item of £2,171,000 for all other types in 1948 (see table in para. 8, Chapter 2).

a long time and which are made by most members of the C.M.A. The tariff and the international arrangements limit effective competition from abroad, but there are a number of large independent makers whose products are bought and accepted as satisfactory by the B.E.A. and by government departments* and are generally sold at lower prices than C.M.A. cable. The B.E.A. is overwhelmingly the largest buyer but fair quantities of cable at 11 kV and under are bought by contractors, or by manufacturers for their own use.

277. Our investigations have shown that in mains cable there are considerable variations between the costs of members of the C.M.A. for cable made to the same C.M.A. minimum specifications; it was made clear to us that there is scope for some variation in dimensions because of the tolerances permitted in the specifications which provide for the minimum standards, but that the resulting product, when made by any one of the C.M.A. members, can be taken to be in each case virtually the same product, suitable to serve the same purpose and conforming to the C.M.A. high standard of excellence. The differences in cost appear to be due to many factors, including the use of different materials or of different quantities of materials to serve the same purpose, differences in wastage of materials and differences in methods of manufacture and speed of machines. In the case of super tension cable the products are not sufficiently standardised for a similar comparison to be made. The method of pricing as described to us for mains cable is to take the average of the five lowest estimated total costs submitted† and to add a percentage to provide for profit which is 10 per cent. for most of the business, but varies up to 26 per cent. according to the purchaser and the voltage of the cable. In practice the result has been that the average level of net profit realised by all C.M.A. members in 1948 was 5·4 per cent. on sales of mains cable and 3·8 per cent. on super tension cable, the average being 12·1 per cent. for the five members who made the largest profit in mains and 12·4 per cent. for the three members who made the largest profit in super tension cable. The considerable spread of costs among C.M.A. members for the production of virtually the same product for sale at a common price suggests that, even assuming the average profit remains reasonable, there is a risk that the public may still be paying too much owing to the inclusion of relatively high costs in the average on which the prices are based.

278. The existence of vigorous competition in lower voltage mains cable will do much to ensure that costs and prices remain reasonable but in the super tension range there is no such safeguard. In both super tension cable and other mains cable the powerful position of the C.M.A. is further secured by the tariff and by the international arrangements affecting the prices of imported cable. It does not seem to us, however, that this situation in which a near monopoly buyer faces a near monopoly seller should or could be transformed into one of ordinary competition. In our opinion the B.E.A. is strong enough to be able to buy at reasonable prices. A system of purchase which is in the long-term interests both of the consumer and of the producer will have to be worked out by the B.E.A. with the industry. Consultations have been going on for some time between the B.E.A. and C.M.A., and the B.E.A. recently arranged for C.M.A. members' costs of six types of cable

* It will be seen from the table in para. 32, Chapter 3, that government departments, who are relatively small buyers, take considerably more mains cable from independents than from the C.M.A.

† The Mains Agreement specifies that the prices must be based on not less than the three lowest and not more than the five lowest costs (see Clause XVIII of Appendix 3). In the case of super tension cable, the three lowest costs only are specified and used.

to be investigated by an independent firm of accountants. This arrangement appears to be in the public interest, and so long as the C.M.A. members act together as sellers there should, we think, be an obligation upon them, in the ranges in which no competition exists, to submit their costs for investigation by the B.E.A. in order to establish that the prices charged are reasonable.

279. There are also a number of small buyers of mains cable. As has been said, their purchases are concentrated on lower voltage cable where independent competition is relatively strongest and some of them are members of organisations such as N.E.C.T.A., which are in a position to bargain collectively with the M.C.M.A. Nevertheless there is at least the danger that the arrangements made by the B.E.A. may absorb a large part of the capacity of the independent makers and so leave the smaller users very much dependent upon the C.M.A. We suggest that so long as the members of the M.C.M.A. agree prices for sales to users other than the B.E.A., their prices to these users should bear a direct relationship to their prices to the B.E.A. (as they now do) and this relationship should be reasonable and should be made known to the buyers.

(ii) *Rubber Cable*

280. The proportion of the home market for rubber cable which is supplied by independent makers is slightly larger than it is for mains cable but the resulting competition appears to us to be considerably less effective. Some independent makers admit that they welcome the C.M.A. common prices and fix their own just below them, and those of them who are members of the I.C.M.A. (about half) have their own set of minimum prices for sales to wholesalers and contractors. Further, the position of members of the C.M.A. is supported by exclusive agreements with wholesalers and other buyers and by payments to associations of contractors and wholesalers. The buyers, too, are numerous and widely scattered and are consequently much weaker than they are in the mains cable section of the trade.

281. We are satisfied that the method adopted by the R.C.M.A. in pricing rubber cable cannot be justified. According to the C.M.A. evidence the prices are arrived at by taking the average costs of the five lowest cost producers who submit costs (instead of the three lowest as under the 1936 Agreement), by adding profit rates which vary from product to product and by adding on top of this in each case $12\frac{1}{2}$ per cent. to cover "pay-aways". The costs have not hitherto been calculated on a uniform basis (although some progress to this end is being made with the assistance of the Accountancy Unit) and there is amongst the C.M.A. makers a considerable spread of costs for cable made to the same minimum specification. The average profit rate aimed at is 25 per cent. on total costs. The average net profit realised by all C.M.A. members in 1948 was 17.8 per cent. on cost,* the average for the five who made the largest profit being 32.1 per cent. on cost. The actual rates which are added to each product are stated to be calculated on the general basis that the types in largest demand carry the lowest profit; they range from 9 per cent. to 32 per cent. and appear in practice to be highest where the spread of costs is greatest and so to ensure, in some cases at any rate, a profit even to the highest cost producer. These percentages have remained constant for some years in spite of considerable changes in costs. Prices so fixed bear little relation to costs.

282. There is so much variation in costs between one member and another that we feel that there should be scope for price reductions. We do not

* The corresponding percentage on sales was 15.1 and is shown in column 4 of the table in para. 274.

consider that there is, in the case of rubber cable, either a sufficient concentration of purchasers or the necessary urgency of competition to ensure, if agreement on common prices continues, "the production . . . by the most efficient and economical means of goods of such types and qualities in such volume and at such prices as will best meet the requirements of the market". Our conclusion is, therefore, that the C.M.A. system of common prices for rubber cable is contrary to the public interest and should be brought to an end.

283. It has been strongly represented to us, and not only by members of the C.M.A., that if the common price system of the C.M.A. is disturbed the result may be some deterioration in the quality of rubber cable produced by C.M.A. members. As we have said in para. 273, we see some force in the argument that there might be less collaboration between members on standards of quality if they were engaged in price competition with each other; in particular, members might be less ready to use the C.M.A. certification marks, with the mutual testing in each others' factories which this involves, for the most competitive lines of cable. It seems to us, however, unlikely that concerns which have invested heavily in building up a reputation for high quality, both in the C.M.A. marks and in their own individual brands, would jeopardise that good will by debasing their products in order to gain a temporary advantage over their competitors, or that, of the various means which they might employ for strengthening their competitive power, they would deliberately choose one which might have the effect of losing to British cable the commanding position which, on quality considerations, it holds and has held throughout this century in the markets of the world. Nevertheless, recognising as we do the immense importance of the maintenance of a high level of quality in this industry, we cannot dismiss altogether groundless the fear which undoubtedly exists in the industry that severe price competition of the kind which might develop in times of depression, might force some or all of the members of the C.M.A. to abandon their collaboration on quality and to meet competition by some deterioration in the quality of their products. With this in view and also having in mind the importance of maintaining a measure of stability in this industry as a vital national asset in peace and in war, we think that the R.C.M.A. should be permitted to fix minimum prices as a defence against extreme price cutting, provided that the level of those prices is no higher than will provide a reasonable profit to the lowest cost producer of each type of cable. In the event of C.M.A. members establishing minimum prices on these lines, we should think it necessary that their costs and profits should be reviewed from time to time by the appropriate government department to ensure that the minimum prices are fixed in accordance with the conditions which we have recommended.

(iii) *Covered Conductors*

284. The C.C.A. considers that its members' sales are not less than 75 per cent. of the total United Kingdom output of covered conductors, and the figures we have quoted in para. 274 of this Chapter suggest that the proportion supplied by C.C.A. members is appreciably higher. On the other hand there is no international arrangement governing imports of covered conductors (although before the war attempts were made to establish one), and there is evidence that important users have seriously considered the possibility of making their own requirements. The Association may therefore be more affected by potential competition either from abroad or from new entrants than the figures suggest. The reality of potential competition from purchasers can be judged from the fact that it is one of the conditions of the large number of C.C.A. agreements which at present accord special

prices to buyers (see paras. 165 and 171, Chapter 9) that the buyers undertake not to make covered conductors themselves. Covered conductors are bought solely by manufacturers for use as components in electric machinery and apparatus and there is, therefore, no one buyer capable of bargaining on equal terms with the associated sellers.

285. Our investigations have shown that in this as in other sections of the cable industry there is a considerable spread between the costs of different members of the C.C.A. for making the same kinds of covered conductor. The average net profit earned by C.C.A. members in 1948 on covered conductors was about 8·5 per cent. on cost* and the average earned by the three members who made the largest profit was about 15·7 per cent.† In the past the C.C.A. has determined prices on the basis of a general provision that "prices shall bear a reasonable relationship to cost" without collecting information on costs. The 1948 Agreement, however, provides for prices to be based on costs in much the same terms as are used in the C.M.A. agreements, and the association had been trying to complete the task of costing and preparing a new price list to come into force this year. The new method being used by the C.C.A. for this purpose differs from that used for rubber cable in that only the three lowest costs are averaged—but some types are only made by three concerns—and that a standard profit margin of 15 per cent. is added for all types of conductors and for all consumers.

286. As in the case of rubber cable, we consider that the system of common prices is likely to operate against the public interest, particularly by limiting the opportunity for low cost producers to reduce their prices. The considerable spread of costs suggests that there is scope for reduction and, as in the case of rubber cable, there does not appear to us to be either a sufficient concentration of purchasers or sufficient independent competition to ensure, if agreement on common prices continues, "the production . . . by the most efficient and economical means of goods of such types and qualities in such volume and at such prices as will best meet the requirements" of the market. We conclude, therefore, that the C.C.A. system of common prices should be brought to an end.

287. Technical development is rapid in this field and the C.C.A. has been devoting increasing attention in recent years to the exchange of technical information and to collaboration on research and on standards of quality. There is not, however, as in the case of the C.M.A., a long history of technical collaboration, and the C.C.A. does not operate a certification mark. Nevertheless, the possibility has to be kept in mind that here as in rubber cable vigorous price competition might lead to some deterioration in standards of quality, and we think that the C.C.A. should be permitted to fix minimum prices on the same basis and with the same provision for review as we have suggested for rubber cable.

(iv) *Submarine Telegraph Cable*

288. This is a complete monopoly of a single company (Submarine Cables Ltd.) owned by two C.M.A. members; the chief purchasers are Cable and Wireless Ltd. and the G.P.O. who, since the nationalisation of Cable and Wireless, have collaborated to an increasing extent in matters of cost and price. The profits of Submarine Cables Ltd. were high before the war and in the three years 1947-49 they averaged 10·9 per cent. on sales and were rising. The C.M.A. maintains that this business, being highly specialised

* The corresponding percentage on sales was 7·8 per cent. and is shown in column 4 of the table in para. 274.

† These figures are for the types of cable most nearly related to covered conductors; we have no separate returns for exactly those cables which are the concern of the C.C.A.

and concerned with a product which cannot be made for stock, is more speculative than other cable business and therefore that somewhat higher profits are justified. Since 1947 the G.P.O. has not only been costing its own relatively small contracts but also an increasing amount of the large purchases made by Cable and Wireless. These periodical cost investigations are clearly desirable.

289. Before the war the costs of the makers were not investigated and the only means by which the purchasers could check the reasonableness of prices was by reference to imports. There is no international agreement covering submarine telegraph cable and consequently, subject to the operation of the tariff, this check on the general level of prices in this country appears to be a real one. We think it is important that it should remain so.

(v) Telephone Cable

290. Over 90 per cent. of all the sales of telephone cable are made under a system of bulk orders placed by the G.P.O., which we discuss in the following section. There is, however, a certain volume of sales both of ordinary land telephone cable to purchasers other than the G.P.O. and of various miscellaneous types of telephone cable (e.g. switchboard cable) to the G.P.O., amounting together to about £500,000 in 1948, which are dealt with by public tender. All these sales are covered by price agreements, in some cases made by C.M.A. members among themselves and in others by C.M.A. members and other concerns, of which the purchasers have been until now unaware. These agreements are described in para. 150, Chapter 8. There is some independent competition in the field of miscellaneous telephone cable, but there are no figures showing its extent. The G.P.O. should now take appropriate steps to ensure the protection of the public interest so far as all its purchases outside the bulk agreements are concerned; as regards sales of land and other miscellaneous types of telephone cable to other purchasers we think that the price agreements operate against the public interest and should be brought to an end.

Bulk Orders

291. The G.P.O. places a bulk order with the T.C.M.A. for all its land telephone cable* and the T.C.M.A. allocates the orders amongst its members. The first G.P.O. bulk agreement for land telephone cable was a ten-year agreement taking effect from 1931, when, in return for rationalisation by the industry, the G.P.O. guaranteed orders to the T.C.M.A. for a period of ten years and limited its purchases from non-members. The present agreements run for five years, and the prices under them are fixed on the basis of cost investigations carried out by the G.P.O. Any economies in the cost of manufacture achieved during the currency of each agreement by the concerns which are costed are reflected in the prices fixed in the following agreement. We notice that there are considerable differences in costs between members of the T.C.M.A. and accordingly the choice of the concerns to be costed is a matter of some importance. It is claimed both by the C.M.A. and by the G.P.O. that this system, ensuring as it does a steady level of production, has made possible progressive savings in costs and prices. We notice that in 1938 towards the end of the period of the first agreement the average net profit on sales made by one of the principal producers was 25.9 per cent. and that in 1947 towards the end of the period of another agreement it was 23.2 per cent. The profit made by the same concern under the interim price arrangement for the first two years (1948 and 1949) of the current agreement was 9.9 per cent. and 11.5 per cent. respectively.

* Except for certain special new types of cable (see para. 134, Chapter 8).

292. The G.P.O. is an informed buyer with highly trained and experienced personnel. It is fully satisfied with the existing arrangement. The result is something very like a "closed shop" in land telephone cable, and the obvious danger to be guarded against is that of excessive rigidity and lack of enterprise on the part of the organised industry and of the permanent exclusion of "new blood". Except for the rearrangements made necessary by the formal admission to the Association in 1942 of the two concerns which had at one time been independents, the shares of the T.C.M.A. members in the orders placed by the Post Office have not changed at all since 1931 when they were first negotiated. Moreover, amongst the concerns which closed down their separate production of telephone cable in 1931 under the rationalisation scheme, four made an agreement ten years later extending their undertaking not to re-enter the field of telephone cable production for 99 years from 1941. It seems to us that a rationalisation which involves keeping some of the largest firms in the industry out of this field of production for a century and maintaining the status quo in the matter of shares of trade over a quarter of a century is unnecessarily rigid.

293. The present agreement contains new safeguards on this point of rigidity in that the G.P.O. is now free to obtain cable embodying any new principle from concerns outside the T.C.M.A., and in addition to place orders with independent concerns if such purchases will assist the export trade. These safeguards are clearly desirable. During the last decade the two largest independent concerns considered entering the field of land telephone cable production, one actually embarking on production and gaining some export orders, while a third has obtained orders from the G.P.O. for a special type of land telephone cable. There is therefore evidence of willingness on the part of independent makers to consider entering this field.

294. The G.P.O. also places a bulk order for telephone cord with members of the C.M.A. and others, organised in the Telephone Cord Manufacturers Association. The G.P.O. has, however, always reserved a part of this business for independent producers "as a safeguard against complete monopoly", the present proportion being 22½ per cent. We are told that immediately on the G.P.O. signature of the first agreement in 1936, active steps were taken by it to encourage new firms; one concern was deliberately built up (see para. 148, Chapter 8), the G.P.O. obtaining from it cords of equivalent quality at a price slightly lower than the Association price and allocating to it a gradually increasing proportion of its order.* There has been no rationalisation in connection with the cord agreement but otherwise its terms are very similar to those of the agreement covering land telephone cable, except in the matter of the reservation of a part of the order for independent makers.

295. We welcome the recommendation of the Select Committee on Estimates that the G.P.O. should make a special check from time to time to ensure that its officers remain efficient and keen buyers; on this and on the accuracy of their cost investigations rests much of the success of the system. We suggest in addition, as regards the land telephone agreement, that the G.P.O. should follow the pattern of the Cords Agreement and leave itself free in future to place a proportion of orders with independent concerns.

296. It is possible that the G.P.O. may wish in the light of the facts discussed in para. 290 to extend its system of bulk orders to other types of telephone cable; and the nationalisation of the electricity supply industry has opened up the possibility of the principle of bulk orders being extended to mains cable. We recommend that, if further bulk orders are placed, their

* The proportion was 10 per cent. under the 1936 Agreement, 15 per cent. under the 1939 Agreement and is now 22½ per cent.

existence should be publicly announced so that other concerns contemplating production may know the possibilities of the market, and that in every case careful provision should be made to safeguard the continuance and development of efficient independent competition.

The Sharing of Business—Quotas and Allocation

297. Each section of the C.M.A. and of the C.C.A. has arrangements, which differ considerably in detail, for sharing the business available by means of quotas, with their attendant penalty and bonus payments (or, as the associations prefer to call them, "contributions and receipts"); over a diminishing field which has never included the products covered by the C.C.A. these arrangements are supported by the "allocation" of orders to particular companies. It is in respect of the sharing of business that there have been in recent years the most far reaching changes in the C.M.A. and C.C.A. systems: the rates of contributions and receipts have been reduced and are now fixed below the average rate of profit that association members hope to make, although in many cases they have been close to the rate of profit actually made; wide tolerances have been introduced in many schemes so that no payment is made or received in these cases until a company's output is well above or below its quota (and sometimes no payment is made if the deficit exceeds, e.g., 50 per cent.); profit pooling, which was fairly widespread before the war, has disappeared and the C.M.A. practice of allocating orders in support of the quota system is now much less widespread. We are not here concerned with the quota or allocation system as applied to a bulk public order, which has already been discussed in paras. 291 to 295.

(a) Quotas

298. We accept the view put forward by the associations that their quotas being percentage shares do not necessarily restrict the total output of the industry. But the system, based as it is on the principle that production should be in accordance with shares which are unaffected by changes in relative efficiency and are determined for ten years ahead, seems to us to conflict with the public interest in securing the greatest output from the most efficient producers. Figures we have quoted in earlier chapters show that members' turnover has in fact differed considerably from their quotas from year to year in pre-war days as well as recently. Yet despite these yearly fluctuations the shares of the market enjoyed by the different members of the associations have, on average, remained remarkably stable over a long period.

299. The C.M.A. has argued to us that the total amount paid in penalties (or received in bonuses) is only a very small proportion of total turnover, but we do not accept this as the best measure of the effect of the payments. It seems to us more appropriate to compare them with the profit earned, and on this basis they are seen to be much more considerable: the average net profit on sales of mains cable in 1948 was 5·4 per cent. and on super tension was 3·8 per cent. and the penalty rates were 5 per cent.; a particular concern was substantially in excess in one quota scheme in the year 1948, while all the other concerns were below, and the penalty which became due by this one concern amounted in fact to more than the whole profit earned by the company on all its business in that section. When we put it to the C.M.A. that penalty rates were at least in some cases very close to the average profits made, the association claimed that the rate of profit made from any excess over quota would be higher than the average rate of profit, and suggested that the prospect of penalties would not deter any

company which could sell more. This is clearly not an adequate explanation in the example which we give, and, in general, we find it difficult to reconcile this approach with the manner in which the provisions on this subject are set out in the association agreements or with the practice followed under them. We note that members attached enough importance to the system for the quotas for rubber cable made to government departments' specifications to be suspended during the war and for a special quota to be introduced, with penalties higher than those now generally enforced, for war emergency rubber cable. It seems to us likely that the penalty payments, whatever their size, would have some influence on producers who were able to exceed their quotas by large amounts. Even if the immediate effect of penalty payments on a manufacturer in any one year was not great, the mere continuance of this part of the C.M.A. system would be certain to influence the longer term planning of members. We are strengthened in this view by the fact that it has been argued to us by the B.I.C.C. that the introduction of the quota tolerances and the reductions in the rates of contributions and receipts in 1948 resulted in "greater freedom of commercial operations [being] given to members". Examples of the practical importance attached to the quotas by members can also be found in the minutes of the association meetings. Thus we find a member of the C.C.A. explaining at a meeting in 1948 "that although his company was working in excess in the C.C.A. this was not due to any sales activity on their part. During the war they had been compelled to install additional plant to meet government departments' requirements".

300. We think it is of importance for the public interest that the most efficient or lowest cost producers should be able to expand their output in relation to others with as little hindrance as possible. It is clearly against the public interest that there should be any sharing out of business in advance and over long periods irrespective of changes in the relative efficiency of different companies. We therefore recommend that all the arrangements made by the affiliated associations of the C.M.A., and by the C.C.A. for sharing out the available business should be brought to an end.

(b) *Allocation*

301. Before the war all orders for mains cable including super tension cable, all orders for telephone cable not the subject of a bulk order, and orders for rubber cable from government departments were all subject to the C.M.A. allocation system. Under the system as it was worked before the war, members reported centrally all enquiries received, and orders were "allocated" to members on the basis of the quotas by means of the "allottee" quoting a lower price than the rest of the members. In each case the customers appear not to have been aware of the arrangement. The allocation system, which does not necessarily involve the allocation of every order, was still in force for all mains cable sales to public utilities and government departments until April, 1950, at which date it was abandoned for cable of 22 kV and under, which is overwhelmingly the largest volume of mains cable trade; the system still applies to super tension cable and to mains cable over 22 kV, although in fact only a proportion of such orders (£845,000 out of £2,762,000 in 1951) is actually allocated. The system also still applies to the miscellaneous types of telephone cable which are not the subject of bulk agreements. More recently, except in the agreements relating to telephone cable where a price differential is still the normal means of "protection", the selected member has quoted a delivery time two or three weeks earlier than that quoted by the other parties to the arrangement.

302. The C.M.A. informs us that all the agreements in regard to miscellaneous telephone cable, cords and cordage, are in course of being revised to make the arrangements for allocation apply only where the customer consents, but that it considers it necessary to retain allocation for mains cable over 22 kV and for super tension cable, in order to ensure that the maker most fitted to carry out the order gets it. This is also an interest of the purchaser and, in our opinion, the C.M.A. will obtain the same result by informing the purchaser of the facts instead of maintaining a system of allocation.

303. We asked the main purchasers—the G.P.O., the Ministry of Supply, the B.E.A. and the Railway Executive—whether they were aware of the existence of any arrangements of the above kind and what would be their attitude to such arrangements if they affected their purchases. In no case were the purchasers aware of the arrangements although suspicions had been aroused in one case. One buyer said that it would “view with disfavour a group of firms who submitted tenders designed to share the business between them”, although its objections would not be so strong if it was “able to satisfy itself from costing data in its possession that the quoted prices are fair and reasonable”. Another said that it would not “regard the offer of a reduced price on a basis limited and controlled by the association as a satisfactory substitute for *bona fide* and genuine price competition”. A third buyer said that if such a practice came to its knowledge it “would be on its guard and take any possible steps to satisfy itself that the price was reasonable and the delivery promises satisfactory”.

304. The effect of the C.M.A. “allocation” system is to conceal from the customer the fact that he is not getting competitive quotations on prices and delivery terms. It not only deprives the public of the protection of competition but also, by preserving the semblance of competition, prevents buyers from adopting alternative measures to protect themselves. The C.M.A. was unable to point to any damage which would result to the industry if the system were brought to an end, and indeed said itself that it is now its general policy to leave the customer to make his own choice of supplier. We think that this is the right attitude; the system of allocation which we have described is, we consider, likely to operate against the public interest and should be brought to an end in all cases in which it still obtains.

Restriction of Capacity

305. We have examined in Chapter 11 certain activities of C.M.A. members which appear to have limited competition, partly as a result of covenants restricting the manufacture of cable and partly as a result of the purchase and dispersal of productive capacity. The C.M.A. has denied that these incidents were part of any general restrictive policy and in most cases the purchase and closing down of capacity was claimed to be justified as a rationalisation of production. These measures inevitably had the effect of limiting the amount of competition, and two of the agreements* were expressly aimed at “avoiding unnecessary competition”. Whether or not these measures were justified at the time, no arrangements of this kind have been made in post-war years, although some of the agreements made before the war are still in force. In any event, independent competition has now reached a level at which a policy of purchase and dispersal of capacity would be ineffective. Similar activities by members of the C.C.A. have been investigated; the three instances which we have found were spread over a period of some 20 years and are not sufficient evidence to indicate anything in the

* Those described in paras. 211 and 212.

nature of a consistently restrictive policy. Neither the C.M.A. nor the C.C.A. are following such a policy today and we are satisfied that they do not contemplate doing so in the foreseeable future.

306. As regards the agreements still in force which contain covenants prohibiting manufacture, we have referred in para. 292 to those which arise out of the rationalisation of telephone cable production, and we deal in para. 316 with the special arrangements made by the C.C.A. with certain customers which also contain undertakings that the customer will not himself manufacture. Of the three other agreements which are still in force, two really amount to selling agency arrangements; the third, that between British Insulated and British Ropes (described in para. 211, Chapter 11), includes a covenant which runs until 1958 prohibiting British Ropes from any interest in manufacturing cable.* We recommend that the covenant in this last agreement should not be renewed when its term expires.

Standards and Specifications

307. We have narrated at some length in Chapter 12 the history of the development of B.S.I. standard cable specifications, with special reference to the inclusion of quality clauses. The situation was unusual in that a trade association or group of companies, with its own tests and standards, was opposing on technical grounds the inclusion of quality requirements in published B.S.I. standard specifications. C.M.A. resistance to such publication resulting necessarily in the absence of any recognised standard of quality of insulation other than the C.M.A.'s own secret standard, had the effect of putting competitors at a disadvantage. We are relieved from expressing any opinion on the technical question involved in this controversy because it is now of merely historical interest. Following upon experience gained during the war years, a compromise solution has been arrived at whereby a quality clause for the insulating material is now included in the B.S.I. specification for rubber cable—around which the battle has mainly been fought—with a “warning” to buyers that the specification may not be conclusive as regards length of time for which the cable will give adequate service. It is also agreed that there is now no technical difficulty in the way of the inclusion of clauses specifying quality of insulating material in other cable specifications. We recommend that clauses governing the quality of the insulating material (together with any warning addendum that may be thought appropriate) should be included in other B.S.I. cable specifications as soon as the necessary technical details can be agreed. We have no doubt, on the assurances now given, that C.M.A. policy will proceed on these lines. The C.C.A., which for some years opposed the publication of standards by independent bodies such as the B.S.I., has stated frankly to us that they have now “changed their minds” and are wholehearted supporters of the B.S.I. Not only is this so, but the C.C.A. in recent years has played a leading part in establishing complete B.S.I. standards.

Patents

308. C.M.A. policy on patents has been liberal. Licences have been made available to members and non-members alike, and no application for a patent licence has been refused. In 1938 a proposal was put forward for the adoption of a more restrictive policy, as a means of restraining outside competition. A document was compiled setting out possible lines along which this policy might be developed. The proposal, however, was not otherwise followed up, and we are assured that there is no intention of putting such a policy into effect. We are fully satisfied with this assurance. The C.C.A. policy in this matter has also been liberal and we have no recommendation to make in respect of patents as regards either association.

* Except for rubber insulated field telegraph cable.

Copper

309. Copper is an essential raw material of the cable industry ; and some apprehensions have been voiced to us arising out of the fact that C.M.A. and C.C.A. members, through the fact that they produce a considerable part of the supplies of copper rod and wire and through their membership of the High Conductivity Copper Association and Rod Rollers Association, are in a position to exercise control over copper supplies to independent cable makers. No one has suggested that this position has been abused. Because of the present shortage, the Ministry of Supply has introduced arrangements which should ensure that supplies are fairly distributed. If and when these arrangements come to an end, there should be sufficient safeguard against any abuse, should it ever arise, in action by the appropriate government department to ensure that supplies are fairly allocated or that competitive supplies are available either within the United Kingdom or by import. We recommend that if and when the present arrangements for regulating the supply of copper are brought to an end, the Government should continue to keep a watch on the situation, with the object of intervening if necessary—although from past experience we see no reason to suppose that such intervention will be required owing to any abuse of their position by members of the associations.

Import Restrictions

310. Certain restrictions are imposed on the import of cable from abroad under agreements to which C.M.A. members are parties. These restrictions form part of a complex whole including provisions which affect the export trade, to which our terms of reference do not extend. Accordingly we have no recommendation to make, but we have taken account of these restrictions in considering the effect of the other practices described in this chapter.

Rebates, Discounts and Other Selling Arrangements

(i) *Rubber and plastic cable*

311. There are a number of selling arrangements for rubber cable, and the common prices of the R.C.M.A. are supported by exclusive dealing discounts and rebates, aggregated quantity rebates, association rebates and definitions of purchasers eligible for trade terms. As regards that portion (about 25 per cent.) of the R.C.M.A. sales which are sold through wholesalers, the exclusive dealing arrangements mean in the case of the *R.C.M.A. member* that he may give wholesale terms (*trade* terms less a discount of 16 per cent. on delivery to the wholesaler or less a discount of 12½ per cent. on delivery direct to the wholesaler's customer) only to signatories of an R.C.M.A. wholesaler's agreement and in the case of the *wholesaler* that he can obtain wholesale terms from R.C.M.A. members only if he undertakes to deal exclusively in R.C.M.A. cable. *Trade* terms (list prices less 25 per cent.) are given to government departments, nationalised industries, electrical contractors, non-signatory wholesalers, and also to industrial users and other buyers if they have qualified electrical staff as defined by the Electrical Fair Trading Council. All buyers eligible for trade terms may agree to deal exclusively in R.C.M.A. cable and receive an annual rebate of 5 per cent. on their total purchases of R.C.M.A. cable.* There are also two types of rebate which do not depend on the buyer dealing exclusively in R.C.M.A. cable but which are given on the total value of R.C.M.A. cable which he buys. These are (a) the aggregated quantity rebate proportional to the total value of R.C.M.A. cable bought in a year on a scale

* Wholesalers willing to deal exclusively with R.C.M.A. members would, of course, obtain not this 5 per cent. rebate but wholesale terms.

starting at 2½ per cent on £1,000 and increasing up to 10 per cent. on £10,000, which is available to any buyer eligible for trade terms (including non-signatory wholesalers), and (b) the association rebates of 1 per cent. in the case of the E.W.F., and 2½ per cent. in the case of both N.E.C.T.A. and E.C.A. of S., which are paid on the total purchases of R.C.M.A. cable by the members of these associations. Apart from these general arrangements, special terms have been negotiated with the B.E.A. and the N.C.B., which, without undertaking to deal exclusively, get terms at least as good as those offered to exclusive buyers though they do not obtain a concession corresponding to the association rebates. As we have shown in Chapter 14, the total amount paid in rebates and discounts in 1948 was £2·2 million on total net sales of just under £20 million, most of which was rubber cable.

312. The arrangements involving exclusive dealing, which include some 7,000 agreements with individual buyers as well as agreements with wholesalers, have been the subject of particular criticism. It frequently happens that architects and engineering consultants specify C.M.A. cable because of the C.M.A. reputation for quality and in the absence, until recently, of any other recognised quality standard. A wholesaler or user may thus be obliged to buy a certain quantity of C.M.A. cable. While he might be quite willing to purchase also from non-C.M.A. sources, the exclusivity rebate frequently has the effect in practice of confining his purchases to C.M.A. cable and thus of shutting out the independent maker from a large part of the market. These arrangements have been administered with moderation: there is no system of enforcement by stop list, and during the war, non-exclusive buying was frequently permitted without sacrificing rebate when an insistence on exclusive buying would have conflicted with public requirements. The system has been defended by the C.M.A. as being necessary to deal with the situation in which independent makers may concentrate on cheap and easy lines, leaving the buyer to rely on C.M.A. members for the less lucrative lines. In our view, C.M.A. members should meet competition even on "bread and butter" lines without the aid of exclusive agreements. The existence of the large number of such agreements is undoubtedly a serious obstacle in the way of independent makers, and we conclude that the exclusive dealing provisions, both with wholesalers and with other buyers, are contrary to the public interest and should be brought to an end.

313. The aggregated quantity rebate and the association rebates also tend to make independent competition more difficult. While an ordinary quantity rebate is designed to reflect economies in production and distribution costs brought about by the placing of large orders with one firm, the aggregated quantity rebate appears to us rather to be a means of putting pecuniary pressure on the customer to buy from a group of makers. We also see considerable disadvantage in the association rebates, whose main effect is to provide a financial incentive to contractors and wholesalers to join particular associations, and to members of those associations to buy from a particular group of makers. Both rebates make it more difficult for independent makers to find a market. We recommend that both these rebates should be brought to an end.

314. The denial of trade terms to retailers and to industrial users who have no qualified electrical staff may also properly be described as restrictive of competition. The cables most affected by this restriction are those for heating appliances, electric motors, etc., which may cause danger if not properly installed. Though we are not fully persuaded of the need for an agreement to impose this restriction, we are unable to say that it is contrary

to the public interest. It may be regarded as a prudent if perhaps over-stringent precaution, and we therefore make no recommendation with regard to it.

(ii) *Mains Cable*

315. In the case of mains cable there is only one special rebate arrangement. N.E.C.T.A. receives a rebate of 5 per cent. on the invoice value of the purchases by its members of M.C.M.A. cable. We recommend that this rebate should cease to be paid; the objections to it are the same as the objections to the association rebates paid in respect of rubber cable which we have set out in para. 313.

(iii) *Covered Conductors*

316. The C.C.A. has arrangements under which certain buyers receive a rebate in return for undertakings to buy a minimum proportion of their supplies from C.C.A. members and not themselves to make covered conductors. The C.C.A. told us that when its new price list is published, it intends to bring the arrangements with special customers to an end. This would in any event seem to follow our recommendation in regard to common prices and we recommend that the undertakings by purchasers not to make covered conductors and to buy a proportion of supplies from C.C.A. members should be discontinued.

317. The C.C.A. have unwritten arrangements with some 70 customers in accordance with which they pay aggregated quantity rebates on the basis of the total purchases of those customers from all C.C.A. members. This arrangement has the same disadvantages as the equivalent practice for rubber cable, and for the reasons we have already given, we recommend that it should be brought to an end.

SUMMARY OF CONCLUSIONS

318. Our conclusions may be summarised as follows:—

(1) The restriction of members' freedom which is involved in their having to submit new designs and types to their associations for approval is a necessary concomitant of the minimum standards of quality established by the associations and has been reasonably administered (para. 272).

(2) A system of purchasing mains and super tension cable which is in the long term interests both of the consumer and of the producer will have to be worked out by the B.E.A. with the industry. The present arrangement for C.M.A. members' costs to be investigated by independent accountants is in the public interest and so long as C.M.A. members act together as sellers of these types of cable, there should be an obligation on them, in the ranges in which no competition exists, to submit their costs to the B.E.A. in order to establish that the prices charged are reasonable (para. 278). Prices to buyers other than the B.E.A. should bear a direct relationship to the prices charged to the B.E.A. and this relationship should be reasonable and made known (para. 279).

(3) The system of common prices for rubber cable and the C.C.A. system of common prices for covered conductors should be brought to an end (paras. 282 and 286).

(4) As a defence against extreme price cutting the C.M.A. and C.C.A. should be allowed to fix minimum prices giving no more than a reasonable profit to the lowest cost producer of each type of cable; if minimum prices are established on this basis, costs and profits should be reviewed by the appropriate government department from time to time to ensure

that the prices are fixed in accordance with the conditions which we have recommended (paras. 283 and 287).

(5) So long as there is no independent competition in submarine telegraph cable the periodical cost investigations which are now made are clearly desirable. Submarine telegraph cable is outside the international agreement and it is important that it should remain so (paras. 288 and 289).

(6) We suggest that the G.P.O. should leave itself free in future to place a proportion of orders for land telephone cable with independent concerns (para. 295) and should take appropriate steps to ensure the protection of the public interest for all its purchases of telephone cable outside the bulk orders (para. 290). Price agreements for sales of telephone cable to purchasers other than the G.P.O. should be brought to an end (para. 290).

(7) If further bulk orders are placed, their existence should be publicly announced and provision should be made to safeguard the continuance and development of efficient independent competition (para. 296).

(8) The quota systems of the C.C.A. and of the affiliated associations of the C.M.A. should be brought to an end (para. 300).

(9) The system of allocations operated by C.M.A. members and others should be brought to an end in all cases in which it still obtains (para. 304).

(10) The covenant entered into by British Ropes Ltd., in which they undertake not to make cables, should be allowed to lapse (para. 306).

(11) We welcome the co-operation of the C.M.A. and C.C.A. on the questions of quality clauses in B.S.I. specifications and we recommend that clauses governing the quality of the insulating materials (together with any warning addendum that may be thought appropriate) should be included in all B.S.I. cable specifications (para. 307).

(12) The C.M.A. and C.C.A. policy on patents has been liberal and we have no recommendation to make (para. 308).

(13) When the present arrangements for regulating copper supplies are brought to an end the Government should continue to keep a watch on the position to ensure that supplies are fairly allocated or that competitive supplies are available either within the United Kingdom or by import (para. 309).

(14) We make no recommendations as regards import restrictions, because they form part of a complex whole including provisions affecting the export trade which are outside our terms of reference (para. 310).

(15) The exclusive dealing provisions in agreements with wholesalers and other buyers of rubber cable should be brought to an end (para. 312).

(16) The aggregated quantity rebates and association rebates payable in connection with rubber cable and the rebate paid to N.E.C.T.A. on purchases by its members of mains cable should cease (paras. 313 and 315).

(17) The C.C.A. aggregated quantity rebates and their agreements with buyers who undertake not to make covered conductors should be brought to an end (paras. 316 and 317).

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25th April, 1952.