

APPENDIX 1

(Referred to in paragraph 15)

I. Terms of Reference and Conclusions of Sub-Committee on Fixed Retail Prices, 1920

Terms of Reference:

To report the extent to which the principle of fixing a minimum retail price by Manufacturers or Associations prevails; what are its results, and whether the system is, in the interests of the public, desirable or otherwise.

Conclusions:

Our view then, in regard to the general question, is that the system of fixing retail prices as between the four classes referred to above, viz., (1) the manufacturer, (2) the wholesaler, (3) retailer, and (4) the public, is (subject to the general proviso stated hereafter) to the advantage of the latter, in that (1) in times of scarcity it does in fact check the undue inflation of prices, (2) in times of plenty it tends to ensure to all classes, including labour employed in manufacture and distribution, a fair rate of remuneration for the services respectively performed by them, and (3) in all conditions tends to prevent speculative dealing by the middleman, who is prevented from taking undue advantage of violent market fluctuations and allocating to himself what properly belongs either (a) to the consumer, or (b) to the trader or manufacturer. These remarks are, however, subject to the overriding consideration that it is necessary that the price charged by the original producer or manufacturer shall be a fair and reasonable one, and not one which yields him an unreasonable profit or allows him to exploit for his own advantage the various conditions of the market either in raw materials, labour or other factors of production. The witnesses who appeared before us, however divergent their views were on other aspects of the question, were unanimous on this point, that provided the original price, charged by the producer to the particular purchaser to whom he sells is fair and reasonable, the further steps in the transactions as between wholesalers, retailers and the consumer may be fixed and controlled to the advantage rather than to the detriment of the latter. The final point therefore on which we have to express our view is as to what steps are practicable to ensure a "fair start" in the case of those articles for which a retail price is fixed. The methods suggested to us to this end are three, viz. :—

1. That a department shall be set up whose duty it shall be to investigate at the source the actual cost of every article of general use and to lay down a price beyond which the producer may not sell. In our view this plan, though it would undoubtedly check profiteering in all its forms, would be far too cumbersome and costly to justify its adoption, even if it were practicable, apart from the fact that it would perpetuate and render an integral part of the national life the system of Government and bureaucratic control.

It would also, we believe, hamper unduly the development of industry and initiative. It would require legislation of an intricate and comprehensive character going far beyond anything which it is believed would commend itself at present to public opinion. In short, we cannot recommend it as a practical solution to the problem.

2. A scheme has been suggested to us which has, we believe, already been adopted in certain trades, and which in our opinion deserves further consideration and might eventually, subject to any modifications which experience may prove necessary, lead to a practical solution. As, however, legislation which might be difficult to secure would be required to render its adoption effective we cannot see our way to recommend it at the moment as a practical solution of the question on which we are asked to report.

The method suggested may be summarised as follows:—

"That every Association (as defined in the Report of the Committee on Trusts) which fixes retail selling prices should be required to obtain from its members, and at the end of each six-monthly period publish, or deposit with the Board of Trade, a statement showing (1) the average trading profit and the average net profit in relation to the turnover of the industry in so far as it is covered by such Association; (2) the average ratio of turnover to capital; (3) the average wages earned per hour of skilled, semi-skilled and unskilled labour. Such a statement would it is suggested enable the consumer to judge whether the price he was called upon to pay was reasonable in view of all the circumstances."

3. The third method is the one recommended in the Report of the Original Committee on Trusts, which provided in effect for the setting up of a tribunal under the control of the Board of Trade or other Department having charge of commercial matters, which could investigate specific complaints of excessive charges on the part of monopolies, trusts or combinations, and would be empowered to take or recommend such action thereon as they might consider advisable. We cannot at present suggest any procedure more likely to attain the object in view, viz., that in any trade where retail prices are fixed, facilities should be afforded for ensuring that the prices at which the goods controlled are originally put on the market by the producer are not unfair or excessive in view of all the circumstances.

Addendum by Mr. John Hilton to the Report of the Retail Prices Sub-Committee

I have signed the Report because I agree in the main with its account of the working of the fixed retail prices system and with its recommendations, but I desire to add the following observations:—

(1) Where the system of fixed retail prices is accompanied by preferential discounts or rebates conditional upon the retailer agreeing to sell no goods other than those made by the firm or association which fixes the price, the system is likely to operate adversely to the interest of the public. There is much to be said in support of the deferred rebate, as for example, that it enables an association to stabilise prices without the risk of customers placing their orders elsewhere whenever the association's prices happen momentarily to be above those of outside manufacturers and coming back to the association when its prices are comparatively favourable.

In this way the deferred rebate makes for steadiness of prices and continuity of business. On the other hand, exclusive dealing discounts and rebates have the effect in large part of closing the channels of the distributing trade to actual or potential manufacturers outside the association, and to that extent serve to fortify monopolies, restrict freedom of enterprise and competition, and enable immoderate prices to be exacted. Weighing these considerations against each other, I am of opinion that discounts or rebates conditional upon exclusive dealing are on the whole more harmful than beneficial, and I consider that the giving of such discounts or rebates should be made illegal.

(2) I am not satisfied that the ground surveyed in the course of this investigation has been sufficiently wide to justify treating as negligible the danger of extravagant trading discounts being given to retailers as a result of competition between "association" and "outside" firms to secure the retailers' interest. It seems to me probable that wherever there is an incomplete monopoly subject to a danger of competition, either from non-associated manufacturers at home or from manufacturers abroad and where the normal method of distribution is through a body of merchants or retailers, the policy of fixed prices will generally be accompanied by a practice of immoderate discounts.

(3) In regard to the references in the body of the Report to the differential discounts given to large and small retailers, I wish to add that the differential discounts at present given by some firms and associations represent far more than the saving in expense to the manufacturer in selling in large instead of small parcels, and works out in practice as a subsidy given to the large shop or store at the expense of the small shop. I suggest that retailers' organisations would do well to look into this matter and take steps to ensure that the issue between the small and the large shop is not decided with loaded dice.

(4) The withholding of supplies of proprietary articles to retailers who are deemed not to be selling at the stipulated prices is, I understand, a frequent occurrence in the case of co-operative societies. Under the method of co-operation the funds accumulated at the end of the trading year, which in a private business would be taken as profit, are distributed in the form of a dividend among the members of the society in proportion to their purchases. Manufacturers of proprietary articles, acting under pressure from the Proprietary Articles Trade Association, have sought to stipulate that co-operative societies shall add to the selling price of the proprietary article a sum equal to the dividend which will eventually be paid, and have refused further

supplies to co-operative societies who have declined to comply with this condition. This is a particular instance of one general result of the fixed retail price system, which is that retailers who by reason of their circumstances and methods are able to do with a trading margin lower than the average are precluded from doing so. In the case of co-operative societies, whose object is to eliminate profit and distribute among members any surplus trading margin, the stipulation mentioned above strikes at the root of the principle on which they operate.

II. Terms of Reference and General Conclusions of Committee on Restraint of Trade, 1930

Terms of Reference:

To consider present trade practices which result in withholding from particular retail traders supplies of goods in which they wish to deal or which prevent the resale of such supplies except upon conditions imposed by the suppliers, and to report whether, in their opinion, all or any of such practices are detrimental to the public interest, and, if so, what alterations in the existing law are necessary to prevent the continuance of such practices.

General Conclusions:

- (a) We hold that the ordinary right of freedom to contract ought not to be withdrawn without some compelling reason.
- (b) We do not regard the price maintenance system as free from disadvantages from the public point of view, but we are not satisfied that if a change in the law were made there is any reason to think that the interests of the public would be better served.
- (c) We do not regard the restrictions upon the admission of retailers to the newspaper trade and the somewhat similar arrangements in the trade in photographic goods as detrimental to the public interest either in principle, or so far as we can see, in their actual operation.
- (d) Though the withholding from retailers of goods in which they wish to deal may cause grievances and in some cases no doubt hardships, we do not consider that any compelling reason for a change in the law has been established.
- (e) We see no justification of principle for the refusal of certain traders to supply goods to co-operative societies; but we regard the dispute between the societies and the traders in question as of the nature of a trade dispute, and we do not find ourselves able to make any special recommendation in this case.
- (f) The trade practices into which we have inquired impinge upon a much wider problem—the problem of monopolistic combinations and trusts—which is outside the scope of our reference. If, at some future time, the question of public policy in relation to this wider problem should be examined, the possibility of support being given by the price maintenance system and boycotts to monopolistic combinations and trusts ought, we think, not to be overlooked.

III. Terms of Reference and Conclusions and Recommendations of Committee on Resale Price Maintenance, 1948

Terms of Reference:

To consider the practice by which minimum wholesale and retail prices or margins for the resale of goods are fixed by producers, and its effects on supply, distribution and consumption, and to report whether in the light of present conditions, and particularly of the need for the maximum economy and efficiency in the production and distribution of goods, any measures are desirable to prevent or regulate its continuance.

Conclusions and Recommendations:

159. Our inquiry has revealed a conflict between two apparently contradictory aims—the need on the one hand to encourage the development of more economical methods of distribution and the reduction of retail prices and on the other hand to maintain the quality, continuity of production and ready supply to the public of established British brands.

160. We are satisfied that the elimination of price competition over the greater part of the distributive trades is not consistent with the need for the maximum efficiency and economy in production and distribution so necessary in the present economic circumstances. Bearing in mind, therefore, the probable continued growth of branding and standardisation, we have been concerned to find some solution which would mitigate the harmful effects of resale price maintenance as now in operation and guarantee a substantial degree of flexibility in the distributive structure.

161. In arriving at our conclusions we have drawn a distinction between the fixation and maintenance of resale prices by an individual manufacturer and the collective administration of resale price maintenance schemes. The effects upon the public interest of these two methods of maintaining prices and their impact on the economy are, in our opinion, different.

162. We take the view that the manufacturer of a branded article remains responsible for the quality of the goods sold under his own brand; he cannot, therefore, be indifferent to the terms on which his goods are sold to the public. Our evidence has shown that well-known branded articles are particularly liable to be used as loss-leaders by distributors and we are satisfied that their use in this way has not brought any permanent advantage to manufacturers, distributors or the shopping public as a whole. Resale price maintenance offers a convenient means of protecting brands against misuse by distributors in this or other ways.

163. We recommend that no action should be taken which would deprive an individual producer* of the power to prescribe and enforce resale prices for goods bearing his brand.

164. Producers are not, in our opinion, entitled to use resale price maintenance to obstruct the development of particular methods of trading, to impede the distribution by another manufacturer of competitive goods or to deprive the public of the benefits of improvements in distribution. Public policy requires adequate distribution of goods with provision for such price reductions as are justified by low-cost distribution or by a regular policy of distributing surplus profit to the customer.

165. We recommend that the appropriate Government Departments should invite consultations with the principal national organisations in trade and industry to consider the most satisfactory means of ensuring that this policy is made effective.

166. We can find no adequate reason to justify a manufacturer either in interfering with the terms on which the distributor disposes of another manufacturer's goods or in surrendering any part of his interest in the resale prices of goods bearing his brand for this purpose. Collective price maintenance schemes appear to us to have led to the comprehensive regulation of competition in the distributive trades and to have impeded the development of economical methods of trading and prevented the reduction of distributive costs and prices. Associations of traders designed to bring their collective power to bear to maintain their members' prices are, in our view, undesirable and we note that the Commission set up under the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, has already been asked by the Board of Trade to investigate two of the industries from which we received evidence.

167. We therefore recommend that steps be taken to render illegal the application of sanctions which extend beyond the remedies open to an individual producer for any breach of resale price maintenance conditions.

* We use this word to include manufacturers, wholesalers, growers, importers, etc. Our recommendations chiefly relate to manufacturers and others who mark goods with their own brand.

Note by Mr. Henry Smith

(1) I support the recommendations adopted by my colleagues, as I consider that they represent a marked advance from the present position. I cannot, however, without some reservations, accept their interpretation of the evidence given before us, nor admit the whole of the logic by which they reach their conclusions.

(2) In my opinion the criticism of resale price maintenance which some of our witnesses presented, and which is set out in the report, is entirely convincing. Whether enforced by an individual manufacturer or by a trade association, it inevitably leads to retail prices being higher than they would otherwise be in areas and under conditions where distribution costs are low, and to an unnecessary proliferation of retail outlets. The recommendations of our report, if adopted, will lessen these evils, but will in my opinion only remove them if it proves impossible for resale price maintenance to be operated without the support of trade associations.

(3) I am satisfied that the manufacturer of a branded article is interested in his product being sold to the public on terms which maximise the continuity and stability of production, and that he often believes that this is most easily achieved by fixing a uniform selling price. The selling price which he chooses, is, however, in my opinion, likely to be that which will maximise his profits. I do not mean by this that he will seize upon every opportunity ruthlessly to exploit the public, regardless of the consequence to himself or them, nor that no other considerations will influence his conduct, but that one may in general expect that self-interest, however enlightened, is likely to provide his dominant motive. The producer of a branded product enjoys to a certain extent a private market, and can thus choose the price which he will charge, at the expense of losing sales or increasing advertising costs if he sets a higher rather than a lower price. The fact that we have not encountered a perfect monopolist engaged in exploiting the public . . . does not surprise me, nor does it lessen the weight of the argument. Having chosen the retail price most attractive to him, if the manufacturer is free to maintain it by withholding supplies from distributors who do not accept his decision, his opinion is substituted for the impersonal forces of the market.

(4) The public are interested in paying no more than the necessary cost of distribution, including fair competitive profits to the distributor. As the costs incurred by distributors are not uniform, the public interest is in conflict with that of the manufacturer in uniform prices. But certain aspects of these two interests, that of the manufacturer and of the public, may coincide if the effect of price competition is to disrupt the continuity of production to such an extent as to increase the cost of production by more than it reduces the cost of distribution. Here I distinguish between ordinary price competition, in which the distributor expects a share in his overhead costs to be provided by all sales, and the use of loss-leaders, of which the name is self-explanatory. If competition of the former kind is in operation, and the basic assumption of a free enterprise economy is that it is normal, I believe that the public interest is served by its free play. Competition of the latter type may be against the public interest: both may cause embarrassment to the manufacturer. If, however, a distinction is to be drawn between the two, the responsibility should not be left to the manufacturer, whose interest is not necessarily identical with that of the public.

(5) I am impressed by the evidence presented by manufacturers to the effect that the use as "loss-leaders" of branded goods of which the normal retail price has been widely advertised may break down the continuity of production upon which low-cost production largely depends, although I am not convinced that the practice of selling at uniform retail prices does not contribute to the problem by providing a background against which price-cutting is obvious, and thus strategically effective. I cannot, however, accept the implied view of my colleagues that the two contradictory aims of reducing distributive costs and maintaining the supply of branded goods cannot be subjected to comparative evaluation. The influence of resale price maintenance is continuous and actual, while the disturbing effect of price competition upon the sale of branded goods may only operate occasionally. This is of particular importance in the circumstances of the present time when we are faced with an apparently intractable shortage of labour in the basic industries at the same time that the absorption of labour by distribution is a cause of concern. Moreover, on the evidence

presented to us I would hold that the effect upon the continuity of sales is the same whether price competition be "legitimate", i.e. reflecting low costs of distribution, or "strategic", i.e. resulting from sales below cost intended to attract custom. Thus to accept in principle the right of the manufacturer to determine retail prices is also to deny in principle the usefulness of competition in the distributive trades.

(6) It is only because I do not think that legislation designed to limit the use of loss-leaders would be easy to frame, or practicable to operate, that I am prepared to support the recommendations of my colleagues that resale price maintenance should be allowed to continue in a restricted form. But I consider that the evil consequences of resale price maintenance in its present form greatly outweigh the evil consequences which might result from an extension of even the most reckless price competition by distributors.

In my view even the power left to the individual manufacturer by these proposals may prove to be more harmful to the public interest than would be the complete restoration of free price competition in the distributive trades.

APPENDIX 2

(Referred to in paragraph 20)

In the course of our inquiry we have considered statements about arrangements affecting the supply or processing of the following goods which appeared to us to have some relevance to our report. We have not in all cases attempted to determine whether or not these arrangements were completely within our reference. Some of the arrangements affect only certain sections of the trade in these products and others are operated only in certain parts of the United Kingdom.

Agricultural machinery	Laboratory ware
Baths	Lead sheet and pipes
Bicycles and motor cycles	Leather and grindery for footwear repairs
Biscuits	Lime
Books	Linoleum
Bricks	Mechanical clocks
Bright steel bars	Medicinal and toilet preparations
Carpets and rugs	Memorials
Casein plastic	Metallic slide fasteners
Cement	Millinery
Certain chemicals	Motor vehicles and accessories
Chain link fencing	Newspapers and periodicals
Chocolate and cocoa	Paint and paint materials
Cinematograph films	Paper
Confectionery	Petroleum products
Copper cylinders and boilers	Pins, hair grips, etc.
Cotton velvet	Plasterboard
Curtain rails	Radiator blocks
Dampcourses	Radio batteries
Certain electrical goods	Radio valves and cathode ray tubes
Electric lamps	Refrigerators
Engineers small tools	Rubber footwear
Fertilisers	Salt
Fibre building board	Salt glazed pipes
Fine art publications	Sanitary earthenware
Flat glass	Sanitary fireclay and other clayware
Flushing cisterns and copper balls	Sports goods
Galvanised tanks	Starter batteries
Garage equipment	Stationery
Glazed and floor tiles	Steel conduit
Groceries	Steel mesh reinforcement
Hand tools	Steel wire
Hard fibre cordage	Surgical dressings
Hardware	Tobacco and cigarettes
Heating boilers and radiators (cast iron)	Typewriters
Jute goods	Wallpaper
	White fish
	Wines and spirits
	Wire rope

APPENDIX 3

(Referred to in paragraph 24)

Principal Concerns and Organisations from which evidence was received

(Those which furnished oral as well as written evidence are denoted by *)

British Bath Manufacturers' Association
South Eastern Brick and Tile Federation
Stock Brick Manufacturers' Association
Cast Iron Heating Boiler and Radiator Manufacturers Association Ltd.
British Ironfounders' Association
Cement Makers' Federation
Chain Link Fencing Association
Copper Ball Manufacturers' Association
Copper Cylinder and Boiler Manufacturers Association
Scottish Association of Manufacturing Coppersmiths
Curtain Rail Manufacturers' Association
The Dampcourse Agreement
Fibre Building Board Agents' Association Ltd.
Insulation, Building and Hardboard Association Ltd.
Flushing Cistern Makers' Association
Galvanised Tank Manufacturers Association
Gypsum Building Products Association
Lead Sheet and Pipe Manufacturers' Federation
National Paint Federation
Society of British Paint Manufacturers Ltd.
Paint Materials Trade Association
Reinforcement Conference
Association of Steel Conduit Manufacturers
National Salt Glazed Pipe Manufacturers' Association
Midland Pipe Association 1940
British Sanitary Earthenware Manufacturers' Association
British Sanitary Fireclay Association
National Clayware Federation
Glazed and Floor Tile Manufacturers' Association
National Council of Building Material Producers
Wallpaper Manufacturers Employers' Association
National Wallpaper Council
Sheet and Plate Glass Manufacturers Association*
British Chemical Ware Manufacturers' Association Ltd.
Lead Oxide Convention
White Lead Convention
Southern Lime Association
British Salt Federation
British Sulphate of Ammonia Federation Ltd.
Fertilizer Manufacturers Association Ltd.
Superphosphate Manufacturers Association Ltd.
National Sulphuric Acid Association Ltd.
Surgical Dressings Manufacturers' Association
Association of British Pharmaceutical Industry
Imperial Chemical Industries Ltd.
Cleveland Petroleum Co. Ltd.
Esso Petroleum Co. Ltd.
Fina Petroleum Products Ltd.
National Benzole Co. Ltd.
Power Petroleum Co. Ltd.
Regent Oil Co. Ltd.
Shell Mex & B.P. Ltd.
Vacuum Oil Co. Ltd.
Agricultural Engineers' Association
British Clock and Watch Manufacturers' Association Ltd.
Radiator Block Manufacturers Association

Bright Steel Bar Association
 British Steel Wire Industries Association
 Federation of Wire Rope Manufacturers of Great Britain
 Associated Ceiling and Table Fan Manufacturers
 Associated Manufacturers of Domestic Electrical Appliances
 Associated Manufacturers of Domestic Electric Cookers
 Association of Manufacturers of Electric Wiring Accessories
 Association of Manufacturers of Small Switch and Fuse Gear
 British Synchronous Clock Conference
 Electric Discharge Lamps Auxiliaries Council
 Electric Light Fittings Association
 Electric Water Heater Manufacturers Association
 Electric Lamp Manufacturers Association
 Association of Radio Battery Manufacturers
 British Starter Battery Association
 British Radio Valve Manufacturers' Association
 Edge Tool Manufacturers' Association
 File Trade Association
 Garden Shear Association
 Light Edge Tool and Allied Trades Association
 Association of United Kingdom Plier Manufacturers
 Saw Trade Association
 Scythe, Sickle and Hook Manufacturers' Association
 British Hacksaw Makers' Association
 British Hard Metal Association
 Cut Thread Screwing Tool Manufacturers' Association
 Ground Thread Tap Association
 Milling Cutter and Reamer Trade Association
 Twist Drill Traders' Association
 Welded & Brazed High Speed Steel Tool Trade Association
 Portable Electric Tool Manufacturers' Association
 Metallic Slide Fastener Association
 Pin and Allied Trades Association
 Federation of British Carpet Manufacturers
 Association of Manufacturers of Mohair and Pile Floor Rugs and Mats
 Linoleum Manufacturers' Association
 Hard Fibre Cordage Federation
 London Millinery Manufacturers' Association
 South of England Hat Manufacturers Federation
 National Association of Cut Sole Manufacturers
 Rubber Footwear Manufacturers' Association
 Apparel and Fashion Industry's Association (of Great Britain and Northern Ireland)
 Incorporated National Association of British and Irish Millers Ltd.
 National Association of Biscuit Manufacturers
 Cocoa, Chocolate and Confectionery Alliance Ltd.*
 Cadbury Bros. Ltd.
 J. S. Fry & Sons, Ltd.
 The Nestle Co. Ltd.
 Rowntree & Co. Ltd.
 Joseph Terry & Sons, Ltd. } *
 Federation of Home and Export Tobacco Manufacturers Ltd. }
 Imperial Tobacco Company (Of Great Britain and Ireland) Ltd. }
 British Trawlers' Federation Ltd.
 Brands (Wines and Spirits) Protection Association
 Scotch Whisky Association
 British Paper and Board Makers' Association (Incorporated)
 Association of Corrugated Paper Makers
 Music Publishers' Association Ltd.
 Newspaper Proprietors Association, Ltd.
 The Newspaper Society
 Periodical Proprietors Association Ltd.
 The Publishers Association

Casein Plastic Association
Casein Button Manufacturers Association
Federation of British Manufacturers of Sports and Games Ltd.
Golf Ball Manufacturers' Conference
Wholesale Memorial Manufacturers Association
Unilever Ltd.

Building Industry Distributors
Distributors of Builders Supplies Joint Council
British Federation of Plumbers' Merchants
Scottish Metal and Plumbers' Merchants' Federation
Wallboard Importers' Distributors' and Merchants Association of the United Kingdom
National Association of Wholesale Paint Merchants
National Sheet Glass Merchants' Association
Wall Paper Merchants' Association
British Laboratory Ware Association Ltd.
Electrical Wholesalers Federation
National Association of Radiator Repairers Ltd.
Motor Factors' Association
Federation of Hardware Factors
Hand Tool Wholesale Factors' Association
National Association of Rope & Twine Merchants
Council of Leather and Grindery Merchants' Associations of Great Britain
Millinery Distributors Association
British Federation of Wholesale Confectioners Ltd.
Wholesale Tobacco Trade Association (of Great Britain and Northern Ireland)
Grimsby United Fish Merchants' and Fish Curers' Association Ltd.
Federation of London Wholesale Newspaper Distributors
National Association of Paper Merchants
Kinematograph Renters' Society Ltd.
Co-operative Wholesale Society Ltd.
Plate Glass Association
National Pharmaceutical Union
Ulster Chemists' Association
Agricultural Machinery and Tractor Dealers Association Ltd.
Electrical Contractors' Association of Scotland
The NECTA Ltd. (The National Electrical Contractors' Trading Association)
Radio and Television Retailers Association (R.T.R.A.) Ltd.
National Association of Cycle Traders
National Federation of Ironmongers
Scottish Retail Drapers Association
Incorporated National Federation of Boot Trades Associations Ltd.
National Union of Retail Confectioners
National Union of Retail Tobacconists
Wine and Spirit Association of Great Britain (Incorporated)
J. Sainsbury Ltd.
The Booksellers Association of Great Britain and Ireland
National Federation of Retail Newsagents, Booksellers and Stationers
Cinematograph Exhibitors' Association of Great Britain and Ireland
Photographic Dealers' Association
Federation of Sports Goods Distributors Ltd.
Lewis's Ltd.*
John Lewis Partnership Ltd.
F. W. Woolworth & Co., Ltd.*
The Chemists Federation of Manufacturers, Wholesalers and Retailers of Medical and Pharmaceutical Products
Proprietary Articles Trade Association*
Unichem Association and Unichem Ltd.
Boots Pure Drug Company Ltd.*
Scottish Agricultural Machinery Association
Agricultural Co-operative Association Ltd.

Association of Manufacturers and Distributors of Garage Equipment
 British Refrigeration Association
 Typewriter (& Allied) Trades Federation of Great Britain and Ireland
 The Electrical Fair Trading Council
 British Cycle & Motor Cycle Manufacturers & Traders Union Ltd. }
 Cycle Trade Union
 British Motor Trade Association
 Society of Motor Manufacturers and Traders Ltd. } *
 Motor Agents' Association Ltd.
 Scottish Motor Trade Association Ltd.
 The National Hardware Alliance Ltd.
 Cotton Velvet Council
 British Jute Trade Federal Council
 Grocery Proprietary Articles Council*
 Fine Art Trade Guild
 Stationers' Association of Great Britain and Ireland
 Association of British Dental Traders

Cheap Food League
 Parliamentary Committee of the Co-operative Union Ltd.
 Fair Prices Defence Committee
 Ministry of Food
 Ministry of Health
 H.M. Stationery Office
 Federation of British Industries
 Trades Union Congress
 Urban District Councils Association
 Winchester Group Hospital Management Committee

We also obtained evidence or received information from a number of individuals (manufacturers, distributors and members of the general public).

APPENDIX 4

(Referred to in paragraph 168)

Proposals for amending the law relating to Trade Association Tribunals put forward by the British Motor Trade Association

"It is . . . suggested that domestic tribunals should be recognised by statute and be made subject to the surveillance of the Courts. . . .

If the conduct of domestic tribunals is brought under more direct surveillance, any practices which are thereby enforced must of necessity equally be subject to public enquiry in the Courts. In these circumstances it is submitted that most malpractices will quickly disappear and the public conscience will not be disturbed by the thought of extra legal proceedings.

It is further suggested that legislation incorporating the following points would adequately cover the position and perpetuate the many advantages of domestic tribunals whilst at the same time nullifying possible abuses:—

- (a) That statutory authority be given to the domestic tribunals operated by such trade associations certified or registered as trade unions with power to administer oaths, to subpoena witnesses, etc., as in the case of arbitrations.
See *Medical Act 1950* Sub-section 16 (i).
See the *Arbitration Act 1950* Section 12.
See the *Solicitors (Scotland) Act 1933* Section 29.
See the *Solicitors Acts, 1932-1941* and in particular the 1932 Act Section 4 and Sub-section 6 (2).
- (b) That all such tribunals should be presided over by a Chairman who must be approved by the Lord Chancellor and must be a Barrister of at least seven years' standing. A minimum scale of fees to be paid by the Association to such chairmen could be provided.
Compare the *Medical Act 1950* Sections 15 and 17.
Compare the *Architects (Registration) Act 1931* Section 7.
Compare the *Solicitors (Scotland) Act 1933* Section 24.
- (c) That in addition to the Chairman, the tribunal shall consist of one manufacturer and one retailer member, selected from a panel nominated by the Council of the Association concerned.
See *Medical Act 1950* Section 15.
See the *Architects (Registration) Act 1931* Section 7.
See the *Solicitors (Scotland) Act 1933* Section 24.
- (d) That the Chairman shall be able, if he so desires, or if so directed by the High Court, to state any question of law arising in the course of the hearing in the form of a special case for the decision of the High Court.
See the *Arbitration Act 1950* Section 21.
- (e) That the complainee shall have a right of appeal against the finding and/or penalty on a point of law to a separately constituted Appeal Committee and thereafter to the High Court.
Compare the *Medical Act 1950* Section 20.
Compare the *Arbitration Act 1950* Section 16.
See the *Architects (Registration) Act 1931* Section 9.
See the *Solicitors (Scotland) Act 1933* Section 28.
See the *Solicitors Act 1932* Section 8.

Alternatively it is suggested that instead of a right of appeal to the High Court the complainee should have the right to require the matter to be referred to arbitration under the *Arbitration Act 1950* as is provided under the *Tomato and Cucumber Marketing Scheme (Approval) Order 1950* (No. 1327) and the *British Wool Marketing Scheme (Approval) Order* (No. 1326). In that the tribunal must of necessity in many cases award a penalty and in

that an arbitrator can normally only award damages, it would be necessary to give an arbitrator the specific power to award a penalty as is done under both the above schemes.

- (f) That the Chairman shall have a casting vote and shall be entitled to refuse to accept the decision of the tribunal and to declare the proceedings a nullity in all cases where he considers it to be unjust or contrary to the public interest.
There appears to be no statutory precedent.
- (g) That proceedings before the tribunal shall be conducted on the lines of a hearing in the High Court, with the rights of examination, cross-examination and re-examination of witnesses.
Compare the *Medical Act*, 1950, section 16.
Compare the *Arbitration Act*, 1950, section 12.
Compare the *Architects (Registration) Act*, 1931, section 13.
Compare the *Solicitors (Scotland) Act*, 1933, section 33.
- (h) That full rights of audience be accorded to Counsel and solicitors acting for a defendant.
Compare the *Medical Act*, 1950, subsection 16 (2) (d).
See the *Architects (Registration) Act*, 1931, subsection 7 (4).
- (j) That a scale of maximum penalties be provided. Since this scale must vary from trade to trade according to conditions and the value of the products concerned, it is suggested that this scale should preferably be laid down in the rules.
See the *Solicitors (Scotland) Act*, 1933, section 28.
See the *Solicitors Act*, 1932, subsection 5 (2) as amended by the *Solicitors Act*, 1941, section 19.
- (k) That a scale of costs be provided and that costs may be awarded to or against the Association by the tribunal.
Compare the *Arbitration Act*, 1950, section 18.
See the *Solicitors (Scotland) Act*, 1933, subsection 28 (i).
See the *Solicitors Act*, 1932, subsection 5 (2) as amended by the *Solicitors Act*, 1941, section 19.
- (l) That representatives of the press should be permitted to attend hearings at the discretion of the Chairman."

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