

from competing distributors. Dunlop have been unable to use the combination of manufacturer's and distributor's profit to reduce distributive costs because of the heavy capital investment which they have made.

473. As for their interest in the retreading industry, Dunlop maintain that there is no evidence to suggest that this has tended to cause higher consumer prices or has led to less efficient production or discouraged new enterprise. At a time when technical difficulties prevented other manufacturers from accepting for retreading casings other than their own, Dunlop encouraged development on more enterprising lines by setting up an independent retreading business through the special distribution companies. Moreover, 52 new retreading concerns have entered the industry since Regent was formed in 1938.

474. The secret discounts which Dunlop gave to certain tyre distributors and motor dealers up to 1954 are said to have been granted to old customers whose business they were anxious to retain. In some cases Dunlop understood that similar concessions had been offered by a competitor. In others the position of the concerns under the Tyre Plan seemed unfair. In any case, Dunlop maintain that the amounts of the secret discounts were insufficient to affect the public interest.

#### **VII. Retreading and the Supply of Retread Material**

475. Identical prices for remoulds and for retread materials are charged by all T.M.C. members and all price changes are made simultaneously, after consideration of recommendations made by the Commercial Advisory Committee. Normally these changes come into effect at the same time as changes in the prices of new tyres for the replacement market, or immediately following such changes.

476. The industry maintain that this identity of price is due to price leadership, as with new replacement tyres, and that each manufacturer is in fact free to fix whatever price he pleases. They point out that T.M.C. members have no monopoly in the supply of remoulds or in the materials used in their production and that, as far as the latter are concerned, "there are alternative sources of supply, which could be extended if unreasonable prices made it profitable." There are already six retreaders outside the T.M.C. who compound their own retread rubber, and two of these offer camelback for resale to other retreaders. Their prices are admitted to be a little lower than T.M.C. prices, but this is said to be due to the fact that they do not offer the same wide range of die sizes or give the same delivery service.

### **CHAPTER 27. CONCLUSIONS ON THE PUBLIC INTEREST AND RECOMMENDATIONS**

#### **Introduction**

477. The annual turnover of the pneumatic tyre industry in the United Kingdom is roughly £100 million, of which remoulds account for about 8 per cent. Exports in 1953\* were larger in number than those of any other country. The production of new tyres is in the hands of eleven companies varying greatly in size, all of which are members of the T.M.C. Nearly half the industry's turnover is accounted for by the Dunlop Group. Of the four next largest manufacturers three are off-shoots of United States or

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\* This statement is true whether or not the total includes cycle tyres in the export of which the United Kingdom always predominates. Complete statistics are not yet available for 1954, but it seems unlikely that the situation was different in that year.

continental groups. These four and the Dunlop Group between them do about 90 per cent. of the total United Kingdom tyre trade. Between 30 and 40 per cent. of the industry's turnover is in tyres for the replacement market (which are sold through distributors and garages throughout the country) and for mileage contracts. About another third is sold by manufacturers as original equipment direct to the makers of motor cars, bicycles and other vehicles; and between a quarter and a third is exported, the Dunlop Group accounting for over 40 per cent. of this trade.

478. The pattern of the industry in the United Kingdom as it is today began to take shape in the decade after the first world war, when private motoring became popular and technical improvements enabled giant pneumatic tyres to replace solid tyres on heavy vehicles. It was during this period that most of the foreign-controlled companies were established in the United Kingdom, first as selling agencies for imported tyres and then, after the imposition of import duties in 1927, as manufacturers. Unstable conditions of trading at that time led to the formation of the T.M.C. in 1929, so that manufacturers could exchange views on common problems. Although in the '30s prices were discussed and the registration of traders was considered, it was during war-time control from 1942 to 1946, and the period of scarcity which followed, that the industry evolved the arrangements which we now have to examine and which are, for convenience, summarised below:—

#### (a) *Replacement Market*

All T.M.C. members maintain and collectively enforce identical consumer prices for tyres in the replacement market. They make their price changes simultaneously after discussion in the T.M.C.

They further protect these identical prices by (i) an agreed scale of discounts to large users, (ii) inspection panels to examine complaints about giant and agricultural tyres, (iii) an agreement not to make private-brand or unbranded tyres, and (iv) the branding of sub-standard tyres to ensure that they are priced as remoulds.

They confine trade terms for most tyres to registered traders with premises and equipment to certain approved standards, and they have adopted certain restrictions on advertising and the exhibition of their tyres.

#### (b) *Mileage Contracts*

All T.M.C. members use a common formula in calculating the initial rate to be charged to transport operators for new contracts and all tender a common rate. When submitting fresh tenders for existing contracts or parts of a contract all manufacturers quote the same starting rate as the current supplier or suppliers. With only one or two exceptions, all contractors sharing a contract charge the same rate. Except for contracts with the London Transport Executive, all tyre manufacturers engaged in mileage business inform the T.M.C. of the rates they propose to charge for each contract in the next quarter. The T.M.C. then circulate to the manufacturers concerned schedules of the rates charged.

#### (c) *Original Equipment*

Members of the T.M.C. confine original equipment terms for tyres, other than cycle tyres, to vehicle manufacturers on certain registers kept by the T.M.C. For one of them, the "No Restriction" register, which contains the names of the largest vehicle manufacturers, no terms are prescribed. But the net prices charged by all the tyre manufacturers to customers in this group buying in comparable quantities are generally identical except for the secret allowances and discounts granted in certain

cases. The nature of the terms applicable to manufacturers, apart from aircraft constructors, in the other registers is laid down by the T.M.C., although actual prices are not prescribed. All tyre manufacturers use the same basic O.E. price lists and change their prices at the same time, whether they are the basic prices or net prices calculated from them.

(d) *Exports*

Before export prices are changed, Dunlop consult confidentially the principal foreign manufacturers. Dunlop inform United Kingdom exporters of any price changes proposed and expect them to follow them. This they almost always do.

(e) *Dunlop : Other Practices*

Dunlop have secretly acquired and own the share capital of groups of distributing companies, whose turnover represents about one-fifth of United Kingdom replacement sales. They also control about one-third of the United Kingdom output of remoulds by their control of certain retreading companies. Dunlop have for many years paid to a small number of tyre distributors and motor dealers secret allowances which were contrary to the rules of the Tyre Trade Register up to January, 1954.

(f) *The Retreading Industry*

T.M.C. members' prices for remoulds are dealt with in the same way as the prices for new tyres in the replacement market and their user discount scheme takes account of remoulds (see paragraph (a) above).

The Retread Manufacturers Association, which include most retreaders outside the T.M.C., recommend to their members, but do not enforce, prices in line with the prices charged by T.M.C. members. They advise their members to deal only with traders on the Tyre Trade Register, and to avoid those on the stop list of the B.M.T.A. R.M.A. members are expected to brand their products and to conform to the Association's code of minimum standards. Most of the retreading material used by retreaders is supplied by members and associate members of the T.M.C. and their associates, who charge identical prices for it.

479. It is clear that in the replacement market identical prices are charged to consumers and changes in price are simultaneous. This the manufacturers have told us is due to price leadership, exercised by one or other of the larger manufacturers. The manufacturers consult together about prices, but they have told us that there is no agreement to fix common prices and we accept this statement. They have suggested that the only alternative to the existing system is a ruinous price war and that even this is not a real alternative, because after it had gone on for a time the survivors would be forced to re-establish an equilibrium on much the same basis of price leadership as at present. In the other main classes of business—mileage, original equipment and exports—consultation about prices is less close, particularly for original equipment and exports; but even here we find practically identical prices charged by all manufacturers, and it may be assumed that the same general line of argument can be applied to these classes of business also.

480. We consider these arguments as they relate to the various classes of business in more detail below. In so far as they are accepted—and we think that there is some force in them—we have to ask ourselves why in this industry normal price competition between a number of manufacturers, which results neither in identical prices nor in ruinous and uneconomic price cutting, should apparently be impracticable, though it

works well in many other industries. It might well be thought that in an industry where the product is not completely standardised and manufacturers suggest in their advertising that their own tyres are better than those of their competitors, there would be scope for some difference between the prices quoted, even when quality is more or less comparable. Clearly no analogy can be drawn between the uniformity of prices in the tyre replacement market and the uniformity of prices sometimes found in markets, particularly commodity markets, where price competition has free play. The reason for identical prices in the tyre replacement market lies partly, we think, in the structure of the industry and partly in its history. It consists of a small number of manufacturers, operating with a large amount of special equipment. In the difficult and highly competitive conditions prevailing after the first world war they began to develop a habit of price consultation, which has since continued. Today the industry is dominated by some half a dozen firms—one much larger than the rest in the United Kingdom, and the others all connected with overseas interests of comparable power. They all know that any aggressive market policy on the part of one of them would provoke a response from the others which might lead to a prolonged period of "full-blooded" competition, as they call it, either at home or abroad with disastrous effects on the profits of all. Consequently they are all under a powerful inducement to adjust their market behaviour to this situation even without any agreement to that effect. The predominance of one concern confers upon it (usually) the position of a "price leader", but even the price leader must be cautious in its pricing since if it started an aggressive market policy others would reply and the financial results would be unpleasant. Thus all the major firms have a powerful inducement to refrain from competition and, being few in number and fairly evenly matched in power, they can pursue this policy with a minimum of formal consultation, or with none at all. In these circumstances it seems improbable that price competition of the kind which is normal in industries where there are many independent manufacturers will develop between the manufacturers of tyres, at any rate without radical changes in the structure of the industry.

481. We set out this reasoning at the outset because it underlies much of the discussion of the particular practices which follows, and in so far as it is accepted it must influence profoundly the conclusions and recommendations at which we arrive. It means that we are dealing here with a situation quite different from that which has had to be considered in most of the Commission's previous inquiries, and that there are likely to be consequent differences in the remedial measures which may have to be considered if any practice is found to be against the public interest.

### **I. Identical Prices, Resale Price Maintenance and Collective Enforcement in the Replacement Market**

482. Members and associate members of the T.M.C. include all the manufacturers of new tyres in the United Kingdom. In the replacement market they maintain identical prices to the consumer which, with two or three minor exceptions, extend to tyres of every size and category. These prices are maintained by the manufacturers' conditions of sale or licence and enforced, where necessary, by collective boycott. These practices cover the whole replacement market for new tyres and about 80 per cent. of it for new and remoulded tyres together. It is only in retreading that there are manufacturers outside the T.M.C., and most of these, in fixing their remould prices, follow the lead of the T.M.C. members, whose remould prices are identical. In the replacement market therefore price competition

to the consumer is virtually eliminated, though there is considerable competition in trade discounts. (Trade margins have shown a tendency to widen since the beginning of 1954, particularly to traders buying in large quantities.)

483. The T.M.C. contend that the identical prices shown in the price lists of the different manufacturers do not result from any agreement among them, but from the operation of competition in a market where a price leader (usually but not always Dunlop) sets the market level to which the rest have to conform if they wish to sell their goods. Each manufacturer, they say, is free to decide for himself what prices he will fix for his tyres and, as he is bound by no agreement to conform with the rest, competition is not restricted.

484. We accept the manufacturers' evidence that in this industry there exists no agreement binding manufacturers to charge common prices, but this does not mean that we can treat the activities which result in identical prices as being free from restrictiveness. Section 3 (2) of the Act of 1948 recognises that conditions restrictive of competition may prevail when two or more manufacturers conduct their business in particular ways "whether voluntarily or not and whether by agreement or arrangement or not". In fact all changes in prices for replacement tyres are discussed by the T.M.C., and all manufacturers have, since the end of war-time control in 1946, taken identical action following these discussions. It is apparent that they find it expedient to follow the policy of keeping their prices the same; and in these circumstances we consider that price competition is in fact restricted, although the policy is not embodied in an agreement and no manufacturer is bound to continue to adhere to it.

485. The question we have to consider then is whether this restriction of competition is such as to be against the public interest. The evidence indicates that all the price changes since war-time control ended have resulted from consideration of reports on cost trends by the Accountants' Panel and that, despite much argument on occasion in the Commercial Advisory Committee as to the recommendations to be made to the Conference Groups, a practice of unanimity of action has been developed and maintained. Though, since the introduction in 1948 of legislation relating to restrictive practices, the results of these discussions have been recorded not as collective but as individual decisions (see paragraph 214), this change in procedure has not meant any change in substance. We are prepared to accept the contention of the T.M.C. that the present mode of recording the proceedings is more accurate than the older form, but the very fact that members were content for so long to have their decisions recorded as collective ones seems to indicate that they were under the impression that what they were doing was not materially different from agreeing on common prices. Nor have we any doubt that the information provided by the Accountants' Panel and the discussions in the Commercial Advisory Committee and Conference Groups enable each manufacturer to form a shrewd idea of his competitor's trade position and his intentions. We cannot believe that the manufacturers would continue to hold these discussions, or attach to them the importance which they do, unless they have some effect on the prices which they charge.

486. The result of discontinuing these discussions might be that the prices fixed by the various manufacturers would no longer be identical, or it might be that the prices of different manufacturers would remain more or less identical, but the general level of prices would be different. In view of the circumstances of the industry which we have discussed in paragraph 480 above, it seems probable that, even without the T.M.C.'s discussions, price leadership would operate to produce more or less identical prices in the

replacement market, as it already does in the markets for original equipment and exports. It is true that we have found a wide difference in costs between different manufacturers and a wide difference in the profits which they earn in the replacement market. But such differences in costs occur also in the export and original equipment markets without causing significant variations from price uniformity and we doubt whether, in the conditions which we have described, the differences in costs in the replacement market would be reflected in significant differences in prices. Without the T.M.C.'s discussions price changes would not be made quite simultaneously; there would be a tendency towards more differentiation of quality and hence of price between different manufacturers; and pressure from the trade would probably compel a slightly lower price for the less popular makes. But we think it likely that quality for quality the retail prices fixed by the various manufacturers would still differ only within fairly narrow limits, as appears to be the case in the United States. It seems probable, however, that if it were not for the information about their competitors' position and intentions gained in the T.M.C.'s discussions, the lower-cost producers might find it advisable to take more advantage of their position, in the sense that they would set their prices closer to their own costs of production.

487. The industry suggest that the alternative to their present arrangements would be "full-blooded competition" and price war and that this, in the long run, would be almost as damaging to consumers as to manufacturers, who would eventually have to make good their losses by charging higher prices. This suggestion is inconsistent with the argument that identical prices are due to price leadership rather than to the T.M.C.'s discussions. Moreover it does not explain why identical prices are charged in the export trade, to which the T.M.C.'s arrangements do not apply. Dunlop themselves have indeed said (paragraph 452) that it would be "an ill-founded suggestion wholly unsupported by the evidence if it were sought to infer that because, after consultation, prices are found to be identical they would be different were there no consultations." We think this a much more realistic view of the situation likely to exist if the T.M.C.'s discussions were abolished than the suggestion that it would lead to "full-blooded competition" although, as we have shown in the previous paragraph, the general level of prices might well be different. It is, of course, possible that the British subsidiaries of foreign tyre manufacturers, with all the resources of their powerful groups behind them, might challenge Dunlop to a price war in the United Kingdom market. We agree that such a price war, if it meant that prices fell below a level sufficient to cover the costs of even the lowest-cost manufacturers, would be highly undesirable. But there is no evidence that it is at all likely; the fact that these foreign-controlled companies participate in the T.M.C.'s arrangements is some indication that they are no more desirous than Dunlop of embarking on a price war, but whether these arrangements existed or not we believe that the circumstances of the industry are such as to make all manufacturers particularly cautious of provoking such a development. We are disposed, therefore, to believe that the abolition of the T.M.C.'s price discussions would not lead to any clearly marked degree of price variation between tyres of different makes.

488. We are satisfied that the T.M.C.'s discussions have some effects which may be not only advantageous to the manufacturers but convenient to the whole trade and to the public generally. Price changes can be carried through in an orderly way so as to involve the minimum of disturbance to manufacturers' production schedules and to the distributive trade. A stabilising factor is introduced in a trade where, owing to the wide fluctuations to which the price of rubber is liable, prices tend inevitably to be less

stable than in many others. In times of shortage or of rapid change in the rubber market, the price of tyres would probably have moved more frequently and more violently if there had been no consultation between manufacturers, and the policy of maintaining retail prices has no doubt worked in the same direction, by preventing dealers from raising their prices in times of shortage and cutting them, in order to get rid of stocks, when prices seemed likely to fall. It would, moreover, be wrong to assume that the effect of consultation on prices at the T.M.C. has always been to secure a higher level of prices than would otherwise have prevailed; there is indeed evidence that on occasions the opposition of powerful members of the T.M.C. has delayed an increase in price.

489. Against these advantages have to be set the reasons we have given in paragraphs 485 and 486 for thinking that these discussions affect the level of prices fixed and strengthen the tendency to reduce competition inherent in the structure of the industry. Though on occasions the discussions in the T.M.C. may have kept prices down, in the long run their purpose and effect must, we believe, be to keep them higher than they would otherwise be. We do not think they are necessary to prevent a ruinous price war. They clearly afford the opportunity for strong pressure to be brought to bear on a manufacturer who wishes to pursue a more independent price policy to dissuade him from doing so, and though this pressure may not always be successful, it sometimes is. The knowledge of their competitors' costs which manufacturers obtain, even though it is far from exact, facilitates and encourages the fixing of prices by reference to an average cost rather than to the costs of the lower-cost manufacturers, which are often substantially below the average. In the '30s, when prices were not discussed with the same formality, it is evident that despite the structure of the industry a certain degree of price competition, particularly on second- and third-line tyres, was possible. It may well be that in present conditions without these discussions there would be little price competition between the tyre manufacturers, but it is certain that with them there will be less, and that the incentive to the higher-cost producers to improve their efficiency will also be less. These considerations appear to us to outweigh any convenience to the trade in arranging price changes and any gain in stability of prices that may be attributable to the price discussions. We therefore conclude that the T.M.C.'s price discussions are, and may be expected to be, on balance against the public interest.

490. The identical prices fixed by the tyre manufacturers are the resale prices to the user. These they maintain and rigorously enforce mainly through the machinery of the B.M.T.A. We have given full weight to the industry's argument that resale price maintenance is necessary to ensure that an efficient network of distribution is available and that traders are enabled to give a proper tyre service to their customers. We appreciate that in the replacement market efficient distribution requires numerous widely scattered points of sale, and thus depends on small and medium traders, who are the most likely to suffer from outbreaks of price cutting. But we cannot ignore the fact that, from the point of view of the consumer, the arrangements result in a completely rigid price system in which it is impossible for a customer in the replacement market to buy any make of new tyre except at the fixed price, unless at some point the system breaks down. The B.M.T.A. appear themselves to recognise the undesirability of such a situation, since their rules expressly forbid the enforcement of "ring" prices and they enforce the common prices of the tyre industry only because the manufacturers certify annually that they do not undertake with each other to fix common prices. We are not satisfied that, from the point of view of the consumer, there is

any substantial difference between the practical effect of the T.M.C.'s arrangements and the situation which would result if an undertaking to fix common prices existed.

491. For all but aircraft tyres the enforcement of the identical prices is collective and is in the last resort applied by means of a collective boycott. This procedure has been defended to us as the most efficient means of maintaining resale prices because litigation is slow and if a manufacturer individually withholds supplies the price cutter merely transfers his custom elsewhere.

492. For cycle tyres the enforcement agency is the Cycle Trade Union, on behalf of the Coventry Union, which includes all the cycle tyre manufacturers. The Cycle Trade Union, however, has had little occasion to use its powers of fine and stop list, because price cutting of cycle tyres is uncommon. The B.M.T.A., on the other hand, which is the enforcement agency for car, giant, agricultural and motor cycle tyres, is called upon to deal with cases of price cutting quite frequently. All complaints are investigated by its Investigation Department, and if the Permanent Committee decides that a *prima facie* case of breach of rules has been established it is referred to one of the Price Protection Committees, which are presided over by lawyers. There is in addition an Appeal Committee, over which also a lawyer presides. In such cases the trader has full notice of the nature of the complaint and is entitled to give evidence before the Committee and to call and cross-examine witnesses. If he wishes, he may be represented by solicitors or counsel. Like many other tribunals, both statutory and non-statutory, the Committees sit in private. The main, if not the only, reason why the Price Protection Committees do so is that their proceedings might give rise to actions for defamation if conducted in public.

493. Furthermore, like many other tribunals, the Committees cannot compel the attendance of witnesses, and the B.M.T.A. admit that this sometimes makes it difficult to obtain direct evidence of price cutting. This being so, hearsay evidence is sometimes submitted to the Committees and this is received for what it is considered to be worth. Direct evidence is, however, often obtained from B.M.T.A. investigators who make test purchases. The investigating staff are expressly forbidden by the rules of the B.M.T.A. to act as *agents provocateurs*: nevertheless it is hardly surprising that they are sometimes accused of doing so. The person making a test purchase cannot announce himself as an agent of the B.M.T.A., so that some degree of concealment is inevitably involved if this method is to be used at all; it is also difficult to draw the line between enquiring for a cheaper tyre and suggesting a cut-price sale. Some of the methods used to obtain evidence are described in paragraph 238.

494. In our opinion, most of these difficulties are inherent in the system of collective enforcement adopted. On the other hand, the complaints which have come to our notice relate mainly to the B.M.T.A.'s system rather than to the correctness with which their rules are applied, and our attention has not been drawn to any case where we could be satisfied that the decision was wrong in relation to the facts. Due credit must be given to the B.M.T.A. for what they have done to ensure the legality and fairness of the proceedings. The B.M.T.A. have suggested that some of the objections to their procedure could be removed if the powers of domestic tribunals were defined by statute so as to subject them to more direct surveillance by the courts and to give them the right to subpoena witnesses and take evidence on oath. This would make their procedure more like that of a criminal court. We think, however, that there is no real analogy between a criminal prosecution for an alleged

contravention of the law and a complaint by a trade association that a trader has been selling below the resale prices fixed by manufacturers. We are, therefore, not satisfied that it is desirable to adopt the B.M.T.A.'s suggestions. We do not think it necessary to reach any conclusion as to whether the B.M.T.A.'s system is against the public interest or not, because of the conclusion reached in paragraph 496 below and of the recommendation made in paragraph 497 (iii).

495. All makers of new tyres belong to the T.M.C., all fix identical prices for their tyres in the replacement market and change them simultaneously, and all have, as one of their conditions of sale or licence, that their tyres shall not be resold except at these prices. Traders can obtain new tyres from a manufacturer only on that condition and it is rigorously enforced by collective action. Except, therefore, to the extent that remoulds compete with new tyres, traders in the replacement market are absolutely debarred from any form of legitimate price competition with one another. However low his costs may be, a trader who wishes to charge a lower price than his rivals must either break an agreement or understanding which he entered into, or buy from others who have most probably done so. Because the arrangements are so rigid and comprehensive, traders who would otherwise have no inclination to break their agreements are encouraged to do so, and sanctity of contract is undermined rather than upheld.

496. The policy observed by all manufacturers of maintaining resale prices in the replacement market and rigorously enforcing them by collective action, taken in conjunction with the T.M.C.'s discussions which result in identical retail prices, brings about an extreme rigidity in the structure of prices and in the channels of distribution and a complete absence of price competition to the consumer, except such as is provided by remoulds. In our view, these disadvantages far outweigh any benefits which may be derived from the policy. As we have indicated in paragraph 480, this identity of prices has nothing in common with the identity of prices often found in markets where the product is standardised and competition is free and unrestricted. We therefore conclude that not only the T.M.C.'s price discussions, but also the whole system of which they are an integral part and by which identical prices to the consumer are collectively maintained, operate and may be expected to operate against the public interest.

497. We have considered, as we are required to do, what action should be taken to remedy the consequent harm to the public interest arising from the T.M.C.'s price discussions and the collective enforcement of identical retail prices. We do not believe that this can be done except by introducing some degree of price competition in sales to consumers, despite the difficulties inherent in the structure of the industry to which we have drawn attention in paragraph 480. There are three possible points of attack : (i) the discussion of prices between manufacturers in the T.M.C., (ii) the machinery by which identical retail prices are collectively enforced, and (iii) the fixing of maintained retail prices by the manufacturers themselves.

(i) Since numbers are small, it is probably impracticable to prevent at any rate the four or five principal manufacturers from discussing, formally or informally, matters affecting their price policies and from concerting those policies so far as they think it expedient. Even if they were not to do this, we think (and we believe that the manufacturers would not dispute this view) that the structure of the industry is such that price leadership would result in all the principal manufacturers continuing to fix more or less uniform retail prices. Nevertheless, without the information about costs which is now made available by the Accountants' Panel and the close and

organised consultation on prices which the T.M.C. arrangements ensure, we think that there might be some loosening of the price structure and that the lower-cost producers might exercise more influence on the general level of prices. Accordingly, we recommend that the T.M.C. should cease to concern itself with questions of price levels and price changes and that no other committee or organisation should be set up or employed by the tyre manufacturers for this purpose. This alone would not, in our view, be sufficient, for the reasons stated earlier in this paragraph, to ensure a reasonable degree of price competition in sales to the public. We therefore think it necessary that steps should be taken to introduce price competition at the distributive stage.

(ii) To abolish the machinery by which tyre prices are collectively enforced would not by itself achieve this object. No doubt without this machinery those traders who wished and were prepared to disregard their contractual obligations, would find it rather easier to sell with impunity below the prices fixed by the manufacturers. But we think it likely that the major producers would still be strong enough to enforce, by themselves, their resale prices sufficiently effectively to ensure that consumers would derive little benefit from price competition between traders, and that the main effect of abolishing collective enforcement would be to put the smaller tyre manufacturers at a disadvantage.

(iii) It appears to us that in the circumstances of this industry, with which alone we are here concerned, the only way to ensure a reasonable degree of price competition in sales to the public is to abolish the maintenance of retail prices, whether it be individual or collective. Tyres for replacement reach the public through some 27,000 traders. The great majority of these are owners of garages and service stations for whom tyres represent only one item of their trade. We express no view on the reasonableness of present trade margins, but we think that in the circumstances of this industry, so long as price maintenance continues, manufacturers will always be likely to fix and maintain individually, if not collectively, retail prices which would be practically identical. Price competition in the ordinary sense cannot therefore be counted upon. To abolish control by manufacturers over retail prices will introduce an element of price competition among traders generally, and at the same time prevent those who are willing to assume obligations they have no intention of observing from gaining an unfair advantage. On the assumption that the price discussions in the T.M.C. are brought to an end, it may also foster competition among manufacturers in the prices at which they supply the replacement market and the retail prices which they may suggest to the trade. We see no reason why manufacturers should not continue to issue price lists so long as traders are free to follow them or not as they choose. In these conditions it will be easier for larger traders and users to bargain with manufacturers individually, and manufacturers themselves will have less incentive to make their own prices or their suggested resale prices identical if they have no assurance of what price the trader will ultimately charge. We therefore recommend that all tyre manufacturers should cease to prescribe the resale prices of their tyres in any way intended to be binding on any subsequent seller of the tyres.\*

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\* See Note of Dissent by Mr. Archdale, Sir Thomas Barnes, Mr. Cullen and Professor Goodhart. (paragraphs 557-568)

## II. Ancillary Practices

498. There are four practices which can be distinguished as having a specially close relationship to identical retail prices in the replacement market:—

- (a) the user discount scheme.
- (b) tyre inspection panels,
- (c) the ban on private brand and unbranded tyres, and
- (d) the branding of sub-standard tyres as tyres of remould quality.

If our recommendations in the previous paragraph are accepted, we should expect these practices, with the possible exception of (c), to be discontinued, in view of their relationship with the maintenance of identical retail prices, but we think it desirable to set out our views about each of them.

499. *The User Discount Scheme.* Under this scheme, which applies to both replacement and mileage business, the T.M.C. fix the discounts to be allowed to those users whose aggregated expenditure on car and giant tyres exceeds £500 a year. The discount appropriate to each user registered under the scheme is allowed off invoice by the supplier, whether manufacturer or trader. One of the objects of the scheme is to prevent price cutting by the grant of excessive discounts to large commercial users.

500. The scheme has been criticised by various commercial users who bought directly from manufacturers before the war on more favourable terms. In particular, some concerns who have their own fitters complain that whether they buy from manufacturers or from the trade, they have to pay a price which includes an element for service which they do not need. This, however, is rather a criticism of the rates of discount allowed than of the scheme itself. There has also been complaint that small traders whose scale of purchase is too small to entitle them to discounts above the basic rate of  $7\frac{1}{2}$  per cent. for giant tyres, find it hard to allow the minimum discount of 5 per cent. to commercial users spending £500 a year and above on tyres, as laid down in July, 1954. On the whole, however, such hardship is probably not extensive, because it is unlikely that many large users obtain their tyres from small traders.

501. Nevertheless we cannot overlook the fact that the scheme is in effect an aggregated rebate arrangement. The usual argument against such rebates, that they handicap outside manufacturers, hardly applies in the case of this industry since there are not (and presumably are not likely to be) any tyre manufacturers outside the T.M.C. But the discounts paid are not related to the volume of individual orders and do not, therefore, reflect economies in the costs of production or distribution. They secure substantial concessions for the big commercial users mainly at the expense of the tyre distributor since most of these users obtain their supplies from the trade. The scheme thus protects both manufacturers and traders from pressure by these users for the offer to them of competitive discounts on the fixed retail prices. At the same time price maintenance is facilitated, because if any tendency by traders to cut prices to commercial users develops the T.M.C. can increase the range or rate of discount to be allowed to such users, thus narrowing the distributor's margin. For these reasons we are of opinion that the scheme at present operates against the public interest. Aggregated rebates or discounts are, however, seldom found outside a system of common or identical prices, and there is no reason to believe that the present scheme is any exception. For if the rigid system of identical prices collectively maintained is terminated in accordance with our recommendations in paragraph 497, manufacturers could no longer prescribe but only recommend individually

the retail prices of tyres, and they would be in no position to impose upon the traders a common rate of rebate to be allowed to commercial users. Nor would they have any incentive to do so if there were no system of identical prices to preserve. We assume, therefore, that if our recommendations are implemented the user discount scheme will be abandoned.

502. *Tyre Inspection Panels.* The T.M.C.'s inspection panels, which now concern themselves with giant and agricultural tyres only, ensure that complaints from commercial and agricultural users are examined by representatives of manufacturers not concerned with the complaint, and that where compensation ought reasonably to be given it is fairly assessed. Car and motor cycle tyres were removed from the scheme in 1953 mainly at the instance of Dunlop, against some opposition, because they found difficulty in maintaining the goodwill of their customers through the impersonal procedure of the panels. We are satisfied that the inspection panels restrict competition to some extent, but only in the sense that they prevent manufacturers from giving concessions as generous as they would wish on occasions. We do not consider that, as operated at present, the panels are against the public interest, and there is no reason to expect that so long as they continue they will be differently operated in future.

503. *Private brand and unbranded tyres.* All T.M.C. members are parties to an agreement under which they undertake not to manufacture for non-members in the United Kingdom private brand or unbranded tyres. The industry's case for this ban is that the business is uncertain, that the tyres would compete against their own brands and might be sold through traders whose standards of service are inadequate, and that it is uneconomic to multiply the types and brands of tyres on the market.

504. Since the ban does not apply to the making of tyres for the non-manufacturing members of the T.M.C., it seems probable that, apart from the question of service, the industry's main fear is that tyres made for concerns outside the T.M.C. would compete at lower prices. Other things being equal, we should regard such price competition as beneficial, and we see no reason to suppose that tyres made for reputable concerns and branded with their name would be of questionable quality or supplied without adequate service. But we think that there may be some danger that tyres with no brand name, whose performance would prejudice no maker's reputation, might be of inferior quality and even of unsafe construction. Such tyres, whether or not fitted efficiently, might be a source of danger on the roads. We consider, therefore, that the industry's present arrangements, in so far as they ban the production of unbranded tyres, are not against the public interest and should be allowed to continue, but that in so far as they apply to private brand or "Own Name" tyres they are unnecessarily restrictive of competition and against the public interest. We recommend, therefore, that the agreement between manufacturers, in so far as it bans the production of private brand tyres for customers outside the T.M.C., should be discontinued.

505. *Branding of sub-standard tyres as "remould quality."* Before the war, new tyres with surface blemishes, but entirely roadworthy, were disposed of at clearance prices. After the war, these tyres were branded "Remould" and sold at the same price as genuine remoulds. This gave rise to some criticism from retreaders, who argued that the branding was misleading. More recently, and since the Merchandise Marks Act of 1953, the brand "Remould Quality" has been used. There is no evidence before us to indicate that the quality of such tyres is not at least as good as that of remoulds, but in any case we do not think it would be right for us to

embark on a consideration of whether the brand "Remould Quality" is misleading; The Merchandise Marks Acts exist to enable such questions to be decided.

#### *Other practices affecting replacement sales*

506. *Registration of traders.* Members of the T.M.C. confine trade terms for car and giant tyres to traders on the Tyre Trade Register who, except for distributors of car tyres selling only to the trade as wholesalers of motor accessories, must satisfy certain conditions as to premises and equipment acceptable to the Tyre Trade Joint Committee and remain open during customary business hours. Trade terms for agricultural and earthmover tyres are similarly confined to traders on the T.M.C. Agricultural and Earthmover Tyre Trade Register and traders on the Tyre Trade Register who handle tyres in this category. The T.M.C. also maintain an Aircraft Tyre Trade Register. Manufacturers confine trade terms to traders on this register who must be "engaged mainly or substantially in the manufacture, sale, overhaul or repair of aircraft" and must provide the necessary facilities and trained staff for fitting and servicing aircraft tyres. Similar terms are allowed to concerns on the Register of Aircraft Constructors, who buy tyres for resale.

507. There is little doubt that these trade registers have, by defining the membership of the trade, facilitated the maintenance of retail prices by the manufacturers. The T.M.C. have, however, particularly stressed throughout our inquiry the importance of the proper fitting and maintenance of tyres for safety on the roads, and contend that the sale of tyres to the public should be confined to traders who have the necessary equipment and whose premises have been inspected and found to be suitable by representatives of the manufacturers. They point out that there is a great saving in doing this collectively and in maintaining common lists. Decisions as to admission to the Tyre Trade Register, which applies only to car and giant tyres, are taken by local panels on which distributors as well as manufacturers are represented. But in cases where a local panel wishes to refuse an applicant for admission, or to remove a trader already on the register, an appeal is allowed to a national committee composed wholly of manufacturers, who may be expected to favour any increase in the number of sales outlets. Where a trader is refused registration because his premises or his equipment are not up to the required standard, he is told that if these are improved he should make a fresh application for admission to the register. Admission to the Agricultural and Earthmover Tyre Trade Register is controlled by the T.M.C. Conference, Group for Agricultural and Industrial Tyres, i.e., by a body composed entirely of manufacturers. The Aircraft Tyre Trade Register and the Aircraft Constructors Register are similarly maintained by the tyre manufacturers concerned, through the T.M.C. Aircraft Conference Group.

508. In considering the effect of these arrangements upon the public interest, we have given the fullest weight to the need for safety, but we do not believe that this purpose is greatly served by registers of approved traders. Though traders in car, giant and agricultural tyres may, at the time of registration, have been found by inspection to occupy premises and possess equipment to certain standards, they are not subsequently inspected to ensure that these standards are maintained. There is thus no assurance that their equipment will continue to be suitable for all the work they undertake and there is no guarantee that the persons employed to fit tyres are competent to do so. In any case, it appears to us quite unreasonable that a trader on the Tyre Trade Register is entitled to trade terms for agricultural and earthmover tyres, while a registered agricultural tyre dealer who does some

business in car and giant tyres does not enjoy a reciprocal advantage. We consider that the main effect of the Tyre Trade Register and the Agricultural and Earthmover Tyre Trade Register is simply to create a privileged class of trader. This is in principle against the public interest unless it can be shown to be beneficial, and we find no evidence that in this industry it does any good. We therefore conclude that the Tyre Trade Register and the Agricultural and Earthmover Tyre Trade Register are against the public interest. We recommend that they be discontinued, and that no similar registers should be compiled or maintained by any association concerned with the manufacture or distribution of tyres.\* But we would see no objection to the T.M.C.'s maintaining a single list of traders which could be recommended and circulated to manufacturers to observe or not as they pleased.

509. We see no more justification for the maintenance of the Aircraft Tyre Trade Register and of the Aircraft Constructors Register in so far as it relates to trade terms. The supply of all components for civil aircraft, including tyres, is under the strict surveillance of the Air Registration Board and replacement tyres can be issued only by aircraft concerns and stockists who are regularly inspected and approved by the Board. The T.M.C.'s registers include only some of the concerns recognised as qualified by the Air Registration Board and are thus selective. They must therefore have the effect of creating a privileged class of trader. We consider the maintenance of these registers to be against the public interest and we recommend that they be discontinued. While we should have no objection to the maintenance of a list of recommended aircraft tyre traders, provided that the observance of the list were left to each tyre manufacturer's discretion, we doubt if such a list could serve any useful purpose, since the real criterion must be whether an individual aircraft concern or trader has been approved by the Air Registration Board as qualified to fit and service aircraft tyres.

510. We have noted that while the T.M.C. maintain no similar registers of motor cycle and cycle tyre dealers, all manufacturers of these tyres are signatories of the Coventry Bond, which binds them to limit best factor terms to factors on the Union lists. We regard these lists as creating a privileged class of trader as much as the T.M.C.'s registers, and we consider that the limitation of best factor terms to factors on these lists is against the public interest and recommend that this practice be discontinued.

511. The rules of the Tyre Trade Register up to June, 1953, imposed a rigid system of fixed discounts and qualifying stock orders related to a trader's classification on the register. The industry have said that these arrangements were a necessary part of the Post-Control Tyre Distribution Plan, which was adopted by the manufacturers and the traders to meet special circumstances when the supply of tyres fell far short of the demand. The purpose of the scheme, they explain, was to secure the greatest possible choice to the consumer. Stocking traders, in order to qualify for discounts above the basic minimum, were therefore required from 1946 to 1950 to place annual orders for certain minimum quantities of tyres with each of the fourteen T.M.C. members and after 1950 with at least one manufacturer in each of three groups. In 1953 the system was relaxed by the substitution of one initial stock order for the qualifying stock orders, and in January, 1954, was finally abandoned. Each manufacturer was then left free to fix his own trading terms above a minimum basic discount still laid down by the T.T.J.C., and each trader was allowed to place his orders as he pleased.

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\* See Note of Dissent by Mr. Archdale, Sir Thomas Barnes, Mr. Cullen and Professor Goodhart. (paragraphs 557 and 569)

512. No doubt the industry's plan for organising distribution was necessary in the immediate post-war years when there was a very real shortage of tyres, but we do not think there was any justification for keeping it in operation so long, particularly since the system of qualifying stock orders was the subject of much criticism from stockists from 1949 onwards. We have also noted that the plan was not substantially relaxed until after this reference had been made to us. We consider that such a system of controlled distribution, if reintroduced in a market not short of supplies, would restrict competition to an undesirable degree and so operate against the public interest. Since, however, we have no reason to expect that such a system will be reintroduced, we do not consider it necessary to make any recommendation on this matter.

513. *Advertising.* All members of the T.M.C. have agreed to accept certain restrictions on advertising. These impose, for example, limitations on the use of certain advertising media, on publicity and display at traders' premises, and on gifts and financial inducements to traders. The main objects of these restrictions are said to be the avoidance of wasteful forms of publicity and the protection of the public from misleading statements about quality. It was, however, expressly stated in 1948 that the restrictions were to operate during the period of the Post-Control Tyre Distribution Plan, in order to facilitate the operation of the Plan and to avoid any advertising calculated, directly or indirectly, to give one trader any material advantage over another. The detail in which the restrictions have always been enumerated in the schedules suggests that their primary object is to prevent competition among manufacturers for traders' and operators' support.

514. The restrictions have been accepted by all T.M.C. members. There are no penalties for non-adherence but the language of the schedules has always been mandatory, even though it has been toned down in the 1954 edition. The industry have explained that the prohibitions in the agreement must be understood as meaning "must not, without notification, . . .", but in the period since 1946 the only example of unilateral action (disclosed in the minutes of the Car and Giant Group) has been that of Michelin, who would give no undertaking not to state the number of plies in advertising their metallic tyres.

515. In avoiding "wasteful" advertising, the agreed limitations have a comparatively unimportant effect. They do not apply to large-scale advertising in the national press, where members are free to spend as much as they please. In fact in 1952 the larger manufacturers spent from 1½ to 5½ per cent. of their turnover on advertising.

516. On the whole, we consider that these restrictions leave a sufficiently wide field of advertising open to allow all tyre manufacturers a reasonable degree of competition in attracting buyers, and we do not find them to be against the public interest.

517. *Exhibitions.* All the tyre manufacturers but one are parties to the Exhibition Bond and the Supplemental Agreement of the Society of Motor Manufacturers & Traders, which binds them not to exhibit tyres and to prohibit their exhibition by traders, except as part of a vehicle or other machinery, at shows not covered by the Bond; shows not so covered include local and county agricultural shows. Similar bonds are entered into with the Coventry Union and the Society of British Aircraft Constructors.

518. The industry's exhibition policy is criticised by the Agricultural Machinery and Tractor Dealers Association, whose members are prevented from displaying their tyres at local shows not approved under the S.M.M.T.

Bond. They seek no financial assistance from the manufacturers in participating in exhibitions, but merely desire the right to exhibit their own stock where they please. They have explained that the farmer regards the agricultural machinery dealer's exhibits at agricultural shows as a shop window; if any lines are excluded he gets the impression that the dealer does not handle them. The agricultural dealer is thus handicapped in competing for business with the specialist tyre dealer, who has greater facilities for display in his showrooms because they are devoted entirely to tyres.

519. The tyre manufacturers argue that if a dealer can exhibit at any show the tyres of a particular make, the manufacturers of other makes are liable to suffer, unless they exhibit their tyres likewise. In doing so they are saddled with expenditure which, they think, benefits them little. In our view, however, it is against the public interest that manufacturers should enter into binding commitments, such as the agreement supplemental to the Exhibition Bond of the S.M.M.T., to the detriment of local traders, to whom it may be important to exhibit their stock as and where they please. We recommend, therefore, that the supplemental agreement which requires manufacturers to prohibit traders from exhibiting tyres of their particular makes at shows not approved under the S.M.M.T. Bond should be terminated.

### III. Mileage Contracts

520. During the war the tyre manufacturers, at the instance of the Tyre Directorate, adopted a common formula for mileage rate calculation. This was based on the principle that the rate charged should return to the supplier the retail price of the tyres supplied and that it should be inclusive of tyre service and maintenance. This common formula was retained after the war and is still applied uniformly when tenders are submitted to operators going on to mileage contract for the first time. If the contract is given to a single supplier, he is under no obligation to continue to charge a rate based on the formula, and can at any time give notice of his intention to vary the rate: in practice, however, we understand that the formula is used by all suppliers as a means of checking the performance of their tyres and of determining the rate to be charged in the next quarter. Where a contract, or part of a contract, is transferred to a new supplier, the initial rate is always identical with the rate charged by the previous supplier. Where contracts are shared, all the suppliers concerned normally charge the same rate. This is either the weighted average rate calculated by the T.M.C. from the individual rates submitted by the several suppliers, or a lower rate put forward by one supplier and matched by the others.

521. The industry do not deny that these arrangements result in uniform tenders for all new contracts but maintain that this is inevitable, under the special conditions of mileage business. They have said that, in the case of entirely new contracts, each manufacturer tendering must use the data supplied by the operator as to average tyre mileages given on his vehicles. Similarly they say that manufacturers tendering for an existing contract must rely on the current supplier's tyre data and, since if they secure the contract they must take over his tyres and run them out, they have no alternative but to quote his rate at the initial stage.

522. We have received no criticism of the formula from operators, who are aware of the general principles on which it is based. It is clear that if this formula is applied to common data as to mileage averages and to identical retail prices, the resulting rates must be identical. We regard the common tenders, therefore, as a natural result of the system of identical prices, rather than of any express arrangement for the prior communication

and adjustment of tenders, and we believe that if the present rigid system of identical prices collectively maintained were relaxed, competition for new mileage contracts would probably be less restricted. Individual manufacturers might then regard themselves as free to introduce a price variant into their rate calculation and, therefore, to tender for existing contracts at rates below those currently charged.

523. As regards shared contracts, the industry have explained that the weighted average is merely for the guidance of the contractors concerned, and that in roughly half the cases the rate charged is the lowest rate put forward and not the average rate. Operators, however, have stated that they understand that they are always given the benefit of the lowest rate, and one of the groups of transport companies has stated that it could not accept a "compromise rate". We have noted also that the weighted average is not calculated for the London Transport Executive, where the lowest rate for each tyre size is always matched by the other suppliers. It might thus be argued that since, as the industry admit, no supplier could retain his share of a contract if his rate were higher than those charged by his competitors, the alternative of the weighted average rate acts as a buffer against the full force of competition.

524. We recognise, therefore, that the T.M.C.'s mileage arrangements in general involve some restriction of competition. Any estimate of their effect upon the public interest must, however, take into account the general level of rates charged, the profits earned and the bargaining power of the transport undertakings. There has been little criticism from operators that rates are high in relation to those charged under the more competitive pre-war conditions. Suppliers' profits in 1951 and 1952 (the most recent years for which we have figures) have been low, and some manufacturers, including Dunlop in one year, have incurred losses. Indeed, if the T.M.C. were to adopt a suggestion made in 1949 by Dunlop that mileage rates should be related to the industry's actual costs, the resulting rates might well be higher. For reasons which have been fully discussed in paragraph 480 and in the paragraphs dealing with the replacement market, we think that it would be difficult to ensure keen competition in price between the tyre manufacturers even if the present arrangements with regard to mileage contracts and the consultations that take place were discontinued. Moreover, the operators with whom mileage contracts are entered into, are large concerns and their bargaining strength is considerable. We appreciate also that mileage contracts are an alternative to the outright purchase of tyres, and that all operators regard them as more favourable to themselves. They would not, therefore, welcome developments that might lead to a withdrawal of these facilities. For these reasons, we do not consider that the present arrangements operate against the public interest, and there is no evidence to suggest that they are likely to have different effects in the future.

#### IV. Original Equipment

525. Great importance is attached to original equipment business by tyre manufacturers because of the steady volume of production which it ensures and the demand it creates for replacement sales, not only at home but also abroad when United Kingdom vehicles are exported. In the years preceding 1952, the general level of profits in the original equipment market was lower than the profits in the replacement market and on mileage business; but in 1952 it was higher than either. In that year, however, the replacement trade was unusually bad. The range of profit on original equipment business is fairly wide. One or more manufacturers have made losses on this business

in every year before and since the war for which we have complete information, while the highest profit realised by any manufacturer on such business has ranged from 9 per cent. on sales in 1948 to nearly 12½ per cent. in 1951.

526. Ninety-five per cent. of the original equipment business in car and giant tyres is done with vehicle manufacturers on the T.M.C.'s Car and Giant Register of Manufacturers Proper—"No Restriction", which means that the T.M.C. do not concern themselves with the terms offered. The tyre manufacturers have told us that they do not ordinarily discuss the *net* prices to be quoted to vehicle manufacturers on this list (though they may do so informally in particular cases), and one manufacturer often does not know what prices other manufacturers are quoting. The contacts on the other side between the vehicle manufacturers seem, however, to be rather closer, in that their buying agents keep themselves informed of the prices that are being quoted and are thus in a position to resist any tendency by the tyre manufacturers to discriminate in price between vehicle manufacturers of the same buying potential. Indeed the evidence we have received from them relating to 1952 shows that with only one or two exceptions, and apart from the allowances and discounts referred to in paragraph 527, when they buy in roughly comparable quantities they all pay the same price whoever they buy from. Equally, a vehicle manufacturer buying from more than one tyre manufacturer pays the same price to all. In fact, therefore, we find almost identical prices in this market also. These seem, however, to be the natural outcome of a situation where a few large sellers are faced by a few large buyers; and having regard to the great bargaining strength of the vehicle manufacturers, we do not consider that such consultations as there may be between the tyre manufacturers on the prices to be charged to these large buyers, although in a sense restrictive of competition, operate or may be expected to operate against the public interest.

527. These apparently identical prices to the large vehicle manufacturers are subject to two exceptions—the special end-of-year allowances (not related to turnover) paid by Dunlop to certain large customers and the monthly credits allowed off invoice by a smaller manufacturer in certain cases. Both these arrangements are kept strictly secret. Since at least half the original equipment market is supplied by Dunlop, the special allowances which they make are of much more importance than the monthly credits granted by the smaller concern. In spite of exhaustive enquiries, we have found no evidence that similar allowances are made by any of the other major companies.

528. We have considered very carefully whether such secret credits and allowances are against the public interest. Dunlop justify them mainly as *ex gratia* contributions to assist British-owned vehicle manufacturers in their efforts to export to markets previously dominated by foreign interests, and we appreciate that this in turn stimulates a demand for Dunlop tyres and so assists British exports in overseas markets. But this is clearly not the whole story. Dunlop's payments are almost invariably made to cycle or vehicle manufacturers to whom Dunlop are virtually the sole suppliers, and the amounts are not settled in any year until the negotiations for the next year's supplies have been completed. Dunlop admit that one of the purposes of these payments is to retain the custom of the recipients. The payments thus appear to have some of the features of a loyalty rebate, though there is no evidence that they are conditional upon any undertaking to buy from Dunlop alone.

529. The existence of Dunlop's allowances is not known to the buying agents of the recipients or of the other vehicle manufacturers and is not,

therefore, taken into account by them in any discussions which they may have among themselves or with other tyre manufacturers, as would be liable to happen if corresponding allowances were made by way of discount off invoice or simple reduction in price. The advantage to Dunlop of giving rebates which are both secret and deferred is that they are able to quote lower prices to their most important customers without provoking competitive quotations from other manufacturers for individual orders.

530. If we were satisfied that Dunlop's secret payments had the effect of loyalty rebates, we should have to consider the impact of such rebates on competition from smaller manufacturers, having regard to Dunlop's dominant position in the industry; for if the recipient of a loyalty rebate wishes to transfer a small part of his custom elsewhere, he will lose the rebate on the whole of his purchases, and the change of supplier can thus be made only at disproportionate cost unless the new supplier can quote a very much lower price. A large buyer may also find it impracticable to switch any substantial proportion of his custom, because other suppliers may not have enough uncommitted capacity to execute such large orders. Thus the giver of the rebate might be able to retain or even increase his share of the market regardless of his efficiency. There is, however, insufficient evidence to show either that Dunlop would withhold a payment if the recipients made some purchases of tyres from other manufacturers, or, on the other hand, that it is because they receive the allowances that the recipients buy all their tyres from Dunlop. There are indeed some car and cycle manufacturers who find it convenient to buy all their tyres from Dunlop, although they receive no secret allowances at all. Given the nature of this original equipment business, the circumstances of the industry and the constant fear of price war to which they give rise, it is far from certain that competition would be increased if Dunlop gave no secret allowances, and it may well be that in the tyre industry price competition can, in practice, take no other form.

531. While, therefore, we think that there are dangers in the use of secret allowances of this nature by a concern as powerful as Dunlop, and that competition in prices quoted or quantity discounts allowed would normally be preferable, we are prepared to believe that in the circumstances of this trade these are not practicable alternatives and that to prohibit the secret allowances would mean terminating one of the few manifestations (apart from tenders for Government contracts) of price competition directly benefiting the consumer. We consider it preferable, so far as this industry is concerned, that such price competition should exist even in this clandestine form, than that it should hardly exist at all. We cannot, therefore, say that the secret allowances and discounts in the original equipment market are against the public interest.

532. The members of the T.M.C. allow rebate on a common scale, based on the customer's aggregated annual purchases of giant tyres for original equipment from all tyre manufacturers, to nine large commercial vehicle manufacturers. No question arises of these rebates having a tendency to defeat outside competition since there are no United Kingdom tyre manufacturers outside the T.M.C. These arrangements are not supervised by the T.M.C. and appear to be largely the result of pressure from the vehicle manufacturers concerned. Indeed, we have found instances where a commercial vehicle manufacturer has secured rebates greater than his turnover appeared to warrant on the common scale. Since these arrangements do not appear to be supervised or rigidly observed, we think that in the circumstances of this trade they do not, and in their present form are unlikely to, operate against the public interest.

533. For original equipment business not covered by the "No Restriction" register, the tyre manufacturers confine special terms for tyres (other than cycle tyres) to vehicle and aircraft manufacturers on the other registers maintained by the T.M.C., who lay down the terms to be allowed to the customers in each register, except the original equipment section of the Aircraft Constructors Register. It will be seen from the table in paragraph 166 that in most cases these terms are related to basic O.E. prices. Lists of basic O.E. prices are prepared by Dunlop for their own use and are made available to any tyre manufacturer who wants them. These prices are those generally followed in the industry. The tyre manufacturers concerned consult each other informally before making changes in their basic O.E. prices and when any change is made they all follow suit and Dunlop amend their price list accordingly.

534. The T.M.C. maintain that though proposals for the inclusion of new names in the registers, or for their transfer from one register to another, are discussed in the Conference, the tyre manufacturer making the proposal can act upon it even if agreement is not reached. Thus, although there may be no sanction by which the T.M.C. can enforce the classification of a particular original equipment customer in a particular register, it is admitted that additions to and alterations in the lists are discussed before they are made. In 1951 it was agreed that no names should be added to any section of the Agricultural and Earthmover O.E. Register without the agreement of all interested members. The industry have explained that this decision meant merely that no name would be added until all members had had an opportunity of checking the customer's credentials and that no proposed name was ever excluded under this procedure. While this may mean that in the last resort one tyre manufacturer can impose his wishes on the majority, the fact remains that the terms to be granted to customers in each register are prescribed by the T.M.C. in all cases except the "No Restriction" and Aircraft registers.

535. We cannot see how the obligations to use these lists can fail to restrict competition, nor why the terms for supplying tyres to original equipment customers, whatever their capacity, should not be the subject of individual negotiation in each case. We therefore consider that these registers, including the "No Restriction" and Aircraft registers, are an unnecessary restriction on competition and as such are against the public interest. We recommend, therefore, that they should be abolished and that the prescribing of various classes of O.E. terms should cease. But we would see no objection to the T.M.C.'s maintaining a list of reputable vehicle and aircraft manufacturers, which could be circulated for the information of tyre manufacturers, but without any obligation on them to use it. We would not then expect the informal discussions between manufacturers of basic O.E. prices to be against the public interest because they would no longer have the effect of committing manufacturers to charge the same price for the same type of tyre to any particular class of customer.

## V. Exports

536. With regard to exports we have to consider the effect on the public interest, first of the discussions and understandings between Dunlop on the one hand and some of the foreign associations and manufacturers on the other, and secondly of the exchange of information about export prices between manufacturers in the United Kingdom and the effect on those prices of Dunlop's price leadership. There are no market-sharing arrangements to which United Kingdom manufacturers are parties, though the markets to which the United Kingdom subsidiaries of foreign manufacturers may export

are, to some extent, restricted by their parent companies. The broad effect of the comparatively loose and informal arrangements that exist between Dunlop and their competitors, both overseas and in the United Kingdom, is that the prices charged for tyres of similar type, size and quality in most markets where there is no local production, are the same for all manufacturers in the United Kingdom and in other exporting countries. These prices are set in discussions between Dunlop and the principal American and continental manufacturers and their ceiling is usually the domestic price level in the United Kingdom or the U.S.A., whichever happens at the time to be the lower.

537. Exports represent roughly a quarter of the United Kingdom tyre manufacturers' total sales and the United Kingdom is, by volume, the world's largest exporter of tyres, in spite of the fact that the American tyre industry has a domestic market comprising nearly five-sevenths of the world's motor vehicles. We have received no criticism to which we attach any importance of the United Kingdom tyre industry's export performance. Exports of tyres from the United Kingdom are now far greater in quantity and value than they were before the war and Dunlop account for about a third of the total.

538. We consider first the arrangements between Dunlop and their American and continental competitors. It might be argued that if these arrangements were terminated and Dunlop competed freely on price in world markets, United Kingdom exports could be increased. We have no evidence that this would be so. We have insufficient information to make an accurate comparison between the costs of Dunlop in this country and those of their American and continental competitors, nor can we assess the balance of industrial power between the Dunlop organisation and the major American groups. We think it likely, however, that with a home market many times greater than that of the United Kingdom, the largest American companies would be in a strong position to increase substantially their sales of tyres abroad by charging prices much below those in the U.S. domestic market, if they wished to do so. We accept the view put forward by Dunlop that a price war with the Americans in world markets would not be in the interests of this country, and that a determined attempt by Dunlop materially to increase their share of the world export trade by lowering their prices might, in fact, lead to such a price war. Unless a reduction of export prices could be depended on to result in a much more than proportionate increase in the volume of export trade, it would produce a decrease in the United Kingdom's earnings of foreign exchange as a whole, when account is taken of the large percentage of imported materials in the cost of a tyre. We are told by Dunlop that the rubber industry is on the threshold of important developments, particularly in relation to synthetic rubber, and that they sincerely believe that any alteration in these arrangements at this time would endanger United Kingdom interests. We think that this view may be well-founded. For all these reasons we consider that the discussions and understandings about prices between Dunlop and the foreign associations and manufacturers, as they are at present conducted, are not against the public interest. We express no view about the future: it is impossible for us to form any judgment as to whether there may sooner or later be such changes in world markets as would make it unnecessary and undesirable to continue the existing arrangements.

539. The present arrangements by which Dunlop set the United Kingdom export price after confidential discussion with their foreign competitors have the effect that, in practice, other United Kingdom manufacturers and traders hardly ever compete on price in export markets, either with Dunlop or with the principal exporters from other countries. It might be argued that, if they

were able to compete, they could expand their overseas business. But the gain to the national interest would be reduced to the extent by which such expansion would be merely at Dunlop's expense, and in any case they would probably encounter, like Dunlop, the kind of difficulties which we have described in the preceding paragraph. If the United Kingdom subsidiaries of foreign-owned manufacturers obtained by this means additional trade at the expense of British-owned concerns, the national interest would suffer in so far as their profits had to be remitted abroad. The smaller British-owned manufacturers are so much weaker than the major international groups that they could hardly hope by price competition to gain a substantial advantage, and they might well merely spoil the prices which Dunlop could obtain in the export markets. The arrangements between these companies and Dunlop are loose and, even if there were no contact, the smaller companies would almost certainly continue to follow Dunlop's lead on export prices generally.

540. The profits of United Kingdom companies on export trade in 1951 and 1952\* are somewhat higher on the average than the profits earned on replacement trade in the home market; but they show similar differences between one company and another. These facts should provide some reassurance that the United Kingdom manufacturers will be able to hold their own in the future if, as they have told us they expect, competition becomes keener.

541. We conclude that, for the reasons given in the preceding paragraphs, the present arrangements with regard to export prices between the United Kingdom manufacturers are not against the public interest. But we find it impossible, in view of the great uncertainty about world market developments, to express any opinion about the future.

## VI. Dunlop : Other Practices

542. *Distribution Interests.* The evidence leaves little room for doubt that Dunlop's original objects in entering the distributive trade in the '30s were to anticipate a similar move by their competitors and to gain first-hand knowledge of distribution and of their competitors' marketing methods. The trading results of their controlled distribution companies have on the whole been good—good enough before the war to justify considerable expansion; and, though some of the post-war years have been less favourable for the replacement trade, Dunlop have always regarded the investment as profitable.

543. Dunlop now control about 20 per cent. of the tyre distribution in the United Kingdom. For a supplier who produces more than a third of the industry's output to control a substantial part of the distributive trade might well be detrimental to the public interest. The risk of such detriment is increased by concealment of the distributing interest, because other traders do not know with whom they are competing. Dunlop argue that secrecy is necessary, because business might be lost if the company were known to have departed from their declared policy of supporting the garages. The Dunlop distributing companies have not been used to provide outlets, exclusively or even mainly for Dunlop tyres. In 1951, 53 per cent. and in 1952, 52 per cent. of their sales represented other manufacturers' tyres and remoulds. It is possible (as Dunlop themselves fear) that if the distribution companies in question had been identified as Dunlop's subsidiaries their sales of other manufacturers' goods would have been substantially lower; conversely, if Dunlop continued to increase their distributive interests unknown

\* Details are not available of profits earned in 1953 and 1954.

to other manufacturers, these might ultimately be dependent on Dunlop's subsidiaries for a large part of their distributive outlets.

544. It might thus be argued that the secrecy of Dunlop's distributive interests renders them undesirably restrictive of competition, because other manufacturers would, if they knew the facts, set up their own channels of distribution in competition with Dunlop's or would distribute entirely through independent channels, in either case increasing the competition which Dunlop's distributing companies have to meet. Against this it may be said that Dunlop's distributing arrangements are a legitimate expedient to help Dunlop to hold their own in a competitive market, and that their competitors were equally free to acquire secret interests in distributing companies if they wished. On balance, we cannot say that Dunlop's interests in the distributing field, or the secret methods by which they have been conducted, have tended to restrict rather than to enliven competition, and we conclude that they are not at present against the public interest. In the absence of any evidence leading us to suppose that there will be any further extension of them, we cannot say that they may be expected to operate against the public interest.

545. *Retreading Interests.* The Dunlop Group is, on the figures for 1952, responsible for the supply of over 30 per cent. of the total supply of remoulds. Of this share, about two-thirds are produced by Dunlop, India and Tyresoles and the remainder by the secretly-owned subsidiaries, Regent and Tyres (Scotland) Production. Regent and Tyresoles are the largest of the specialist retreading firms. Dunlop therefore exercise a considerable influence on retreading policy both in the T.M.C. and the R.M.A. They maintain, however, that this influence has never been used to keep prices up and could not be so used, since the price of remoulds depends on the natural competition between remoulds and new tyres. Nor has it served to discourage new enterprise: the retreading industry has grown considerably since the war and the number of concerns engaged in it has increased by fifty since Regent was set up in 1938 as a subsidiary of the Marsham Tyre Co. We accept these statements and conclude that Dunlop's dominant interest in the retreading industry has not in itself restricted competition.

546. We note, however, that the true extent of this influence is not generally known, since Regent and Tyres (Scotland) Production are among the group of Dunlop's secret subsidiaries, and the fact that they are owned by Dunlop is not known to any of the sales staff of the Dunlop Group. Dunlop admit that if they could reorganise their various retreading interests and operate them as one unit, it would make for greater efficiency, but explain that this is not possible so long as their ownership of Marsham remains secret. For this reason, while we have stated earlier that we do not consider that Dunlop's secret holding in the distributing companies is against the public interest, we think that the same secrecy in regard to the retreading companies is detrimental to efficiency. We regard the secrecy of the present arrangement, therefore, as against the public interest.

547. *Allowances to distributors.* Dunlop admit that the confidential allowances which they pay to certain distributors and motor dealers violated the rules of the Tyre Trade Register up to the end of 1953. They explain, however, that these payments were made to old customers whose business they were anxious to retain. In some cases they were made because Dunlop understood that additional payments had been offered by a competitor; in others, they were made to concerns whose position under the Tyre Plan seemed unfair. Dunlop maintain that in either case the payments had no effect on the public interest.

548. In assessing the effect of these allowances on the public interest today we think it right to leave out of account those provisions of the Tyre Plan which are no longer in force. The sum involved has never been large enough to have any serious impact on the trade, and since the 1st January, 1954, when the Tyre Plan was relaxed, it has been open to any manufacturer to give to traders, secretly or otherwise, any discount or allowance which he thinks fit. We do not, therefore, consider that these secret allowances given by Dunlop are against the public interest.

549. *Costs and profits.* In 1952 the Dunlop Rubber Company produced 37 per cent. of the tyres made in the United Kingdom. As the largest producer they did not, however, show either the highest profit or the lowest costs. Their profits as manufacturers were extremely close to the weighted average for the industry, but were lower than those of all but one of the six largest manufacturers. Their profits on the types of tyres in which they predominate present no exceptional features.

550. *Effect on the public interest of Dunlop as supplier and producer.* Apart from the specific matters mentioned in this report, we do not consider that Dunlop have used their dominant position in the industry to the detriment of the public interest, nor that the things which they do in order to maintain their leading position operate or may be expected to operate against the public interest; nor have we evidence to show that they may be expected so to operate in the future.

## VII. The Retreading Industry

551. It is evident that the retail prices recommended by the R.M.A. to their members are neither enforced nor strictly observed. Their recommendations that members should allow trade terms only to traders on the Tyre Trade Register, and observe the B.M.T.A.'s stop list, are also optional. Their code of minimum standards and insistence on the branding of remoulds by members are conducive to good workmanship and help in tracing the responsibility for bad workmanship, when it occurs. These arrangements promote safety and we do not consider them to be against the public interest.

552. A small number of retreading concerns outside the T.M.C. compound their own rubber but the great majority buy all their camelback and other materials from T.M.C. members or associates. The prices of these materials are identical from all suppliers and all price changes are made simultaneously. We have had no suggestion from members of the R.M.A. that these prices are unreasonable. But they have emphasised their difficulty when, as has happened on at least one occasion, reductions in the prices of T.M.C. camelback have been proportionately less than reductions in prices of T.M.C. remoulds. In that event, if the R.M.A. were to recommend their members to follow the price of T.M.C. remoulds, their members' material costs would be proportionately higher, and their profit margins correspondingly reduced. In general, however, they are well satisfied with the quality and conditions of supply of all their retreading materials. We do not think, therefore, that the discussions within the T.M.C. resulting in identical prices for retread materials, which are not maintained or collectively enforced, can be said to be against the public interest. Nor do we think that the arrangements by which T.M.C. members fix identical prices for their remoulds are open to the objections which we have enumerated in paragraphs 485 and 486 when considering new tyres. These prices are subject to any competition that might be exerted by R.M.A. members and in any case are not collectively enforced. We do not, therefore, consider that they are against the public interest.

### Implementation of Recommendations

553. In the course of this chapter we have recommended that a number of practices should be discontinued. In every case the practice could be brought to an end by action of the parties concerned and we recommend that this should be done and that discussions should take place between the appropriate Government Departments and the tyre manufacturers and other parties concerned, or their representative organisations, to this end.

554. If any of the practices should not be abandoned voluntarily, we recommend that, except to the extent referred to in paragraph 555, an order should be made under Section 10 of the Act in such form as may be considered appropriate.

555. Our recommendation for the discontinuance of control by tyre manufacturers over resale prices applies to the individual prescribing and enforcement of resale prices as well as to collective enforcement. It would involve the discontinuance of any price maintenance clauses in conditions of sale and in patent licences relating to tyres. Because of the provisions of Section 10 (5) of the Act, an order under Section 10 could not deal with the position under patent licences. It is not within our province to say whether any action could or should be taken under Section 40 of the Patents Act, 1949. In these circumstances we consider that the right course for us is to make no recommendations beyond those mentioned in paragraph 553 for implementing our conclusions in relation to the individual control of tyre resale prices, but to leave it to the appropriate Government Departments to consider, if the question arises, whether any, and if so what, steps should be taken.

### Summary of Conclusions and Recommendations

556. Our conclusions and recommendations may be summarised as follows :—

(1) The discussions on prices which take place within the Tyre Manufacturers' Conference strengthen the tendency inherent in the structure of the industry to reduce price competition and *are* against the public interest. (paragraph 489) We recommend that the T.M.C. should cease to concern itself with the question of price levels and price changes and that no other committee or organisation should be set up or employed by the tyre manufacturers for this purpose. (paragraph 497(i))

(2) The system under which identical prices to the consumer are collectively maintained *is* against the public interest. (paragraph 496) We consider that in the special circumstances of this industry the only way to secure genuine price competition at the retail stage is to abolish the maintenance of retail prices and we recommend that no manufacturer should prescribe the resale prices of his tyres. (paragraph 497 (iii))\*

(3) The system by which the T.M.C. fix the discounts to be allowed to users whose aggregated expenditure on car and giant tyres in the replacement and mileage contract markets exceeds £500 a year, is in present conditions against the public interest. (paragraph 501)

(4) The T.M.C. tyre inspection panels, which consider claims in respect of tyres which have failed prematurely, are *not* against the public interest as they are operated at present. (paragraph 502)

(5) The industry's ban on the production of unbranded tyres promotes safety and is *not* against the public interest, but we consider that the

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\* See Note of Dissent by Mr. Archdale, Sir Thomas Barnes, Mr. Cullen and Professor Goodhart. (paragraphs 557-568)

ban on the manufacture of private brand tyres for concerns outside the T.M.C. is restrictive of competition and *is* against the public interest. We recommend that this practice should be discontinued. (paragraph 504)

(6) The maintenance by the Tyre Trade Joint Committee of the Tyre Trade Register and, by the T.M.C., of the Agricultural and Earthmover Tyre Trade Register, the Aircraft Tyre Trade Register and (in so far as it relates to trade terms) the Aircraft Constructors Register, tends to create a privileged class of trader and *is* against the public interest. We recommend that these registers should be discontinued and no similar registers should be compiled or maintained by any association concerned with the manufacture or distribution of tyres.\* We should not object, however, if the T.M.C. maintained lists of traders which could be circulated and recommended to manufacturers to observe or not as they pleased. (paragraph 508)

(7) For similar reasons, the limitation of best factor terms to factors on the lists maintained by the Coventry Union (in so far as they apply to the distribution of tyres) *is* against the public interest and should be discontinued. (paragraph 510)

(8) A system of controlled distribution of tyres, as operated under the Post-Control Tyre Distribution Plan from 1946 to 1954 would, if reintroduced in a market not short of supplies, restrict competition and *would be* against the public interest. We have, however, no reason to expect that such a system will be reintroduced. (paragraph 512)

(9) The restrictions on advertising accepted by all members of the T.M.C. leave a sufficiently wide field open to allow all manufacturers a reasonable degree of competition and are *not* against the public interest. (paragraph 516)

(10) The S.M.M.T. Supplemental Agreement which requires tyre manufacturers to prohibit traders from exhibiting loose tyres at shows not approved under the S.M.M.T. Bond interferes with the legitimate interests of traders. In this way, it *is* against the public interest and should be terminated. (paragraph 519)

(11) The arrangements under which tyre manufacturers operate mileage contracts involve some restriction of competition but are *not* against the public interest. (paragraph 524)

(12) Such consultations as take place between tyre manufacturers on the net prices to be charged to vehicle manufacturers on the "No Restriction" register, although in a sense restrictive of competition, do *not* operate against the public interest. (paragraph 526)

(13) In the original equipment market the secret end-of-year allowances paid by the Dunlop Rubber Co. Ltd. to certain customers and the secret monthly credits allowed by a smaller manufacturer provide a form of clandestine price competition which in the special circumstances of this industry is better than no competition at all. They are therefore *not* against the public interest. (paragraph 531)

(14) The common scale of rebate, based on aggregated purchases, allowed by T.M.C. members to nine of the largest commercial vehicle manufacturers in the original equipment market does not attract business to one group of manufacturers at the expense of another and is not rigid in form. It does *not* therefore operate against the public interest. (paragraph 532)

(15) All the T.M.C.'s registers of vehicle and aircraft manufacturers entitled to special terms for tyres supplied as original equipment *are* against the public

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\* See Note of Dissent by Mr. Archdale, Sir Thomas Barnes, Mr. Cullen and Professor Goodhart. (paragraphs 557 and 569)

interest. We recommend that they should be abolished and that the prescribing of various classes of O.E. terms should cease. We would, however, see no objection if lists of reputable vehicle and aircraft manufacturers were circulated for the information of tyre manufacturers so long as the tyre manufacturers were under no obligation to observe the lists. (paragraph 535)

(16) The arrangement by which the Dunlop Rubber Co. Ltd. set the export prices for all T.M.C. members (paragraph 541) after confidential discussions with their foreign competitors (paragraph 538) are *not* against the public interest.

(17) The interests of the Dunlop Rubber Co. Ltd. in the distribution field and the methods by which they have been conducted have not tended to restrict competition and are *not* against the public interest. (paragraph 544)

(18) The dominant interest of the Dunlop Rubber Co. Ltd. in the retreading industry has not in itself restricted competition, but their secret ownership of the two retreading concerns, the Regent Tyre & Rubber Co. Ltd. and Tyres (Scotland) Production Ltd., hampers the efficient organisation of their retreading business as a whole. The secrecy of these arrangements *is*, for this reason, against the public interest. (paragraph 546)

(19) The confidential allowances paid by the Dunlop Rubber Co. Ltd. to certain distributors and motor dealers are *not* against the public interest. (paragraph 548)

(20) Apart from the specific matters dealt with in sub-paragraphs (1) to (19) above, the Dunlop Rubber Co. Ltd. have *not* used their dominant position in the industry to the detriment of the public interest. (paragraph 550)

(21) The arrangements of the Retread Manufacturers Association promote safety and are *not* against the public interest. (paragraph 551)

(22) The discussions within the T.M.C. resulting in identical prices for retreading materials and members' remoulds are *not* against the public interest. (paragraph 552)

DAVID CAIRNS (*Chairman*).

G. C. ALLEN.

JAMES ARCHDALE (*Subject to the Note of Dissent below*).

T. J. BARNES (*Subject to the Note of Dissent below*).

W. GAVIN CULLEN (*Subject to the Note of Dissent below*).

C. N. GALLIE.

C. H. P. GIFFORD.

A. L. GOODHART (*Subject to the Note of Dissent below*).

GORDON STOTT.

J. A. R. PIMLOTT (*Secretary*).

24th June, 1955.

## NOTE OF DISSENT

by Mr. J. ARCHDALE, SIR THOMAS BARNES, Mr. W. G. CULLEN and  
PROFESSOR GOODHART

557. We have signed the report subject to this note of dissent because we do not agree either with the recommendation contained in paragraph 497 (ii) that tyre manufacturers should cease to prescribe resale prices for their tyres or the recommendation contained in paragraph 508 that the Tyre Trade Register should be discontinued.

558. As we understand it, the reason for the recommendation that tyre manufacturers should cease to prescribe resale prices for their tyres is that price competition can only be effectively introduced into the industry by adopting this course. At the manufacturers' level, it is said, the circumstances of the industry are such that even though the T.M.C. discussions on price and price levels are abandoned, manufacturers' prices are not likely to vary, save within very narrow limits. The only way, therefore, to ensure effective price competition is to prohibit the fixing by manufacturers of resale prices and so allow distributors to charge what they like. We do not agree with this.

559. It is true that the prices of the various grades of tyres made by the principal manufacturers are identical and, as is pointed out in the report, this is to some extent due to what is called "price leadership".

560. It is, however, also true that it is the policy of the manufacturers to have identical prices and this policy is facilitated by the T.M.C. arrangements and discussions referred to in paragraph 485. We therefore agree with the recommendation that the T.M.C. should cease to concern itself with questions of price levels and price changes and that no other committee or organisation should be set up or employed for the purpose. Neither should any agreement or arrangement be entered into between manufacturers with regard to prices which should be fixed individually by each manufacturer without consultation or discussion with others. We also recommend that until the T.M.C. arrangements are abandoned and prices are fixed individually the B.M.T.A. should refrain from enforcing prices.

561. We believe that these recommendations, if adopted, will prove effective to establish price competition at the manufacturers' level. There is nothing in the structure and circumstances of the industry which, in our view, prohibits normal price competition between manufacturers. It is true, as is stated in paragraph 480, that there is only a small number of them, each operating with a large amount of special equipment; but this is equally true of other industries where active competition exists. In these circumstances we think that adequate price competition can be secured in the tyre industry without prohibiting the prescription of resale prices. It must be realised, however, that as tyres are manufactured from more or less common elements and to a common standard of safety, the variations in the price of tyres of the same class cannot be very great. This, at any rate, seems to be the experience in the United States where presumably competition in the fullest sense prevails.

562. The question of resale price maintenance has been investigated in recent years by two committees—the Greene Committee and the Lloyd Jacob Committee—and both these committees have approved of the right of every manufacturer of branded goods to fix the price at which his goods are sold to the public. We do not suggest that there can be no exception to this general rule but, having regard to the authoritative standing of both those committees and the exhaustive examination which they made of the problem,

we should not be prepared to make an exception unless satisfied that the fixing of resale prices in any particular case is detrimental to the public interest. On the information and evidence we have had placed before us, we are not satisfied that that is so in the tyre industry. There is no evidence to show that the industry is anything but highly efficient, or that the prices of tyres are excessive having regard to the cost of manufacture and distribution.

563. We therefore can see no justification for so drastic and unprecedented a step as the prohibition of the fixing of resale prices by manufacturers in this one industry. In fact such a prohibition will, in our view, have little or no effect on manufacturers' prices. On the other hand it will, we believe, have a serious effect upon the tyre business of retailers, especially the small and medium distributors, and will disorganise the distributive side of the industry in which some 27,000 traders are engaged. The policy of the tyre industry hitherto has been that tyres shall be distributed to the public through dealers who have adequate premises and equipment for fitting and testing tyres before the vehicle to which they are fitted takes the road, and r.p.m. has facilitated the provision of this service. This service must, we think, make some contribution to road safety and a dealer providing it is entitled to protection from "cut rate" competition from persons providing no service, at any rate so long as he is not making undue profits. No allegation has been made and there is, so far as we are aware, no evidence that the retail distributors' profits are on the average excessive, or that the trade margins which they receive are unreasonable.

564. If there were any evidence that the abolition of r.p.m. would lead to a reduction in price by the introduction of any novel marketing practices there might be something to be said for taking the proposed step—but there is no such evidence and no suggestion has been made that this would be the case if the recommendation were adopted. Any reduction in price is far more likely to arise from "cut rate" competition on the part of those dealers prepared to accept a price which would not give a reasonable return to established dealers. We do not believe that "cut rate" competition of this kind is in the public interest. It is not always in the public interest to obtain goods or service at the lowest figure. Whatever may be true of other commodities we believe that in the case of tyres on which the safety of the public to some extent depends, it is in the public interest that the distributive trade should remain in the hands of reputable dealers who receive an adequate remuneration for the services they perform.

565. Furthermore the present system has hitherto ensured a proper distribution of the supply of tyres throughout the country and we think that the abandonment of r.p.m. will seriously prejudice distribution especially in smaller towns and villages in that many of the smaller distributors will cease to stock tyres, for, as is pointed out in paragraph 490, they are the people most likely to suffer from price cutting.

566. Moreover, the banning of r.p.m. means not only that tyres may be sold below the recommended price but also above that price. The ordinary purchaser of tyres, who may not be in a position to know what the proper price is, can at present rely on the fact that the price charged is the standard price fixed by the manufacturer. In the absence of any such standard price, purchasers may find it difficult to know what a proper price is and may be overcharged. The present system also prevents profiteering in times of shortage or in an emergency.

567. Furthermore, it appears to us that in order to enforce the recommendation prohibiting the prescription of resale prices, it will be necessary to deprive tyre manufacturers who are patentees, of the right now enjoyed

by all owners of patents, to prescribe the price at which their patented products are to be sold. The fact that Section 10 (5) of the Monopolies and Restrictive Practices Act, 1948, provides that such a restriction cannot be imposed by an order of the competent authority, indicates to us that a drastic step of this nature is only to be taken in exceptional circumstances. We venture to express the view that the circumstances of this industry are not so exceptional as to justify that step.

568. For all these reasons we are unable to support the recommendation that tyre manufacturers should no longer be able to prescribe resale prices for their tyres.

569. Neither do we agree with the recommendations in paragraph 508 that the Tyre Trade Register is against the public interest and should be discontinued. It is said that the main effect of the register is simply to create a privileged class of distributor. This is, of course, true in every trade or occupation where a qualification or condition has to be complied with. The question is whether the condition or qualification serves a useful purpose. In this case the condition or qualification is that the dealer should have adequate premises and possess certain standards of equipment for fitting and testing tyres and the evidence is that if a prospective dealer complies with these conditions or qualifications there is no difficulty in his being admitted to the register. The fact that every supplier of tyres to the public is equipped to render adequate service for fitting and testing tyres must, as we have already said, make some contribution to road safety, particularly with the growing use of tubeless tyres, and we should welcome a closer supervision by the T.M.C. of those on the register to ensure that the service is effectively maintained. Finally we think that the service is likely to be more efficient if the tyre manufacturers are at liberty to agree that tyres shall be supplied only through traders whose names are included in the register.

JAMES ARCHDALE.

T. J. BARNES.

W. GAVIN CULLEN.

A. L. GOODHART.