

### **The effect on the home market of the international agreements**

182. The L.M.A. maintain that with the United Kingdom duty at 20 per cent. the present overseas arrangements in practice affect the home market only by preventing dumped imports. However, their main importance lies in the fact that they are part of general arrangements covering overseas markets which secure great advantages for our overseas trade, including protection for our exports in Commonwealth markets, and improve our ability to earn foreign exchange.

### **Sterilisation of premises**

183. The L.M.A. tell us that the agreements restricting the use of certain premises for the manufacture of floor coverings were made by individual members and do not concern the Association as such. One purpose of the restrictive covenants was to ensure that the factories in question were not occupied by firms who would produce cheap linoleum of low quality and so damage the reputation of linoleum as a floor covering to the detriment of the industry as a whole. It is to be noted that the purchases took place at a time when "rationalisation" was the vogue. "The popular cure for many industries practised and advocated in the highest places was the reduction of the number of manufacturing units by the permanent elimination of some of them." The L.M.A. members have, however, reviewed the situation in the light of present circumstances. In their opinion, where the goodwill of a going concern is acquired it is reasonable and normal, in order that the benefit of the goodwill may be enjoyed, that there should not for some time be competition from the vendor's premises. L.M.A. members therefore propose that if in future any of them are associated in any purchase of a linoleum manufacturing business and feel that for these reasons some restriction on use of the premises is desirable, it should only be for a specified period after the purchase. In view of the lapse of time the existing covenants will be released.

## **CHAPTER 15. CONCLUSIONS ON THE PUBLIC INTEREST AND RECOMMENDATIONS**

### **Introduction**

184. The linoleum industry in the United Kingdom consists of nine manufacturing companies with an annual turnover of between £8m. and £9m. in the home market. Seven of these companies together constitute the Linoleum Manufacturers' Association, and two, whose turnover represents roughly 20 per cent. of the total, are outside its membership. On the figures for 1952 and 1953 no company or group supplies as much as a third of the linoleum supplied in the United Kingdom, though neither the Barry and L.M. Co. group nor Nairn is far short of that position. The larger independent company, Tayside, was third in order of turnover of the nine manufacturers.

185. Of their output for the home market, manufacturers in the L.M.A. sell about 75 per cent. by value direct to retailers and about 20 per cent. through wholesalers, the remaining 5 per cent. representing direct sales to Government departments, nationalised industries, local authorities and other users. The pattern of the independent manufacturers' trade differs in that the greater part of it is transacted through wholesalers.

186. The Linoleum Manufacturers' Association was founded under the name of the Linoleum & Floorcloth Manufacturers' Association in 1934 and then included all the present members and three manufacturers who

went out of business in 1937, 1938 and 1949.\* There have been no newcomers to the industry since the Association was formed and the arrangements with which we are concerned have existed with only minor changes since 1934. These arrangements are for convenience summarised below:—

(1) *Common Minimum Prices*

The L.M.A. members are bound by a formal agreement to observe the minimum prices adopted by the Association from time to time, and since these are rarely exceeded, the Association's prices are to all intents and purposes common prices.

(2) *Ancillary arrangements*

In support of this system of common prices there are a number of common trade practices most of which are inscribed in a Register maintained by the Association.

- (a) Wholesale terms are confined to traders on an approved list. The rates of discount allowed are common. In practice members try (without any collective action) to ensure that the wholesaler does not sell to the retailer below the manufacturer's list price.
- (b) An aggregated turnover bonus ranging from 2½ to 10 per cent. is allowed after the end of the bonus year on annual purchases of £15,000 and over by retailers and two other customers from all L.M.A. members. Two retailers, as special cases, are paid the maximum bonus as a deduction from invoice in return for guarantees of the necessary minimum turnover. The bonus supports common prices by allowing large orders to be spread over all L.M.A. members without loss of rebate.
- (c) The Register prescribes the special terms which members may allow to the Government of Northern Ireland and the London County Council (10 per cent. off list price less 3¼ per cent.), and the limit of their discretion in quoting special prices to the Ministry of Works and Admiralty (they may not sell below list price less 25 per cent.); the Register also regulates discounts for jobs and rejects, and prescribes the procedure for invoicing, terms of payment and concessions to traders when prices are changed, charges for non-standard widths and for cutting, splitting, packing, carriage and delivery, and maximum prices for the purchase by members of heavy linoleum scrap.
- (d) Two practices have been in suspense since the war, though the Association have not formally revoked them:—
  - (i) Members were required to pay into a "job pool" a certain percentage of the invoiced price of job lots sold in each category of linoleum, and the pool was periodically distributed to members in proportion to the invoiced value of all their other sales of linoleum of the same category; and
  - (ii) As a condition of receiving the wholesale discount, the L.M.A. used to require wholesalers to undertake to buy linoleum only from L.M.A. members.

(3) *Other marketing practices*

The Register also contains rules

- (a) prescribing the thickness to which members may manufacture linoleum;

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\* As explained in paragraph 48, one non-manufacturing member also left the Association in 1937.

- (b) prohibiting the supply of certain kinds of linoleum with painted back;
- (c) imposing restrictions on advertising and exhibiting, and on the supply to traders of samples, sales aids and other accessories;
- (d) prohibiting members from accepting orders which do not specify the pattern number or quality and colour of the linoleum required.

**(4) Enforcement**

Under the Association's Constitution a member who fails to comply with the rules is liable to pay damages or to be expelled from the Association.

**(5) Restriction of outside interests**

A member is also liable to expulsion for transferring a substantial part of his business to a firm outside the Association or for holding a substantial interest in such a firm if it is in competition with firms within the Association.

**(6) Overseas Agreements**

The L.M.A. have entered into agreements with certain foreign linoleum manufacturers which regulate the price at which imported linoleum may be sold, and have the effect of preventing or restricting imports of linoleum into the United Kingdom. (These arrangements are part of general arrangements for overseas markets, with the other provisions of which we are not concerned.)

**(7) Sterilisation of premises**

After certain members of the L.M.A. went out of business, their factories were acquired and disposed of by other members, subject to agreements (made independently of the Association) which prevent the use of these premises for the manufacture of linoleum and other hard-surfaced floor coverings.

We now proceed to examine the effect of all these practices on the public interest.

**Common Minimum Prices**

**Quality**

187. The L.M.A. say that the common price system safeguards and improves quality—a term which includes general appearance as well as wearability—and apart from the common price system they take no direct action to maintain quality. They have further told us that they would not do so if the common price system were abandoned. There is no agreement among members to observe any particular standard of quality, but the Association say that their members' linoleum would pass any relevant B.S.I. test and is in fact of a far higher quality than the B.S.I. tests require. It appears from their evidence that there are no striking differences in quality between members and they attribute this to the effect of competition in raising standards to the level of the best.

188. We have found considerable difficulty in assessing the effect of the common price system on the quality of linoleum produced by L.M.A. members. The wholesalers' association have told us that they favour a fixed price as helping to ensure good quality, which they think would suffer if there were a price war. Most of the individual retailers from whom we have had evidence take a similar view, though one retailers' association was doubtful whether, as a general principle, common prices are necessary to prevent debasement. The L.M.A. themselves could not specify any instances where debasement actually occurred before common prices were introduced.

We asked the L.M.A. whether they could express in terms of money value any differences as between members, in the quality of particular lines, but they said they could not do so. We think it probable that the common price system does have some tendency to encourage manufacturers to compete in quality more than they otherwise would. We also think that price competition might lead individual manufacturers to lower quality (especially in matters other than appearance) to enable them to reduce prices on particular lines, although we have no evidence that it occurred before the Association was formed. Such lowering of quality would be most likely to occur in wearability, about which the ordinary user has difficulty in making an accurate judgment at the time of purchase. It would not necessarily be to such a degree as to be prejudicial to the public interest, but it might be carried to excess in conditions of acute competition. On the other hand no minimum standard of quality is guaranteed by the Association's arrangements, and high-cost producers who found it difficult to sell profitably even at the common price might be tempted to lower quality from time to time in order to reduce their costs and increase their profits. But here again we have no evidence that such a case has actually occurred.

189. The question arises whether the quality of the linoleum made by L.M.A. members is unnecessarily high. The practice of the Admiralty and the Ministry of Works is to require that the linoleum which they buy should satisfy the relevant tests laid down in the British Standard specification. This specification was originally made at the suggestion of Government departments to meet their own and corresponding commercial requirements, and does not cover all types and gauges of linoleum.\* In the past some L.M.A. members have made linoleum below their normal quality under Government contracts, but we understand that they now supply at their normal quality, even though it may be above the minimum on which the Departments insist. The reason, no doubt, is that by doing so the manufacturer avoids the additional cost involved in changing over to the manufacture of a special line for the Government order, large though such orders often are. It might nevertheless be argued that it would be in the public interest that the L.M.A. members should be free to offer other buyers, at an appropriately lower price, linoleum which is good enough to pass the B.S.I. tests even though it is not equal to the manufacturer's normal quality. However, some measure of choice is provided by the linoleum of the independent manufacturers at prices five to ten per cent. below the L.M.A.'s and of a quality which at least satisfies the B.S.I. tests in the grades to which the tests apply. Moreover the existing Association grades, ranging from the most expensive inlaid to the cheapest printed linoleum, do provide a wide range of choice in relation to both quality and price.

190. We reach the conclusion that the common price system does have some tendency to keep quality up, but we do not think that it guarantees a standard of quality higher than would exist under price competition, or on the other hand that it at present tends to maintain a standard of quality which is unnecessarily high.

#### Price stability

191. At times the prices of raw materials fluctuate considerably. The L.M.A. contend that their common price system cushions the effect of these fluctuations, because the Association take a view of future costs when fixing their prices, so that the prices may remain unaltered for some time. This arrangement, they say, induces stability in the trade. It may, however, be argued that such stability is all very well for traders, but that users would benefit more if the individual manufacturer could, by charging

\* For the types and gauges of linoleum not covered by the British Standard specification, see paragraph 43.

lower prices, share with them the economies to be made by skilful buying of raw materials. It might further be held that the degree to which prices should be kept stable is a matter for the manufacturer's individual judgment rather than for collective agreement, since each manufacturer, if he is alert and enterprising, can best tell what price policy is most suited to his business. Indeed, the interests of users generally might be better served if prices fluctuated with the costs of materials, because when costs were low the user would obtain the full benefit in a lower price. It would also follow that when costs were high, supplies would go to the user most ready to pay for them. On the other hand, most of the individual retailers from whom we have received evidence, welcome the L.M.A.'s common prices because they create confidence in stocks, and Tayside, the larger independent manufacturer, regards the stability which they provide as beneficial. On balance, we think that in this trade the benefits of stability outweigh the possible detriment to users. We believe that it is a convenience to users, as well as in the interests of the manufacturers and of the smaller traders who do not normally obtain linoleum direct from manufacturers, that the trade should be encouraged to hold adequate stocks, and we conclude that the stability which gives such encouragement is an advantage of this common price system.

#### Price levels, costs and profits

192. There remains the question whether the common price system leads to higher prices, costs and profits than would otherwise prevail. The Association have stressed that their prices "do not necessarily bear any arithmetical relationship" to actual costs. They are fixed for the future with such considerations in mind as "future trends in costs, the need to minimise price changes, the competition of alternative materials and the need for acceptable margins between grades". They say that since the position of the larger manufacturers changes from year to year in relation to costs and profits on different grades of linoleum, no conclusion can be drawn that without common prices, prices would fall to the level at which the low-cost producer would sell if he based his prices solely on current costs. Indeed, they maintain that because manufacturers' relative positions in regard to costs change from year to year it is hardly possible to say that there is a low-cost or a high-cost producer in this industry. The evidence does not however bear out this last argument for we find that in June and December, 1953, and June, 1954, the same manufacturer showed the lowest costs for respectively four out of seven, five out of seven and three out of seven items costed, while only one other manufacturer (in June, 1954) was the lowest for more than one product.

193. In most grades of linoleum we have found a considerable range of costs between manufacturers making similar types. The Association say that the spread is partly due to differences between manufacturers in methods of cost assessment. They further maintain that, irrespective of common prices, all manufacturers have to make a certain range of goods. In a particular line one manufacturer may not be able to produce as cheaply as another, so he follows the usual business practice of recouping himself on his more profitable lines in order to make a profit on his trade as a whole. Certainly, the absence of uniformity in costing methods reduces the value of comparisons between the costs of one manufacturer and another, and of the conclusions to which such comparisons may lead. We have, however, found confirmation of a wide difference in costs in the considerable variations in the rates of profit of the individual manufacturers on each of the main types of products, and we are not satisfied that so wide a spread of costs can be dismissed in the way which the L.M.A. suggest. Manufacturers no doubt find that under the common price system they can best fill their order books by

making a wide range of goods, and, if some lines are less profitable than others, by averaging the profits over their total production. We believe however that without common prices each member, while producing a reasonable range, would tend to concentrate his production more on the lines in which, at the time, he could compete best on price because his costs were comparatively low. Encouragement would thus be given to the low-cost producer of each line and if, as might be expected, his business expanded because his prices were low, a general lowering of prices would eventually follow, for some period at least. It is therefore arguable that in the long run the security afforded by common prices tends to discourage individual manufacturers from eliminating uneconomic lines of production, and so tends to keep prices up. It will be seen from Appendix 8 that the L.M.A.'s prices are now about two or two and a half times what they were before the war. On the other hand, we find that the current price of linseed oil, the principal raw material, is about £110 a ton as compared with about £28 in 1939; and the wages now paid in the linoleum industry are, on the average, about three and a half times what they were in 1938. We therefore see no reason to reject the view expressed to us both by the larger of the independent manufacturers and also by a considerable body of retailers, local authorities and large commercial users that the L.M.A.'s prices are reasonable. We think it likely, moreover, that competition from the linoleum of independent manufacturers and from alternative floor coverings does have the effect of keeping the L.M.A.'s prices down, to an extent which varies with the different lines of linoleum.

194. The Association assure us that as a check on excessive prices the ceiling clause (under which a member can demand that the Association's price shall not exceed his own costs plus 20 per cent.) is constantly in mind when prices are fixed. No manufacturer has however invoked it since the war, though there have been occasions in 1953 and 1954 when a member could have done so on lines where the competition of the independent manufacturers was least. It has indeed been stated on behalf of the Association that the effect of the clause is to allow a manufacturer "to dictate a lower price if he feels that his business will be affected or his enterprise curtailed by the higher price." We note however that no manufacturer invoked it when the L.M.A. decided not to reduce their prices in June, 1954. They say that they expected costs to rise. Nevertheless the fact that prices were then more than 20 per cent. above the cost, at that time, of the lowest-cost producer for various products which represented over 46 per cent. by yardage of L.M.A. members' total linoleum sales (or about two-thirds of the sales of costed items) throws some doubt on the effectiveness of the clause as a check on excessive prices.

195. We have given in paragraph 193 some reasons for thinking that the costs of L.M.A. members may be generally higher under the common price system than they might be if there were free competition, for so wide a spread of costs between them on particular lines suggests that among L.M.A. manufacturers generally as well as in individual concerns a more economic deployment of resources should be possible. It is impossible to determine, in the absence of any costings in a form which can be compared, whether the L.M.A. are correct in attributing the spread of costs in part to different methods of cost assessment. The costings of at least some of the individual manufacturers are an inadequate measure of their own costs for particular products. For example, although linseed oil is an important item in costs, the two manufacturers who use both the slower "scrim" and the faster "smacker" processes of oxidising it have not been able to give us any information about the relative costs of the two methods. In the costings sent to the L.M.A. Accountant the cost of both processes is averaged. There

are, however, important differences between the two methods (as paragraphs 33-35 show) which might be expected to result in differences of costs.

196. The spread of profits in 1954 between the four largest manufacturers in the L.M.A., ranging from 8 to 15.6 per cent. on sales, is not strikingly wide; and the average rate of profit on the home trade in that year, of 10½ per cent. on sales and 11½ per cent. on capital employed, is not excessive considering the sellers' market which prevailed. In 1953 profits on the home trade were about 0.5 per cent. on capital. In that year the industry had to absorb Government stocks of linseed oil at more than world prices, but it is clear that, quite apart from this circumstance, the profits would have been lower than in 1954. The profits made during the war and up to 1952 are irrelevant because of price control. Pre-war figures closely comparable with those we have given for 1953 and 1954 are not available, but a rough comparison is afforded by the average profit on capital of 11½ per cent. on home and export trade together for all linoleum manufacturers, including the independents, in the four pre-war years 1936-39, and 12½ per cent. on home and export trade for the four largest L.M.A. manufacturers in 1954, although the former figure includes felt base as well as linoleum.

#### Effect on exports

197. The Association's contention that the common price system in the United Kingdom is necessary for the maintenance of the common price agreements with foreign manufacturers is based partly on the view that "it is difficult . . . for manufacturers who are fighting each other on price in this country to enter into a common price arrangement with regard to their own products in foreign countries", and partly on the contention that objections arise in overseas markets if British exports are priced above or below the United Kingdom level. Since exports have not been referred to us, we cannot investigate fully the possible effects on exports of abrogating the common price system in the home market. In these circumstances, we make no attempt to form a judgment on the effect of the common price system on exports, but we cannot ignore the strongly held view of the Association members that the system is of assistance to them in their export arrangements.

#### Conclusion

198. Though profit margins have differed widely on different lines of linoleum the average profits of L.M.A. members have been moderate in recent years. It is difficult to determine the precise relationship between the maintenance of quality and the common prices, but, as we have said in paragraph 190, we think that the common price system tends to keep up quality. The stability which the L.M.A.'s common prices provide may not always be advantageous, but we think that it has advantages for the user as well as for the manufacturer and for the smaller trader who does not buy direct from manufacturers, in that by creating confidence in stocks it prevents dislocation in the distributive trade. While it is possible that common prices have to some extent retarded the expansion of low-cost producers, thus tending to prevent the most economical deployment of resources and resulting in higher prices than might be expected under free competition, it is also possible that the system has been of some assistance in at any rate parts of the export field. Taking all these matters into consideration, we do not find that in the circumstances which have prevailed in recent years, the L.M.A.'s common price system has operated or is at present operating against the public interest.

199. We have to consider whether the common price system "may be expected" to operate against the public interest. It is exceptionally difficult in this case to form a judgment about the future because the industry was

under price control from 1939 until April, 1953, and the reference to this Commission was made in September, 1953. It cannot be assumed of any association that the way in which they conduct their affairs while an inquiry is in progress is necessarily a good index of how they may be expected to operate when the inquiry is over. Moreover, we cannot foresee whether the competition of alternative floor coverings will in future be an effective check on linoleum prices, nor can there be any certainty that the two existing independent linoleum manufacturers will continue to compete in price with the L.M.A. manufacturers. Competition from alternative floor coverings is already limited by the L.M.A. members' controlling about half of the United Kingdom output of felt base, the most important competitor of cheap linoleum. L.M.A. members also have interests in other alternative floor coverings besides felt base. These interests may be increased as time passes. We notice that the profits of the four largest L.M.A. members in 1954 were highest on inlaid linoleum where competition from outside linoleum manufacturers is small and progressively lower on plain and on printed linoleum as more competition from these outside manufacturers was encountered. If the L.M.A. were left free to fix common minimum prices without any safeguards, circumstances might well arise in which they would raise the prices, or some of them, to an extent which would give them unreasonably high profits. Further, while we have not found that under the common price system the manufacturers in the L.M.A. maintain a standard of quality which is unnecessarily high, we believe that the system would help them to do so if they so wished. Again, though stable prices may assist the efficient operation of the distributive trade, the common price system prevents the individual manufacturer from sharing the rewards of skilful management with the user in the form of reductions of price, and it may well be that at some future time this fact would outweigh any benefits of stability. For what the figures are worth, the spread of costs between manufacturers for different linoleum products suggests, in a way that cannot be entirely discounted by the manufacturer's normal averaging of results over his whole trade, that the L.M.A.'s common price system would favour an uneconomic deployment of resources on too many lines of production and give undue protection to the unenterprising and inefficient. We consider, therefore, that there are serious risks that the common price system if left unamended and uncontrolled may in some circumstances operate against the public interest. These risks would be increased if it were made any more difficult for members to leave the Association or if manufacturers began to fix retail prices. On the grounds set out in this paragraph and in the sense indicated above we conclude that the common price system may be expected to operate against the public interest.\*

200. We consider that if the L.M.A.'s common price system is to continue there should be certain safeguards to prevent its operating in future against the public interest; and that if the Government are not satisfied that the L.M.A. are fulfilling the conditions imposed, they should consider taking steps to bring the system to an end.

201.† First, we consider that reliable costings should be available when prices are fixed. Despite the recommendations of the Linoleum Working Party in 1947 (which included representatives of the two largest members of the L.M.A., a representative, himself a chartered accountant, of one of the smaller members, and also a chartered accountant outside the industry), manufacturers have not introduced a uniform system of costing, nor do they, as recommended by the Working Party, have before them when fixing prices the costings in comparable form from each member for selected standard lines.

\* See Note of Dissent by Mr. Wrangham, paragraph 236.

† Paragraphs 201-207, see Reservation by Sir Arnold Plant, paragraphs 220-234.

All that they have for the selected lines is the weighted average of the actual costs of the L.M.A. members at a given date, and this is used as a guide when estimating future trends. We see no insuperable difficulty in devising arrangements under which costings in appropriate detail can be collected without disclosing the identity of individual members and the nature, as distinguished from the existence, of confidential processes. We consider it important that when common minimum prices are fixed, regard should be had not only to average costs but to the range of costs and particularly to the costs of the lowest cost producer of any particular type of linoleum.

202. Secondly, we consider that there should be some independent check on the reasonableness of the prices fixed and that only the Government is in a position to make such a check.

203. Thirdly, we consider that the quality of linoleum for which prices are fixed should be specified, and the L.M.A. should see that this quality is maintained.

204. Fourthly, we consider that there should be some assurance that the manufacturers remain free to leave the Association without penalty of any kind.

205. Fifthly, we consider that the freedom of retailers in fixing prices to users should not be curtailed.

#### Recommendations

206. We therefore recommend that the L.M.A.'s common price system should (subject to the recommendations made later in this chapter) be permitted to continue only under the following conditions :—

- (a) The L.M.A. members would take action on the lines of the thirteenth, fourteenth and sixteenth recommendations of the Linoleum Working Party's report, that is to say
  - (i) They should take prompt steps to introduce a uniform system of costings, of definition of terms and processes, and of classification of expenditure.
  - (ii) They should furnish periodically costs of selected standard lines to an independent accountant who would collate the information and circularise it to all members without disclosing the results of particular companies.
  - (iii) The L.M.A. should, when fixing prices, have before them the full details of the costings of each firm in the Association (but without disclosure of the names of individual firms).
- (b) The Association's price list should be publicised within the distributive trade, as well as the price lists of individual members.
- (c) The Government should review from time to time the prices fixed by the L.M.A. and charged by their members, together with L.M.A. members' costs and profits for each line of manufacture. The Government should satisfy itself that the prices are reasonable, and for this purpose the L.M.A. members should make available such information as the Government may require, including that referred to in recommendations (a) (ii) and (iii).\*
- (d) To ensure that the quality of their linoleum is maintained the L.M.A. should establish the standards of quality to which their members should be required to conform and enforce these standards by tests.

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\* See Note of Dissent by Mr. Wrangham, paragraphs 237 and 241.

- (e) Members should remain free to leave the Association without penalty, subject only to giving six months notice as at present.
- (f) Members should continue to refrain from fixing the retailers' price of linoleum to the user.

207. We would also recommend that if the common price system is permitted to continue on these conditions, the collaboration of L.M.A. members in joint fundamental research should continue to be at least as close as it is at present and that in addition, they should make more freely available to one another information on improved manufacturing and processing techniques which they may evolve individually.

#### **The List of Wholesalers and the wholesalers' discount**

208. The L.M.A.'s list of wholesalers consists of about 250 names. Since the war 115 applications have been accepted and 71 refused. The L.M.A. have told us that the traders must be engaged in "genuine wholesale trade" and carrying "stocks adequate for that trade". They make their collective selection so that the list may not contain traders likely to undercut the manufacturer in sales to the retailer or the retailer in sales to the public. The L.M.A.'s common discount to wholesalers further ensures that L.M.A. members give the same discounts to the same wholesalers, and so do not undercut one another by fixing their own rates of discount and deciding what customers should receive them. Wholesalers have an alternative source of supply in the independent manufacturers, who account for nearly half the industry's sales through wholesale channels.

209. We have examined the cases of a number of traders to whom the L.M.A. have refused admission to the list. Some were refused because the L.M.A. thought that they were too closely connected with retail business or that they would sell direct to the public. Others were refused because they were dealing in competing floor coverings or in different lines of goods and the L.M.A. did not think that they would push the sale of linoleum or give a useful service. The L.M.A. do not normally tell the applicant why they will not admit him to the list or what qualifications he must have to be selected. We consider that the collective selection of wholesalers by the L.M.A. introduces an undesirable element of rigidity into the trade. Though the L.M.A. have told us that they would grant wholesale terms to a trader, even though he were not yet a linoleum wholesaler, if he satisfied them that he could operate as such, it must be harder for a trader to satisfy manufacturers collectively than to come to terms with them individually, and the Association must have some regard to the possibility that some of their members' direct business with retailers might be diverted through the wholesale channel. That manufacturers should wish to obtain good service for their wholesale discount is understandable, but we consider that the choice of traders who can be relied upon to perform this service should be made by the individual manufacturer in accordance with the requirements of his own business. The independent manufacturers appear to have no difficulty in making their selection individually and we consider that L.M.A. members should do the same. One of the independents has indeed told us that on the rare occasions when his wholesalers have sold below his list price, a threat to discontinue supplies has been enough to stop them.

#### **Conclusion and Recommendation**

210. In these circumstances, we consider that the compulsory observance of the L.M.A.'s list of wholesalers is against the public interest and should be

discontinued.\* If however the L.M.A. were simply to circulate a recommended list which members could observe or not as they pleased the objection would be removed.

211. It follows from what we have said that we would expect the loyalty provisions of the L.M.A.'s pre-war agreement with wholesalers (which, though no longer in operation, have never been formally withdrawn) to operate against the public interest if they were revived, and we recommend that they should be abolished.

212. Provided that the safeguards which we have recommended are introduced in the common price system, and the observance of the list of wholesalers becomes optional, we do not think it necessary for the common discount to be discontinued as it is a natural corollary of common prices.

### **The Aggregated Retail Turnover Bonus**

213. The L.M.A. say that they agreed under pressure from large retailers to give this bonus on aggregated purchases of £15,000 and over; its object is to increase sales but it is too early to judge whether it has succeeded. The sales which earned this rebate in 1952-53, the first year of its operation, amounted to £1.29 m. or less than a sixth of the industry's total turnover. Unless this proportion greatly increases there is thus a wide field in which the rebate does not attract custom away from the independent manufacturers. The independent manufacturers take account of the rebate in fixing their own list prices, but Tayside believes that the rebate nevertheless tends to attract the custom of the larger retailers to the L.M.A. members, particularly because the aggregation of the bonus enables large retailers, without loss of rebate, to obtain the full range of goods made by all seven members of the Association. The wholesalers' association, while disliking the turnover bonus, admit that in practice they are probably not greatly affected, because most of their retailer customers are not large enough to qualify for it. We have however been informed of one wholesaler who has lost trade with retailers since the scheme was introduced.

214. A customer earns the aggregated bonus on the whole of his purchases from L.M.A. members at the highest rate earned by him in the bonus period. Any linoleum which he buys from an independent manufacturer is thus liable to affect adversely the rate of rebate on all his purchases from L.M.A. members. If the market is such as to make the customer uncertain of his ultimate turnover, the aggregated rebate provides a special incentive to buy only from members of the L.M.A.

215. The L.M.A. have told us that they prefer an aggregated to an individual rebate because it is fairer to their smaller members; individual rebates would encourage large buyers to go to the largest manufacturers who alone make the full range of qualities. Evidently, therefore, if there were no aggregated turnover bonus the L.M.A. manufacturers with a more limited range of production would have to undercut the larger manufacturers if they wished to attract large orders. Thus the bonus helps to sustain the common price. But there is no suggestion that it represents a saving in costs to the manufacturers who grant it, apart from any saving which may result from their share in a general increase in sales if the rebate achieves its object.

### **Conclusion and Recommendation**

216. Though the aggregated turnover bonus does not at present operate over a large proportion of the trade, our opinion is that it unduly restricts the competition of independent manufacturers and could do so even more if at

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\* See Note of Dissent by Mr. Wrangham, paragraph 238.

any time it suited the L.M.A. to lower the minimum turnover entitling a customer to receive it; it unduly restricts competition between individual L.M.A. members; it discriminates against wholesalers and it also favours large retailers in a way not justified by a saving in costs. We therefore consider that it operates against the public interest\* and recommend that it be discontinued.

### Other practices in support of Common Prices

217. We have considered the other ancillary practices with which the L.M.A. support their common price system as summarised in paragraph 186 (2) (rules about Government contracts; discount rates for jobs and rejects; procedure for invoicing; terms of payment; concessions to traders on change of prices; packing, cutting and splitting charges; carriage and delivery terms; and maximum prices for buying linoleum scrap). Special comment is necessary on only two of these arrangements:

- (a) The L.M.A. recently set a maximum of 25 per cent. below list price as the limit of the concession which members might allow on orders for the Admiralty and Ministry of Works. The Association say that the purpose of this limitation is to provide a safeguard against severe competition and that a lower price would not be economical. We think it unlikely that this arrangement will in practice result in a higher general level of prices to the Departments concerned than they would otherwise pay. It is convenient to mention here that, according to the Association, Government orders are spasmodic but "they are for quantities of the same type of goods which justify manufacture especially for the order, as opposed to other manufacture which is for stock". In effect, therefore, L.M.A. members are allowed to give these Departments an individual quantity discount up to 25 per cent. off the list price. To this kind of concession we see no objection at all. Though it may well be that Government orders for any one kind of linoleum are generally larger than those of other customers, we have already explained in paragraph 189 that they do not involve the manufacture of special grades. We therefore think that L.M.A. members should have the same discretion in making special quotations to other customers whose orders involve a comparable saving in cost.
- (b) The Association prescribe a maximum price of £15 a ton (exclusive of freight) which members may pay for linoleum scrap with a heavy cement content. This scrap usually arises on linoleum of the thicker gauges supplied untrimmed to flooring contractors, who often like to have a margin for cutting. The maximum price supports the L.M.A.'s common price system by setting a limit to the concession which, by buying back scrap, a manufacturer can give to a large customer. The L.M.A. say that it also helps to keep down material costs. This arrangement, therefore, constitutes a kind of buyers' ring in linoleum scrap, and it could be argued that the price of scrap should be allowed to find its own level in relation to the current prices of linseed oil and other ingredients of the linoleum mixture. If the price of these materials rose, it might pay the manufacturer to give a higher price for scrap, and so encourage large customers to save scrap and trade it on advantageous terms against their purchases of new linoleum. By this means there might even be some overall saving in imported materials. Since however

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\* See Note of Dissent by Mr. Wrangham, paragraph 239.

the scrap arises mainly from trimmings, such savings would in practice be very small in relation to total material costs, and we consider that the maximum price for scrap can have little effect on the price of linoleum.

Of the other ancillary practices mentioned in paragraph 186 (2) it is sufficient to say that, given the existence of a common price system, their only importance is that they support that system, and we do not find anything in the practices themselves which is detrimental to the public interest.

#### Conclusion

218. We conclude that none of the ancillary practices mentioned in the preceding paragraph operate against the public interest, nor may be expected to do so provided that our recommendations on the common price system are implemented.

#### The Job Pool

219. The L.M.A. have not thought it necessary to revive since the war the job pool scheme laid down in their Constitution. They have, however, told us that they regard it as suspended rather than discontinued and we therefore consider that it is our duty to reach a conclusion about it. Under this scheme a percentage of the invoiced price of goods in each category of linoleum sold as job lots below list price was paid into a job pool and periodically distributed to members in proportion to all their other sales in the same category. One object of the scheme was to discourage debasement of quality, but the L.M.A. say that the volume of imperfect goods now produced is not such as to require the reintroduction of the scheme at present. The other main purpose of the scheme was to prevent manufacturers from undercutting the L.M.A.'s common price by selling perfect goods as jobs. The L.M.A. say that manufacturers have not tended to do this since the war, though we have been informed of one manufacturer who often offers two-piece perfect goods at a job discount of  $17\frac{1}{2}$  per cent. instead of the Association's discount for such goods of 10 per cent. We can understand that the L.M.A. would find the job pool useful to support their common prices in times of bad trade when manufacturers might be tempted to undercut them by such devices, but we think it unduly harsh that a manufacturer who really makes imperfect but saleable linoleum should suffer the double penalty both of a reduced selling price and of a contribution to the job pool. We also think that the requirement for contributions to the pool might in some cases be reflected in higher job prices to the customer, and might in other cases discourage manufacturers from giving discounts on jobs even where permissible; thus, imperfect goods would reach the public less cheaply. For these reasons we think that the job pool scheme, if reintroduced, may be expected to operate against the public interest and we therefore recommend that the L.M.A. should not reintroduce it.\*

#### Other common trade practices

##### Conclusions

220. *Common Gauges.* In standardising and reducing so far as possible the number of gauges in which linoleum is manufactured the L.M.A. are acting on the lines of recommendation 21 of the Working Party's report. The Working Party did not specify whether this reduction should be made collectively or left to the discretion of individual manufacturers. The latter course would have the advantage that it is least likely to interfere with the

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\* See Note of Dissent by Mr. Wrangham, paragraph 240.

initiative of an individual manufacturer if, for example, a technical development were to require the use of a special gauge. We accept, however, the L.M.A.'s contention that their present practice leads to economies in both production and storage, and conclude that on balance it neither operates, nor may be expected to operate, against the public interest.

221. *Linoleum with painted back.* The L.M.A. say that the reason for the rule not to supply certain kinds of linoleum with painted back, even if customers ask for it, is that it serves no useful purpose and merely gives a misleading finish. It could be argued that even in a technical matter the manufacturer is not infallible, and if he is anxious to compete in service he should be ready to supply what the customer wants and is ready to pay for. We do not regard this argument as convincing when possible deception of the buyer is involved and we do not consider that this practice operates or may be expected to operate against the public interest.

222. *Advertising.* The L.M.A.'s practice of banning press advertising by individual members is certainly restrictive of competition, as are their limitations on the free supply to traders of patterns, samples, and sales aids. In some industries advertising by individual firms may lead to an increase in a manufacturer's turnover and hence to a reduction in his unit costs. But this may not always be so; and it is the L.M.A.'s contention that in the circumstances of the linoleum industry the advertising prohibited by their advertising arrangements is wasteful advertising which would not promote lower costs and greater efficiency. Though the L.M.A. jointly advertise the merits of linoleum as opposed to other floor coverings, we have no direct evidence either way to show whether in this industry press advertising by individual firms would lead to lower costs and greater efficiency. It appears however that the independent manufacturers, though free to engage in this type of advertising, have not thought it worth while to do so. We do not, therefore, find that the L.M.A.'s restrictions on press advertising, and on free patterns, samples and sales aids to traders, operate or may be expected to operate against the public interest.

223. *Orders to be specific.* The L.M.A.'s rule that members should not accept orders unless the pattern number or quality and colour are specified is said to be directed against speculative buying. We can see nothing harmful in this rule and conclude that it neither operates, nor may be expected to operate, against the public interest.

#### **Enforcement of common prices and registered trade practices**

224. The L.M.A. can, under clauses 13 and 15 of their Constitution, award damages against, or expel, a member who sells below the Association price or contravenes their registered trade practices. We understand from the L.M.A. that no damages have ever been awarded under these clauses, and that since they are a trade union they doubt whether in fact such damages could ever be recovered. We note their intention to abandon these provisions for damages, and to retain merely the right to expel a member for persistently refusing to comply with rules "democratically adopted." We have separately indicated in each case where we consider that a practice should be entirely abandoned or its observance made optional instead of compulsory. If these recommendations are carried out the Association's rules will in any case have to be amended and we see no reason to object to the L.M.A.'s retaining the right to expel a member for contravening their rules as so amended, provided that, as we have recommended in paragraph 206 (e), nothing is done to make it more difficult for a member to secede from the Association at any time if he so desires.

### **Restriction of outside interests**

225. Under clause 15 of their Constitution the L.M.A. can expel a member if he transfers a substantial part of his business in linoleum or similar floor coverings to an outside firm, or if he or any of his directors have a substantial interest in any such firm manufacturing these products in competition with members of the Association. The Association tell us, however, that the provision has never been invoked and that they propose to delete it from their Constitution. We do not, therefore, think it necessary to express any opinion upon it.

### **Effect on imports of the L.M.A.'s overseas agreements**

226. The L.M.A. have arrangements with certain important Continental producers for the division of markets and with most of the Continental manufacturers to sell in each market at uniform prices. The effect of these agreements on the United Kingdom market is that certain Continental manufacturers cannot sell here at all and others cannot sell here below the L.M.A.'s price. Imports of linoleum into the United Kingdom are negligible, but the Board of Trade could express no opinion as to whether this was due to the 20 per cent. import duty, the L.M.A.'s overseas agreements, or the successful efforts of the industry to compete with imports. Few traders handle foreign linoleum at all, but such evidence as we have been able to obtain suggests that the United Kingdom product is superior to it.

### **Conclusion and Recommendation**

227. As we have said in paragraph 197, exports have not been referred to us and we cannot therefore go into the question of whether or not the overseas agreements are in the public interest. We are, however, concerned with the effect of these agreements on imports and import prices and so upon the supply of linoleum generally in the United Kingdom. If, as the L.M.A. believe, the costs of their foreign competitors are much the same as their own, we think that they are probably right in maintaining that with the import duty at 20 per cent. the effect on United Kingdom imports of their agreements with foreign manufacturers to charge uniform prices in each market is only to prevent "dumping". In general we consider that any problem which arises in connection with dumping should be dealt with by Governmental action rather than by a trade practice. In this case, however, it is represented to us that the price agreements with foreign manufacturers and the division of markets are an integral part of wider agreements of great importance for the export trade, and we do not feel justified in expressing a view in isolation on how they affect imports into this country. We have given reasons in paragraphs 199-205 for thinking that without safeguards the common price system may be expected to operate against the public interest. In recommending the safeguards which we have set out in paragraph 206, we have had it in mind that the safeguard which might be afforded by possible competition from other countries is ineffective while the overseas agreements are in existence and the duty is at its present level.

### **Sterilisation of premises**

#### **Conclusion**

228. The L.M.A. contend that, when a linoleum business is purchased and its premises disposed of, goodwill acquired with the business may fairly be safeguarded by placing, for a limited period, a restriction on the use of the premises for the manufacture of floor coverings. We note first, that the manufacturers who are parties to the only two restrictive

covenants on premises which we have found in this industry consider that their purpose has been served and that the covenantors can now be released ; and secondly, that the restrictions have not been imposed in pursuance of arrangements in the L.M.A. For these reasons we consider them outside the scope of our inquiry.

### Summary of Conclusions and Recommendations

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

- (1) *Common Prices.* We do not find that, in the circumstances which have prevailed in recent years, the Linoleum Manufacturers' Association's common price system has operated or is at present operating against the public interest (paragraph 198). There are, however, serious risks that in some circumstances it might do so if left unamended and uncontrolled, and in this sense it may be expected to operate against the public interest (paragraph 199).† It should be permitted to continue only under certain conditions, including the review of prices, costs and profits by the Government from time to time (paragraph 206).\*† If it continues, there should be a freer exchange of technical information (paragraph 207).
- (2) *Wholesalers.* The compulsory observance of the L.M.A.'s list of wholesalers is against the public interest and should be discontinued, but there would be no objection to a recommended list which members could observe or not as they pleased (paragraph 210).†
- (3) The loyalty provisions of the L.M.A.'s pre-war agreement with wholesalers may be expected, if revived, to operate against the public interest and should be formally abolished (paragraph 211).
- (4) Provided that our recommendations in sub-paragraphs (1) and (2) are implemented, it is not necessary that the L.M.A.'s common discount to wholesalers should be discontinued (paragraph 212).
- (5) *The Aggregated Retail Turnover Bonus.* The aggregated retail turnover bonus is against the public interest and should be discontinued (paragraph 216).†
- (6) *Other Practices in Support of Common Prices.* None of the ancillary practices mentioned in paragraph 217 operate against the public interest, nor may they be expected to do so provided that our recommendations on the common price system are implemented (paragraph 218).
- (7) *The Job Pool.* The job pool scheme if reintroduced may be expected to operate against the public interest, and the L.M.A. should not reintroduce it (paragraph 219).†
- (8) *Common Gauges.* The L.M.A.'s practice of prescribing the gauges to which members may manufacture linoleum neither operates nor may be expected to operate against the public interest (paragraph 220).
- (9) *Linoleum with Painted Back.* The L.M.A.'s rule against supplying certain kinds of linoleum with painted back neither operates nor may be expected to operate against the public interest (paragraph 221).

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\* See Reservation by Sir Arnold Plant, paragraphs 230-234.

† See Note of Dissent by Mr. Wrangham, paragraphs 236-238 and 241.

‡ See Note of Dissent by Mr. Wrangham, paragraphs 239 and 240.

- (10) *Advertising.* The L.M.A.'s restrictions on members' advertising and on free patterns, samples and sales aids to traders neither operate nor may be expected to operate against the public interest (paragraph 222).
- (11) *Orders to be Specific.* The L.M.A.'s rule that members should not accept orders unless the pattern number or quality and colour are specified neither operates nor may be expected to operate against the public interest (paragraph 223).
- (12) *Enforcement of Common Prices and Registered Trade Practices.* We see no objection to the L.M.A.'s retaining the right to expel a member for contravening their rules provided that nothing is done to make it more difficult for a member to leave the Association (paragraph 224).

DAVID CAIRNS (*Chairman*)

T. J. BARNES.

ALAN BIRCH.

W. L. HEYWOOD.

IVAN C. HILL.

ARNOLD PLANT (Subject to the Reservation  
below).

C. E. WRANGHAM (Subject to the Note of  
of Dissent below).

R. E. YEABSLEY.

J. A. R. PIMLOTT, *Secretary.*

13th January, 1956.

## RESERVATION BY SIR ARNOLD PLANT

230. I have signed the Report because I agree with the main conclusions set out in paragraphs 198 and 199, and in particular with that contained in the final sentence of paragraph 199. I concur also in the conclusions and recommendations contained in paragraphs 210, 211, 216, 217 and 219.

231. In paragraphs 201-207 of the Report, certain safeguards are recommended to prevent the common price system of the Association, if it were retained, from operating in future against the public interest. Stringent and onerous as these safeguards undoubtedly are, and necessary as I believe them to be, I am not satisfied that they would suffice in certain eventualities which I foresee. It is one thing for a Government to take steps in exceptional circumstances to satisfy itself that schedules of *maximum* prices are reasonable, as in the case of an industry which occupies a place of special importance in the economy of the country, and in which the ordinary market checks against over-charging are conspicuously absent. It is quite another matter for a Government to assume responsibility for lending its approval to schedules of *minimum* prices. Such a step could be justified only by clear evidence or strong presumption that, for reasons peculiar to a particular industry, a collective agreement which restrained individual manufacturers from reducing the price of one or more of their products at their own discretion was not likely to conflict with the public interest. I do not accept the view that special technological or market conditions obtain in the linoleum industry which furnish grounds for exceptional treatment in this respect.

232. In recent years the demand for floor coverings has been sustained at a sufficiently high level to absorb all the linoleum that the industry has been able to produce. Henceforward it is by no means certain that these conditions will persist. Individual manufacturers may from time to time find their order books out of balance. In the various factories which produce a number of different types and grades of linoleum, many workers and much of the productive equipment are specialised, and rightly so, in the interests of efficient production. A manufacturer who at any time is short of work in a particular specialised section of his factory has a strong incentive to absorb part of his standing charges and other costs and reduce his selling price for the particular line until his order book has been balanced and his available capacity is again more fully utilised. It is particularly important for him to act in this way if he has built up an efficient team of highly skilled specialist craftsmen for whom he is anxious to maintain continuity of employment in the operations in which they can earn wages commensurate with their special skills. It is the more important that he should be free to do so if he is a member of an association which prohibits press advertising by individual firms. Linoleum is sold in competition with other floor coverings; there is consequently no reason to suppose that the aggregate demand for linoleum is inelastic, and unresponsive to price concessions. In my view, therefore, any schedule of common minimum prices of linoleum is open to the serious objection that it obstructs the maintenance of full capacity working and full employment within the industry under conditions of flagging demand, and for this reason it may be expected to operate against the public interest.

233. The safeguards recommended would not meet this objection. It would not be practicable, or indeed possible for the Government's agents, on whom the responsibility would rest for maintaining an independent check on the reasonableness of the schedule of common minimum prices, to meet the day to day needs of an efficient manufacturer.

234. On general grounds, also, I believe that, under normal conditions, governmental incursions into the field of price control should be confined

to the relatively few industries which occupy positions of special importance in the economy of the country. To the members of the Linoleum Manufacturers' Association, the implications of the irksome safeguards recommended in the Report would constitute an onerous price to pay for the continuance of its common minimum price system. The overall advantages to the manufacturers concerned of retaining the system under the conditions proposed are, I venture to suggest, problematical indeed, and I should hope that in these circumstances they would prefer the alternative of suspending the operation of the system, and its supporting ancillary practices, for an experimental period of, say, five years, in order to test whether their apprehensions of the consequences are confirmed by experience in the very different economic circumstances, as compared with twenty years ago, which now obtain.

ARNOLD PLANT.

### NOTE OF DISSENT BY MR. WRANGHAM

235. My colleagues find that this common price system has not operated against the public interest. With that I agree.

236. How far this has been caused first by official control over prices and later by this enquiry, can only be speculation. The risks set out in the 4th to 11th sentences of paragraph 199 cannot be disregarded. But it should be emphasised that there is at this time considerable competition both from independent manufacturers and from alternative products. I agree that it is exceptionally difficult in this case to form a judgment about the future. Expectation, however, postulates some degree of certainty: where it is to beget law the certainty should be substantial. I dissent from my colleagues' view that this common price system may be expected to operate against the public interest.

237. In view of the risks mentioned in paragraph 199 the arrangements proposed under headings (a), (b) and (d) of paragraph 206 appear to me desirable, but I do not consider that the facts warrant compulsory introduction.

238. No injustice is apparent to me in the evidence regarding collective choice of wholesalers. Manufacturers aim generally to widen sales and they reject outlets only when they judge them not to be of advantage. I neither see nor expect any harm to the public interest in this practice.

239. The "aggregated retail turnover bonus" appears to have little, if any, effect on wholesalers' business. Its effect on competition between members of the L.M.A. can only be conjectured. Independent manufacturers view it with distaste, as an inducement that they cannot offer, but their business does not seem to have been appreciably affected. The practice benefits only a small section of the community, whereas it possesses a dangerous potentiality to force out competition. While I do not agree that it now operates against the public interest, I consider that it may be expected to do so and recommend that it be discontinued.

240. Practices not in force (such as the "job pool") appear to me outside our terms of reference, unless they have been very recently suspended or are found to be on the verge of adoption.

241. I recommend that in any negotiations with the L.M.A. prime attention be paid to avoiding official control over any part of the industry and to retaining full benefit from the export trade.

C. E. WRANGHAM.