

157. We find that the conditions to which the Act applies prevail in relation to the supply of tea on the following three separate grounds:

- (i) About 55 per cent. of the tea supplied in the United Kingdom in 1954 was sold at the London auctions (see paragraph 52). All sales at these auctions are subject to uniform and obligatory conditions laid down by the Tea Brokers' Association in agreement with associations representing producers and buyers (see paragraph 130).
- (ii) The volume of tea sold at the London auctions is regulated from time to time by the Regulation of Sales Sub-Committee set up by associations representative of producers and selling brokers of tea (see paragraph 117 et seq.).
- (iii) At least one-half of the tea supplied in the United Kingdom is sold subject to resale price maintenance (see paragraph 148).

158. In each of these respects those concerned so conduct their affairs as to restrict competition in connection with the supply of tea in the United Kingdom. We deal in the next chapter with the question whether all or any of these practices operate or may be expected to operate against the public interest.

## CHAPTER 11. CONCLUSIONS ON THE PUBLIC INTEREST

159. The practices which we have to consider fall into two groups: those for which trade associations are wholly or partly responsible, and those with which only individual firms are concerned. We deal first with the practices of trade associations.

### (a) **The International Tea Agreement and the North Indian Voluntary Crop Regulation Scheme**

160. In paragraphs 92-100 and 111-115 respectively we have described the working of the International Tea Agreement and the North Indian Voluntary Crop Regulation Scheme. In the former, trade associations have been concerned jointly with the Governments of the principal producing countries. For the latter, trade associations have been solely responsible. Either agreement might be considered restrictive or capable of being operated restrictively but neither was in fact in operation on 7th September, 1955, when we received our reference from the Board of Trade and neither is in effect now. To satisfy ourselves on this point we took evidence from the International Tea Committee who stated that: "None of the Governments concerned are, in effect, limiting exports of tea or planting materials or regulating plantations, in accordance with the terms of any former or proposed new Agreement". The North Indian Voluntary Crop Regulation Scheme was introduced for one season only and has not been repeated. The International Tea Committee has informed us that the question of a new International Tea Agreement is still under consideration and that the delay in concluding one "has been due to the fact that unanimity has not yet been reached amongst the Governments of the producing countries concerned". It is not for us to speculate whether any such Agreement will be concluded in the future or what its terms and effects might be if it were concluded. We can deal only with the situation as it stands at present, and we cannot, therefore, consider the possible effects on the public interest in the United Kingdom of either the International Tea Agreement or the North Indian Voluntary Crop Regulation Scheme as formerly operated, or the possible effect of any proposed International Tea Agreement should one be entered into.

### (b) The Regulation of Sales Scheme, London

161. In 1954 about 55 per cent. of the tea supplied in the United Kingdom was sold at the London auctions and, as explained in paragraphs 118-128, the volume of tea which may be offered for sale at the auctions is at times regulated by a body called the Regulation of Sales Sub-Committee, on which selling brokers and all the London tea producers' associations are represented. This body has no compulsory powers but acts by making recommendations to sellers and selling brokers. We have held (see paragraph 157) that this scheme constitutes one of the ways in which the conditions to which the Monopolies and Restrictive Practices Act, 1948, applies, prevail in the case of tea and we have, therefore, to consider whether it operates or may be expected to operate against the public interest.

162. Tea is a seasonal crop and North Indian tea in particular comes forward over a period of seven to eight months, while demand is evenly spread over the whole year. There is also a physical limit to the amount which can be handled weekly at the London auctions. No doubt, if regulation of sales were abandoned and tea were sold as it arrived, in course of time arrangements could be made to handle greatly increased amounts but this would involve both sellers and buyers in considerable additional expense, and, in both buying and selling houses, would call for larger numbers of specialist staff, who could be fully employed only for a few months in the year. This might well affect the prices charged to the public. In the absence of sales regulation individual sellers would presumably make some attempt to spread out sales, but without close consultation between them it is most unlikely that there would be an even flow. We therefore accept the claim put forward by the trade that there are advantages in some system of programming designed to even out sales over the year without limiting the total amount coming forward over the year as a whole, and to prevent excessive amounts of tea from being offered at certain periods. We were impressed by the unanimity with which all sections of the trade, including the buyers, favoured the continuance of the scheme and feared that its abolition would cause serious dislocation.

163. We recognise, as did some of the trade witnesses, that if the quantity of tea on offer in the auctions is increased or reduced by regulation of sales this may have some effect on prices. Indeed, evidence was given that if the price of tea seemed excessive, the Regulation of Sales Sub-Committee would endeavour to increase the quantities offered in the hope of bringing the price down. On the other hand, it was stated that the Sub-Committee had never reduced the quantities offered merely in order to increase prices when these seemed unduly low, though there have been cases where quantities were reduced because there seemed to be no prospect of buyers taking up the larger amounts at all. Our impression is that, though no doubt in its absence there might be more marked fluctuations in the auction prices, the regulation of sales has in practice relatively little effect on the general level of prices but that in so far as it has any effect it is to secure some levelling out over the year. There was certainly no evidence that the average level of prices over a period was altered by these arrangements. On the contrary, the evidence was that buyers calculated the price they were prepared to offer for tea by reference to the total supplies estimated to be available or coming forward in the world market generally and that a change in the quantity offered in an individual London sale had little if any effect. If prices in London did become high in relation to those ruling in overseas auctions the immediate result would be that buyers would tend to transfer their purchasing to other auctions, while if this state of affairs was due to

a physical shortage of tea available here, there would be little that the Sub-Committee could do quickly to increase the quantities offered. There was some evidence also that the present system benefits the smaller buyer, who may not in any case find buying abroad a practical alternative. Only the largest buyers could afford to buy forward heavily even in times of low prices and it would, therefore, be in the interest of the smaller buyer that fluctuations in price, already serious enough, should be reduced as far as possible. It was represented to us that it would not be in the public interest that the extent of competition should be reduced by the elimination of the smaller buyers, and we think that there is force in this view.

164. We considered whether knowledge of the fact that at some given time sales regulation was being operated in London might lead shippers overseas to reduce their shipments to this country or to divert supplies elsewhere. We were assured that this did not occur in practice and indeed it seems unlikely in view of the length of time which must elapse between shipment and sale on the London auctions. In any case the evidence was that tea which had very largely been grown for this market was unlikely to be diverted and that the scheme provided for all the available tea to be offered for sale before the end of the crop year.

165. On the whole, therefore, we consider that the Regulation of Sales Scheme as operated in London is a reasonable and practical measure. It may not produce all the results which some of its sponsors claim for it, but we do not consider that it operates or may be expected to operate against the public interest.

#### (c) Regulation of Sales Schemes Overseas

166. We understand that somewhat similar sales regulation schemes are in operation at the auctions in Calcutta and Colombo (see paragraph 129). We have no detailed information about their working but buyers whom we have consulted have no complaint to make about them and we have no evidence to suggest that they operate in any way against the public interest in the United Kingdom.

#### (d) The Conditions of Sale in the London Auctions

167. We have explained in paragraph 130 that tea is sold in the London auctions subject to conditions of sale which are uniform and obligatory. The conditions themselves are set out in Appendix XI. These conditions apply to about one-half to three-fifths of the tea supplied in the United Kingdom. It is customary for many kinds of goods sold by auction to be sold subject to printed conditions which are frequently uniform for goods of a particular class. This applies with especial force to auctions in which a succession of auctioneers sell, as in this case, from the same rostrum, and the trade emphasised the chaotic conditions which they considered would arise in the auctions if each seller were free to determine his own conditions of sale and buyers working at auction speed were required to adjust their offers accordingly. We were also told in evidence by all the trade associations concerned that the conditions laid down were fully discussed and agreed between all the parties—sellers, brokers and buyers—and that in practice they would not be changed without general consent.

168. We do not think that in these auctions there is anything contrary to the public interest in the mere existence of uniform conditions of sale so agreed, but we have also considered whether any of the conditions at present in force might be regarded as unreasonable. In particular, we inquired into the operation of Clause 3 which provides for a uniform period of credit by

fixing the time of payment, called the "prompt", at 90 days. We were told that some sellers would like to see this period reduced but that this had not been done because it had proved impossible to obtain agreement with the buyers and other sellers on a shorter period. It seems that in practice most large buyers take up and pay for their purchases within a few days of the sale and normally only a limited number of small buyers utilise the full period of credit. For these small buyers, however, the longer period is a great help because it enables them to assure themselves of a forward supply of tea which they can take up as they require it. No such facility exists in overseas auctions where the prompt period is only 7 to 14 days. We conclude, therefore, that the effect of this Clause is to secure for the buyers an extended term of credit which is not available at tea auctions elsewhere and which is of particular value to the small buyer. We consider that the uniform conditions of sale are not unreasonable and we find that they do not operate against the public interest nor may they be expected to do so.

#### **(e) Conditions of Sale in Overseas Auctions**

169. Uniform conditions of sale, varying in points of detail from place to place, are in force at the auctions in Calcutta, Cochin (South India), Colombo and Chittagong (Pakistan) (see paragraph 138). We have examined these, and we have taken evidence from buyers who, we find, have no complaint to make about them. We have no reason to suppose that they operate or may be expected to operate in any way against the public interest in the United Kingdom.

### **PRACTICES OF INDIVIDUAL FIRMS**

#### **(f) Collective Resale Price Maintenance**

170. Four small suppliers of tea are members of the Grocery Proprietary Articles Council, a body registered as a trade union, whose rules provide for collective resale price maintenance. We have been told in evidence by the Council that no collective stop list has operated since 1946 and that no fines have ever been imposed (see paragraph 147). It is, however, unnecessary for us to consider the provisions in its rules because as a result of the passing of the Restrictive Trade Practices Act, 1956, agreements for the collective enforcement of conditions as to resale prices will become unlawful.

#### **(g) Individual Resale Price Maintenance**

171. More than half of the tea supplied in the United Kingdom is subject to individual resale price maintenance, although the methods used and the degree of enforcement vary (see paragraphs 147-151). The Restrictive Trade Practices Act, 1956, provides for the individual enforcement by legal proceedings of conditions as to resale prices. It is nevertheless our duty to consider whether resale price maintenance has been used in such a way as to be contrary to the public interest. We have considered this question in the light of the evidence set out in paragraphs 147-153. We have found no special circumstances or practices in the tea trade which would distinguish it from other trades in this respect. We therefore find that, in the tea trade, individual resale price maintenance does not operate, nor may it be expected to operate, against the public interest.

#### **(h) The Brooke Bond/Lyons Price Notification Understanding**

172. Both Brooke Bond & Co. Ltd. and J. Lyons & Co. Ltd. stated in evidence that there was an understanding between them that each would notify the other in advance of any changes in the prices of their packeted teas (see paragraphs 143-144). These two firms are keenly competitive and

a change of price by one will frequently compel a change by the other. The reason for the notification was said to be the length of time required to alter the price labels on the packets and the confusion which would arise if changes were made at short notice and without the labels being altered. We are satisfied by the evidence that there is no agreement or even consultation between these two companies as to what the level of prices should be and that no specific period of advance notice is expected. We are told that action is limited to a telephone call made by one to the other shortly after a decision has been taken to make a price change. Moreover, while the pressure of competition compels each of these companies to follow closely the price policy of the other, the evidence before us showed that, even where both companies decided on price changes, these were not always made at the same time or by the same amount. There is clearly keen competition between them, and we consider their understanding about price notification to be no more than a reasonable administrative measure. We do not consider that it in any way limits the effective competition between them, and we find that it does not operate nor may it be expected to operate against the public interest.

**(i) General**

173. In general we consider that the tea trade in this country is conducted on keenly competitive lines and we are satisfied that the severe fluctuations in the price of tea which have taken place since decontrol have not been due to the existence of "monopoly" conditions or restrictive practices in the United Kingdom tea trade.

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T. J. BARNES.

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20th September, 1956.