

had acquired the various Tungram companies in Europe, investigated the possibility of selling these companies in order to liquidate the Trust. N. V. Philips had a 10 per cent. share holding in the United Incandescent Company, and two of the big electrical companies in the United States of America, both of which had links with valve manufacturers in the United Kingdom, had similar holdings. Each of the three considered acquiring British Tungram. British Tungram had in 1950-51 been seeking a "know-how" agreement in order to re-establish itself as an important manufacturer of ordinary receiving valves, largely for the maintenance market. It approached Mullard and other manufacturers including valve manufacturers in America. Mullard consulted N. V. Philips and decided to refuse both a technical agreement and a very tentative suggestion that it should buy up the factory.

301. In the middle of 1952 Mullard again became interested in British Tungram and later in the year it was bought by the Philips group partly for cash provided by Philips Electrical Industries Ltd. and partly from funds obtained by the sale of N.V. Philips' shares in the United Incandescent Company. British Tungram is now a member of the Philips organisation and although Mullard has no direct financial holding in it, it has, since October, 1952, had complete managerial control. Mullard substantially increased the production of British Tungram and, until recently, the factory was used by Mullard in the manufacture of valves, particularly of American types, for which the demand, although considerable for maintenance purposes, did not warrant full mass production in one of the Mullard factories. We were informed that at the end of April, 1956, following the contraction of the home market for receiving valves, the Tungram factory, as the least efficient of the valve factories managed by Mullard, ceased production although Tungram valves would be manufactured by Mullard and marketed as before.

CHAPTER 13. RESTRICTIVE AGREEMENTS BETWEEN THE INDIVIDUAL COMPANIES

302. There are and have been a number of agreements between individual manufacturers and other companies which are of a restrictive nature. Many of them are the result of rationalisation of production between different companies or of one company taking over another's interest in valve production. These agreements are described below.

Restriction of production

303. *G.E.C.*: under the arrangements made on the formation of M.O. Valve in 1919 by G.E.C. and Marconi (see paragraph 30), agreements were entered into regarding future valve production. An agreement of 6th August, 1919, between the two companies provided that:

"Each of the two companies agrees with the other of them not to manufacture valves or import valves for sale in the United Kingdom or to be in any way interested in the manufacture or importation for sale in the United Kingdom . . ."

The agreement, however, allowed Marconi to buy from Edison Swan up to 15 per cent. of its requirements in any one year, and provided that Marconi might be interested indirectly in the manufacture of valves if undertaken by an associate company in the Marconi group, though this manufacture was

not to be encouraged. These arrangements were repeated in an agreement which the two companies made on 26th November, 1919, with the newly-formed M.O. Valve company; both agreements were still operative at the end of June, 1956, but lapsed in July, 1956, when G.E.C. became the sole owner of M.O. Valve.

304. The G.E.C. has commented as follows:

"Since G.E.C. and Marconi each owned half of the share capital of M.O. Valve and consequently each were desirous that the business of M.O. Valve should prosper and that the requirements of both of them for valves should be dealt with by M.O. Valve, provision was made that neither of them would, independently of M.O. Valve, manufacture or import valves, or be directly or indirectly interested in the manufacture or importation for sale of valves in the United Kingdom. The provision has not been operated in a restrictive manner because, as has happened from time to time, when G.E.C. or Marconi have required a type of valve which M.O. Valve has been unable to supply, M.O. Valve has upon request, given consent to such valves being obtained from sources in the United Kingdom other than M.O. Valve or else imported. Consent was given during the 1939-1945 war to Marconi manufacturing valves for Government requirements and since the war, consent was given to one of G.E.C.'s subsidiary companies, Claude-General Neon Lights Ltd., manufacturing for Government requirements a special type of valve."

Marconi has confirmed that in practice the G.E.C./Marconi Agreement never precluded Marconi from purchasing any valves it needed from other sources.

305. *Marconiphone*: as explained in paragraph 32 the Gramophone Company in 1929 acquired full control of Marconiphone by purchase from Marconi. E.M.I. (on behalf of Marconiphone) states that there was:

"An agreement between the Gramophone Company Limited and Marconi's Wireless Telegraph Company Limited dated 8th March, 1929, relating to the sale to the former of the latter's business in, inter alia, valves for broadcast receivers. This agreement provided that Marconi's Wireless Telegraph Company Limited would until March, 1949, keep out of the field of business sold to the Gramophone Company."

306. *Mullard*: Mullard's agreements with certain set makers have already been described in paragraphs 296 to 299. Two of these agreements prevented the set makers concerned from making valves.

- (a) The agreement of 17th January, 1935, between Mullard (then The Mullard Radio Valve Co. Ltd.) and The Six-Sixty Radio Co. Ltd., and Pye Ltd., and to which the parties are now Mullard and Ever Ready, provides that Ever Ready may not manufacture valves. The agreement was still operative at the end of June, 1956, but a new agreement was then being negotiated.
- (b) Under the Goodwill Agreement between Mullard and E. K. Cole Ltd., made in June, 1938, E. K. Cole Ltd agreed "not to manufacture electronic discharge tubes" during the period of agreement. This agreement came to an end in December, 1950.

Restrictions on sharing of information

307. *Edison Swan and B.T.H.*, together with other members of the A.E.I. group, were parties to an agreement with International General Electric Company (of U.S.A.), which restricted the sharing of manufacturing information. Edison Swan and B.T.H. have commented as follows:

"The A.E.I. group (including Edison Swan, B.T.H., M.V., and Ferguson Pailin Ltd.) is party to an Agreement with I.G.E. dated 5th February, 1953,

under which these companies are entitled to receive on a non-exclusive basis, technical information used by the Electronic Division of the G.E. Company (of U.S.A.), on Electronic tubes (including C.R. tubes, camera tubes, photo-electric tubes), components and parts therefor, and machines and processes for the manufacture of such tubes and components. There are no provisions restricting the supply of the products made under this Agreement, whether geographically, by price control or otherwise, except that the A.E.I. companies are not entitled to share the information received with third parties."

The agreement expired at the end of 1955 and in June, 1956, negotiations were still taking place as to the arrangements to apply from the beginning of 1956.

308. *Marconiphone*: an agreement of 6th May, 1953, between Marconiphone's parent company, E.M.I., and International General Electric Company (of U.S.A.) provides that manufacturing information furnished non-exclusively to E.M.I., without royalty payment, in respect, inter alia, of valves and cathode ray tubes, shall be treated by E.M.I. as confidential. The respective patent licences are for the lives of the patents concerned.

309. *M.O. Valve*: an agreement dated 25th February, 1952, between M.O. Valve and the Radio Corporation of America, of Delaware, U.S.A., provides for the mutual use of each other's patents and exchange of manufacturing information, covering both receiving and transmitting valves. M.O. Valve states that:

"This does not in our view prohibit us from granting patent licences under our own patents or sharing technical information regarding established valves with other parties."

The company is, however, prevented from passing on information received under the agreement, which has the following clause:

"SECTION 8. All information made available hereunder shall be kept confidential by the party receiving the same and by its subsidiaries and, without the prior written consent of the party furnishing such information, shall not be divulged to others. Nothing herein contained, however, shall be deemed to prevent either party or its subsidiaries from disclosing to others operations embodied in its or their own commercial manufacture of receiving tubes [i.e. valves] and transistors."

Restrictions on importation

310. In addition to the Broadcast Licensing Pool arrangements which are dealt with in paragraphs 328 to 332, we have been informed of the following agreements restricting imports.

311. *Edison Swan and B.T.H.*: An agreement between members of the A.E.I. group and International General Electric Co. (of U.S.A.) which ran from 1939 to 1953 and preceded that referred to in paragraph 307, contained a clause that the American company was not to export to the United Kingdom products covered by the agreement.

312. *G.E.C.*: under the 1919 agreements between G.E.C., Marconi and M.O. Valve, G.E.C. and Marconi agreed not to import valves, subject to specified reservations (see paragraph 304).

313. *Cinema-Television*: an agreement dated 1st January, 1955 between this company and A.B. Standard Radiofabrik of Sweden, provides, inter alia, for Cinema-Television to communicate specified technical information regarding the production of radar type cathode ray tubes and to assist A.B. Standard to manufacture these tubes in Sweden. Imports into the United Kingdom

of A.B. Standard tubes are restricted by the following clause :

"The Tubes which Standard manufacture as a result of the information and assistance given to it by Cinema-Television hereunder shall be manufactured by Standard in Sweden and shall not be sold by Standard outside Sweden nor shall the same be sold in Sweden if Standard has the reason to believe that the same are being bought in Sweden for export from that country."

This agreement runs to the end of 1959.

Restrictions on supply and purchase

314. There are several agreements which come under this head, involving valves and tubes and components. Some of them derive from arrangements to rationalise production through subsidiary companies; others give favourable terms and priority supply in exchange for exclusive or near-exclusive purchase or dealing.

315. *G.E.C. and E.M.I.* : The formation of the M.O. Valve Co. in 1919 led to arrangements being made in 1935 by the parties then interested (M.O. Valve, G.E.C., E.M.I., Marconiphone) which imposed further restrictions on the supply and purchase of both receiving and transmitting valves. G.E.C. has told us in regard to arrangements made in 1935 on receiving valves :

"By letters . . . agreements were entered into under which the Marconiphone Co. Ltd. agreed to purchase a minimum of half its requirements of receiving valves from the M.O. Valve Company subject to certain conditions, and the E.M.I. agreed with the G.E.C. to do likewise under similar conditions.

The latter agreement expired by notice at March 31st, 1954 . . ."

316. With regard to arrangements made in 1935 for the sale of transmitting valves, G.E.C. has stated :

Agreements on Transmitting Valves

Based upon the original M.O. Valve/Marconi/G.E.C. Agreement . . . of 1919, there was an understanding confirmed by letter between the G.E.C., E.M.I. and Marconi on two matters affecting sales of transmitting valves. The first was that neither G.E.C., E.M.I. nor Marconi would sell transmitting valves to makers of transmitting equipment without the consent of the other parties.

The second was that the prices at which transmitting valves would be sold should be agreed between G.E.C. and Marconi (E.M.I. not being interested in such sales).

The first of the above agreements was entered into because the close association between the design of valves and the design of transmitting equipment meant that by supplying valves to manufacturers much information concerning the equipment design, which at that time was almost entirely designed and engineered by the Marconi Company, would be revealed by selling transmitting valves.

This agreement has never been formally rescinded, but as from the outbreak of war—which brought other manufacturers into the radar and other transmitting fields—the operation of the agreement lapsed and has never been resuscitated owing to the less close connection between the Design Section of the Marconi Company and the M.O. Valve Company.

The agreement between the parties in connection with the prices at which transmitting valves are sold was a verbal agreement, which is still in operation and designed to avoid competition between two sellers of the same product. From time to time list prices are agreed between G.E.C. and Marconi and the discounts allowed to different classes of customers."

Marconi has commented that so far as transmitting valves were concerned, M.O. Valve operated in close co-operation with Marconi as if it was part of the Marconi organisation and that the Agreement specified that:

“the policy as regards sales shall be directed by the Marconi company.”

Marconi said that costs were incurred by the Marconi company in testing and stocking the valves.

317. *G.E.C. and B.T.H.*: Paragraph 45 refers to the formation of Glass Bulbs Ltd. in 1948. This followed a “know-how” agreement with Corning Glass Works of U.S.A. Agreements, which are still in force, were entered into in 1948 under which G.E.C. and B.T.H. agreed:—

- (a) to obtain all their requirements of glass bulbs for valves from Glass Bulbs Ltd. to the extent to which it was able to supply;
- (b) on the price at which they were to buy for their own requirements;
- (c) that all sales of glass bulbs to third parties be carried out by Glass Bulbs Ltd.

318. *G.E.C.*: In 1943 G.E.C. formed a new company, Lumifax Ltd., to buy the fluorescent powder making business of Levy & West, the leading specialist in the production of such powders for X-ray screens and cathode ray tubes. G.E.C. holds 51 per cent. and Levy & West hold 49 per cent. of the share capital of Lumifax Ltd. Under a number of agreements negotiated in 1943 and 1955, Levy & West (which retained its business of making X-ray screens and supplying powders for cathode ray tubes) agreed to obtain its requirements of fluorescent powders from Lumifax to the extent to which the latter was able to supply.

319. *Mullard*: under the 1935 agreement between Mullard and other companies, referred to in paragraphs 297 and 298 and in paragraph 306, Ever Ready is precluded, subject to certain provisos about availabilities, from purchasing or dealing in valves other than those supplied by Mullard and from selling valves to equipment makers.

320. Under the Sales Agreement with E. K. Cole Ltd., mentioned in paragraph 299, E. K. Cole Ltd. agreed to take a minimum percentage of its total valve requirements in any one year from Mullard, and undertook not to purchase or deal in radio valves for resale separately from radio or other apparatus of their manufacture except for repair work. The agreement was terminated in 1950.

321. No formal agreement exists between Philips Electrical Ltd. and Mullard which restricts the former's field of operations, but there is an understanding of which Philips Electrical has stated:

“From the beginning of the Company's operations in this field there has been an internal understanding between the Company and Mullard Ltd. whereby the Company restricts its activities in respect of goods included in the Commission's terms of reference to the marketing of rectifying valves.”

Philips Electrical has never manufactured valves and tubes, but has confined its manufacturing activities to a wide range of other electrical and electronic goods and appliances and radio and television receivers.

322. *British Tungfram*: under an agreement dated 29th May, 1951 (which superseded similar previous agreements) between Tungfram and Siemens Electric Lamps and Supplies Ltd. (now Siemens Bros. Ltd.), Tungfram appointed Siemens as sole distributors on the home market of radio receiving valves for maintenance purposes. The agreement took effect as at the beginning of 1950, and ran for five years after which it could be terminated

on six months' notice from either party. Under the terms of the agreement, which is still in force,

"Siemens undertake to handle no other Radio Valves during the currency of this Agreement except for certain other Valves which may be essential for inclusion in apparatus manufactured by Siemens Brothers & Co. Limited and associated companies."

Siemens has become a subsidiary of A.E.I., the parent company of Edison Swan, and British Tungsram is now part of the Philips group of companies. Arrangements over prices covered by the agreement are mentioned in paragraph 325.

Restrictions on prices and terms

323. *Mullard*: the 1935 agreement between Mullard and other companies, referred to in paragraph 306, contained provisions as regards prices and discounts for the valves supplied to Six-Sixty (as the Ever Ready Radio Valve Co. was then called) by Mullard. Prices for original equipment supplies were to be determined by a formula applied to the cost of manufacture etc. Mullard states that the agreement is obsolete so far as it covered prices of equipment valves "and in this respect has by mutual consent been disregarded for a number of years". Prices for maintenance supplies were to be related to list prices.

324. Under the agreement, Six-Sixty was to remain a member of the BVA as long as Mullard was a member, and was to maintain BVA trade prices, list prices and discounts, and to observe BVA regulations. In any event Six-Sixty was not to sell valves at prices less, or discounts greater, than those at which Mullard sold, or allowed, in respect of similar or equivalent types of valves.

325. *British Tungsram*: the agreement with Siemens referred to in paragraph 322 provides that:

"so long as Tungsram is not a party to any price agreement such as British Radio Valve Manufacturers' Association the prices, terms and conditions of sale shall be determined by Tungsram . . ."

The trade prices fixed by Tungsram shall be approximately 10 per cent. (ten per cent.) net below BVA prices so long as the BVA shall fix selling prices but may be altered by mutual consent . . ."

Should Tungsram become parties to a price agreement then the prices terms and conditions for the re-sale of Valves will be in accordance with such agreement. In this event Siemens will have the right to continue this agreement should they so desire but should they not wish to continue then they will have the right to cancel this agreement forthwith . . ."

The agreement determines the basic discount off list prices to be given to Siemens. British Tungsram states that its list prices "are the same as those used by BVA members, and have been so for many years."