

attempted to set up plant for the manufacture of bulbs until the war, when there was, no doubt, very good reason for allocating such machines as could be obtained to those who were experienced in the use of them.

232. The National Union of General and Municipal Workers has stated in evidence that certain of the machinery used in the factories of E.L.M.A. members is obsolete, and in particular that (a) single-mounting machines* are used whereas the use of twin-mounting machines of a type similar to those used in the United States would enable operators to employ both hands in manufacturing processes and so increase their productivity, (b) out-of-date machines are used in the production of tungsten elements and coils for certain special kinds of filament lamps, and (c) more modern machines for wire-cutting would make the process less dirty for the operative. We are informed by E.L.M.A. that machines comparable in design to those used in the United States are used on all ranges of lamps where continuous demand is known, although in a rapidly changing industry it is natural that less up-to-date machines should continue to be used where there is no mass production. As regards wire-cutting, E.L.M.A. contends that its members use the only known process which does not cause serious wastage.

CHAPTER 16 : THE CASE FOR E.L.M.A.

The System as a Whole

233. E.L.M.A. submits on behalf of itself and its members that each of the existing practices described in earlier chapters is individually in the public interest. It asks that the system which the practices support should be judged as a whole. Further, this system should be considered in its present rather than in its past application and regard should be paid to its relation to "the whole of the monopoly policy of Parliament", to the terms of the Patents Act, 1949, and to the existence of increasing competition from Independent Manufacturers.

234. It is the basis of E.L.M.A.'s submission that the common price, the quota system and E.L.M.A.'s trading methods generally together form the basis of "a system of regulated competition" the first result of which is to create stability in the industry. We are told that common manufacturing prices are an essential and fundamental feature of the whole E.L.M.A. organisation without which "the component members of E.L.M.A. would not in fact be prepared to co-operate in the way that they do". Thus, common manufacturers' prices make it possible for E.L.M.A. members to share the results of research and development, which have led also to valuable contributions in other fields. The stability achieved makes possible, it is said, a long-term policy which ensures "a steady production to minimise the danger of gluts and scarcity" and has in practice enabled the members both to build up a skilled labour force and to prevent the subsequent dispersal of this skill through mass migrations of labour.

235. The exchange of technical information among E.L.M.A. members has in turn, we are told, resulted in improved efficiency which, coupled with the development of new undertakings, including the development of common sources of supply of materials and components, has "resulted in a steady consistent and progressive fall in real costs of production . . . which has been reflected in a steady reduction of price"; the quality of the lamps has at the same time been improved and their efficiency increased. As a further result

* This relates to the process of mounting the filament on the filament supports (see Appendix 2).

of stability and mutual co-operation E.L.M.A. says that its members have been able to follow a policy on standardisation calculated to meet all genuine needs, while avoiding the uneconomic multiplication of types of lamps which would result from "all-out" competition where manufacturers strive to meet the demands, as opposed to the genuine needs, of the purchasers. We are told by E.L.M.A. that "the problem of standardisation can only be solved by a flexible system which provides a resistance to multiplication of types yet so functions that the necessary changes can take place. A number of firms working in co-operative competition can, and do provide this system."

236. On the distribution side, E.L.M.A. submits that its system provides reasonable but not excessive margins to the distributors, thus ensuring efficient distribution while meeting "the wish of the private consumer for a standard price for a standard branded article". While individual E.L.M.A. members can draw upon the technical knowledge of the whole group, the members are said to compete with one another for new business, so that existing and new markets are fully exploited.

237. E.L.M.A. submits accordingly, that its system as a whole operates in the public interest when judged by each of the tests which are specifically mentioned in Section 14 of the Act and in relation to "the general economic position of the United Kingdom". In the following paragraphs we summarise the submissions in justification of individual practices.

Distribution and Prices

238. With a branded article such as an electric lamp, a uniform retail price is, we are told, essential; any variation from district to district or between different suppliers "would undermine the confidence of the public" and price cutting "would damage the manufacturer's reputation with both the trade and the public." E.L.M.A. maintains that while full price competition between its members might well lead to general price-cutting and uneconomically low prices, such a "price war" would in the long run be very harmful to the stability of the industry: it would tend to depress the standard of living of employees and would not be ultimately in the users' interest, since periods of uneconomic prices drive competitors from the field and are necessarily followed by increased prices. In addition, "cut-throat" price competition is said to result inevitably in deterioration of quality, which is particularly serious in an industry where the user is not in most cases in a position to judge the quality of the product. The fact that uniform prices are agreed by a majority of the producers concerned, coupled with the existence of competition from the minority and, in the case of patented goods, with the safeguards provided by the Patents Act, ensures, it is claimed, that the levels fixed shall not be excessive, since the most efficient manufacturers will argue for a lower price to obtain more business and so exert pressure on the less efficient. As regards pre-war prices, it is pointed out that most E.L.M.A. members make other electrical goods and "some temporary spread of profits between different lines is occasionally unavoidable".

239. It has been explained to us that the fixing of uniform resale prices (including specified uniform discount terms) was intended primarily to enforce "fair trading" between distributors. E.L.M.A. believes "that the smaller distributor should be protected against unbridled competition from the larger distributor who, by virtue of volume, could possibly sell at a lower figure. The result would be that the smaller distributor would find the profit, when cut by such competition, inadequate and would, in all probability, have to discontinue the distribution of electric lamps, to the disadvantage of the public." E.L.M.A. agrees that by fixing the discounts allowed it restricts

competition between its members, but contends that where distributors' margins are concerned the interests of manufacturers and consumers are the same, since it is to the manufacturers' advantage to keep the end price down and increase their turnover: "the greater the competition between manufacturers for the favour of the dealer the greater the pressure to increase dealers' margins and either cut quality or raise end prices". It is submitted that the present E.L.M.A. discounts are reasonable and that this implies an even balance of bargaining power between E.L.M.A. and the distributors. Were E.L.M.A.'s bargaining power reduced, for example by the prohibition of common discounts or of exclusive dealing, the probable result in E.L.M.A.'s view would be to tip the balance in favour of the distributor, whose margin would be increased at the expense of the user.

240. It is pointed out that exclusive dealing agreements are entered into voluntarily by a buyer in a competitive market. To forbid exclusive dealing in the case of wholesalers would, in E.L.M.A.'s view, be unfair both to the wholesalers themselves and to the manufacturers who rely upon them to distribute their goods. E.L.M.A. submits that those manufacturers who carry out their own wholesaling have the benefit of a service exclusive to themselves, and argues that, if it is conceded that a single manufacturer can properly appoint exclusive wholesalers in the form of agents, then there can be no objection to a collective system of the E.L.M.A. type, which is more liberal than a system where each member has his own exclusive wholesale agents. It is claimed that in practice less than 50 per cent. of all wholesalers in the United Kingdom hold exclusive E.L.M.A. agreements, and that therefore the existence of these agreements places no practical difficulties in the way of Independent Manufacturers seeking wholesale distribution outlets. At retail level, the distributor can get trade terms without giving any undertaking to deal exclusively, and E.L.M.A. submits that the grant of preferential discounts to retailers who do give such undertakings is an aid to sales promotion and a legitimate weapon of competition for a manufacturer offering a comprehensive range of types. Where lamps are concerned, the preferential discount is said to constitute a reasonable compensation to the retailer who meets all demands with E.L.M.A. lamps instead of accepting the higher discount offered by Independent Manufacturers on "easy selling lines" while relying on E.L.M.A. members for his more specialised requirements.

241. E.L.M.A. submits that the sanctions used to enforce price maintenance and exclusive dealing are reasonable and make "provision for compromising specific legal claims arising from a breach of a condition of a contract". It is E.L.M.A.'s view that where there is no contractual agreement between distributor and manufacturer, "the use of a stop list is the only remedy available to the manufacturer"; but it is a remedy which has in fact been used very sparingly indeed. The practice of enforcing resale price maintenance by fines or money payments is said to be "maintained as a necessary method of mitigating the major penalties", namely cancellation of agreement, inclusion in the stop list, or, in the case of members, expulsion from E.L.M.A.; "it is also a method of agreeing the compromise of the right in damages which is conferred in law".

242. The practice of granting quantity rebates to distributors and discounts related to quantity purchases to users is, according to E.L.M.A., a normal weapon of competition; the fact that quantity rebates necessarily "involve some pressure on the purchaser not to get supplies elsewhere" is, it is claimed, universally accepted as legitimate. Rebates "are aggregated so as not to operate against other members" and E.L.M.A. relies on aggregation "as an advantage of the system of regulated competition produced by E.L.M.A. members between one another".

243. The payment of over-riding commissions to certain associations of distributors has, we are told, "facilitated amicable commercial relations" and "it is convenient from E.L.M.A.'s point of view to be able to negotiate with organised associations instead of with individuals".

Quotas and Market Allocation

244. E.L.M.A. submits that the system of quotas between members is historically justifiable under the economic conditions existing when the Phoebus Agreement under which they originated was made. Under the system as then operated, "healthy British industry was preserved and extended," while at the same time it imposed no restriction on expansion.

245. The present system is claimed to reflect the changed conditions and it was agreed on the basis that, the growth of the business being due in some part to the common effort, all should have a share in the increase. E.L.M.A. claims that the system ensures a reasonable measure of stability within the industry, mitigates the hardship of fluctuations in the level of business of individual firms, enables capital and other commitments to be taken on with confidence, and plays an important part in facilitating the valuable co-operation which E.L.M.A. members give to one another; further, that since under the revised provisions of the system the manufacturer now retains a substantial proportion of his profit, there remains an adequate incentive for him to increase his share of the market, more particularly as quota allocations will be reviewed in 1955 and he, therefore, wants "to get as much of the trade as he can before that date". The effect of quotas on costs is said to be very small and is "more than counter-balanced by the better service which E.L.M.A.'s co-operative effort makes possible".

246. As regards international quota arrangements, E.L.M.A. states that these have in the past protected the British market from an influx of surplus goods of foreign manufacture at uneconomic prices, while at no time were the prices fixed for the British market under such arrangements increased: "the international effect of quotas at the present day is, for all practical purposes, nil". In agreements made between individual E.L.M.A. members and foreign manufacturers, exclusivity in home markets was incidental to the interchange of technical information and "know-how", and E.L.M.A. suggests that the agreements ought to be considered as a whole. As regards the agreement by which lamps made by the American G.E.C. are excluded from the United Kingdom, E.L.M.A. says that it is unreal to suggest that an arrangement having the effect of restricting imports of goods made by one foreign manufacturer, however large, would affect the level of prices of the domestic market, since the effect of imports on the domestic price level would be dependent on world prices determined by world competition.

Materials and Components

247. E.L.M.A. submits that the production of components and materials was originally developed by individual members to meet their own needs, supply being extended to fellow-members "under the E.L.M.A. system of 'co-operative competition'", and that a manufacturer is in general under no moral obligation to supply components or materials made for his own use to his competitors, particularly where such components and materials are covered by patents, or involve to a substantial degree the vital techniques or "know-how" of lamp manufacture.

248. It is claimed that, in fact, the E.L.M.A. members concerned make supplies of all components and materials except coiled filaments and

fluorescent powders freely available. Price differentials in favour of fellow-members and the Controlled Companies, where they occur, are small, and it is submitted by E.L.M.A. that some freedom to fix prices must be conceded to the member-supplier unless he is to be placed under an unfair commercial handicap compared with outside suppliers. In the case of supplies to fellow-members, it is said to be normal commercial practice to give a preference to firms with whom one is in close business relationship. In the case of supply to the Controlled Companies, it is submitted that these companies are the joint subsidiaries of E.L.M.A. members, that the members supplying components and materials hold a controlling interest, and that it is normal practice to supply subsidiaries on preferential terms; it is considered in this specific case that the shareholders supplying components should not make a profit on sales at the expense of the other shareholders.

The Controlled Companies

249. As regards the ownership of the Controlled Companies by the E.L.M.A. members, it is submitted that they are not "used to sell at a loss or even without profit". They are intended to compete in the cheap lamp market and "this involves competition with independents and not with E.L.M.A. members; but this follows from the nature of the business they do". The quality of their lamps is claimed to be as good as it can be at the price. E.L.M.A. states that "this use of a separate firm to make the lower grade article (however good it be in its class) is a normal business practice and in the public interest".

Standards and Quality

250. It is explained that E.L.M.A.'s policy has two aspects: in the first place E.L.M.A. members have sought to reduce costs and increase efficiency by type standardisation, hoping thereby to increase profits, extend their business and benefit the consumer; secondly, they have sought that official standards should give credit to manufacturers making lamps of the highest commercially practicable quality, hoping thereby to gain an advantage over competitors making inferior lamps.

Patents, Inventions and Manufacturing Experience

251. E.L.M.A. submits that, since under the Patents Act, 1949, an individual manufacturer is entitled in law to retain his own statutory monopoly provided he can work his patents and meet demands, it would not be against the public interest if access to the patent pool were not available to non-member manufacturers at all on any conditions. E.L.M.A. members, by pooling their patents, voluntarily waive their exclusive rights as between one another, with the result, it is said, that a new invention or development becomes available to the public at the earliest possible moment through the widest possible distributive channels. They are now prepared to go further than this and under the new licensing policy access to any patent in the patent pool will also be made available to non-members on the sole condition of maintenance of E.L.M.A.'s prices on the patented article and on payment of reasonable royalties. Since a patentee who does not grant licences can fix prices provided that the level is reasonable, E.L.M.A. contends that the patentee who grants licences is entitled to do the same, and that while "in one sense it can perhaps be said that the patent licensing system supports the price system . . . it is more correct to say that the price system has enabled the patent licences to be granted where otherwise each manufacturer might have retained his inventions for himself".

252. E.L.M.A. further submits that the practice whereby its members agree together not to provide manufacturing assistance to non-members is a necessary corollary of the agreement to share manufacturing experience. It is E.L.M.A.'s opinion that, if a company has not the right to keep its manufacturing experience to itself, incentives are destroyed; at the same time it is also "in the public interest that a firm should have the right, by freely negotiated agreement, to share this experience". E.L.M.A. maintains that it is therefore in the public interest that a group of companies be entitled to agree not to divulge information so shared to companies outside the group.

Restricted Membership

253. E.L.M.A. submits the following case in support of restriction on its own membership:—

"(i) E.L.M.A. has grown up during the years as an arrangement between firms accepting certain common standards of commercial dealing and able to accept competition without preventing real and effective co-operation in certain spheres. The essence of such an organisation can only be retained if absolute control is retained on the entry of new members.

(ii) E.L.M.A. depends on willing co-operation rather than on penal rules for enforcement of its obligations. That spirit can only be maintained by control of new entry.

(iii) E.L.M.A. is in certain respects a partnership. It is an essential element of such partnerships that new partners can only be admitted by agreement and not as of right.

(iv) E.L.M.A. does not desire to become a monopoly in the generally accepted sense of the word."

CHAPTER 17 : CONCLUSIONS AND RECOMMENDATIONS

254. In this chapter we use the term "the E.L.M.A. system" to describe the complex network of arrangements governing the production and distribution of lamps in the United Kingdom which we have described in the earlier chapters of this report. All these arrangements are the responsibility of the members of E.L.M.A.; in general, the lead is taken by G.E.C. and the A.E.I. Group, but among the other members is the British Philips Company, a subsidiary of Philips (Holland), one of the major lamp manufacturers of the world. The expression "the E.L.M.A. system" covers all these arrangements but, as will be clear from the earlier chapters, E.L.M.A. itself as an association is concerned with only some of them.

255. Total production in 1950 was just over 250 million lamps, value £13½ million; the production of E.L.M.A. members is shown in paragraph 3. It has been shown in paragraph 208 that only about 10 per cent. of the total capital employed by the E.L.M.A. members in the whole of their undertakings is employed in their home lamp business but that, immediately before the war, the estimated distributed profits on this business were nearly 30 per cent. of the distributed profits on the whole of their undertakings. This fact appears to us to explain to some extent the very large amount of care and attention which has been devoted by E.L.M.A. members, over a large number of years, to regulating the trade in electric lamps.

THE MANUFACTURING SIDE

256. The general structure and many of the details of the E.L.M.A. system as we find it at the present time are of long standing: several of them are heritages from the Phoebus Agreement. It is for this reason that we