

238. The CEA has no doubt that Parsons' action has had the effect of stopping the other manufacturers' prices from rising as rapidly or as much as they would otherwise have done. The Groups themselves have assured us that their decision to offer discounts in November, 1950, was not directly influenced by Parsons' withdrawal.

239. Parsons has emphasized to us that it "firmly believe[s] in Group and level prices" and "did not want to break [the system] up". Since its withdrawal the company has adhered to Group prices "on every single job" other than for the CEA and for that reason has continued to notify enquiries and orders: it "would have been extremely unfair to the members to take advantage of the position established with the [CEA], to quote reduced prices to other people"; the Authority "made out a good case for a reduction", but no similar case existed for other buyers. The company adds that other buyers "are not large enough to press their point sufficiently and in any case [the machines they buy] are usually complicated machines of a smaller size and each one is different". In Parsons' view "it would be disastrous from everybody's point of view", including the CEA's, if there were no home price agreements at all: there would be price cutting from those short of work "and inevitably and subconsciously the more you bring the price down the worse the job the buyer gets". The manufacturers should meet competition "by reducing group prices in collaboration with members to meet the competition".

CHAPTER 10. STEAM TURBO GENERATING MACHINERY : HANDLING CHARGES AND INTERCONTRACTING

240. We have explained in Chapter 6, sections (3), (4) and (5), the contractual pattern usual for the main component machines of a turbo alternator set, the extent to which signatories of the various agreements make all the types and capacity ranges of machinery, and the obligations and understandings governing membership of the separate agreements covering related machinery. These matters are relevant to an understanding of the arrangements described below.

241. The main component machines in a particular turbo alternator set may be made or supplied by more than one manufacturer. This would usually occur either because the purchaser specified different manufacturers for the different machines (when he might or might not issue separate enquiries and place separate contracts), or because the main contractor did not himself make—or, exceptionally, did not wish to supply—all the kinds of machine covered by the enquiry; where the manufacturer took the initiative in supplying machines not of his own make in conjunction with his own, the purchaser would have knowledge of the fact.* Whoever the actual manufacturer may be, it is usual for turbine and alternator to form part of a single contract, which may or may not also include the condenser. An enquiry covering both turbine and alternator normally goes in the first place to the turbine builder, who is then responsible for co-ordinating the work as a whole. The condenser maker may tender direct to the purchaser, although in the case of small machinery he generally in practice tenders to the turbine builder.

* The Institution of Electrical Engineers' (IEE) Standard Conditions provide that: "The Contractor shall not, without the consent in writing of the Engineer, which shall not be unreasonably withheld, sub-let the Contract or any part thereof, or make any sub-contract with any person or persons for the execution of any portion of the Works other than for materials, for minor details, or for any part of the Works of which the makers are named in the Contract". There is no parallel provision in the less comprehensive BEAMA Conditions.

242. The Groups cover this form of intertrading by intercontracting agreements between the turbine builders and the alternator makers and between the turbine builders and the condenser makers and by an associated system of main contractors' handling charges (formerly called main contractors' discounts). Each intercontracting agreement is a separate and self-contained document, to which the signatories of both the relevant main agreements (that is the price agreements) adhere; it is included as a schedule in both the main agreements and its provisions apply to all enquiries covered by the main agreements. The subject matter of each intercontracting agreement covers that of the two main agreements to which it is related, and the arrangements as a whole are administered by the same Secretary. Each main agreement binds its signatories to observe their obligations under the intercontracting agreements. Although The International Electrical Association Ltd. (IEA) Turbine Plant Export Agreement contains no provisions for intercontracting between turbine builder and condenser maker, appropriate provision is made in the tendering instructions issued by the Secretary for each enquiry.*

243. The arrangements have little practical significance where the same concern makes and supplies turbine and alternator or turbine and condenser. It follows that arrangements between turbine builder and alternator maker are of greater importance in the case of small machinery where not all members of the price agreements make both types of machine, than in the case of large machinery where all turbine builders are also alternator makers; and as regards small machinery they are in some respects of greater importance in the export than in the home market. There are specialist concerns making condensers of all sizes but not the corresponding turbines, so that as between turbine builders and condenser makers intercontracting arrangements are of significance for large as well as small machinery. Arrangements covering intercontracting and handling commissions were first introduced by the Groups in 1915. The Groups have estimated that intercontracting occurs on perhaps 10 per cent. of all business done by Group members.†

244. Each current Group price agreement relating to alternators and condensers provides that the prices derived from its schedules and the prices for non-standard extras shall be held to include a handling charge of 5 per cent. to the turbine builder main contractor when he is a signatory of the relevant turbine price agreement:‡ the main contractor is not entitled to pass on the amount of his handling commission to the purchaser. The Turbine Plant Export Agreement also provides that where a condenser maker joins a price arrangement (see paragraph 195), all prices quoted to the turbine builder shall include a 5 per cent. handling commission. There is no direct relation between the sums yielded by this percentage commission and any

* Intercontracting between turbine builder and alternator maker would not normally arise under this agreement as all signatories make both types of machine (see also paragraph 243).

† The Groups estimate that in the eight years 1946-1953 intercontracting arrangements operated on roughly one-fifth of signatories' total home market business in small turbines and small alternators and in large turbines and large condensers, and on one-third in the case of small turbines and small condensers: the large turbine/large alternator intercontracting agreement has operated only two or three times in recent years when the purchaser specified a turbine of one make and an alternator of another.

‡ Similarly the turbine price agreements provide that prices derived from the schedules include a 2½ per cent. handling charge to alternator or condenser maker main contractor: in practice this has no significance since in neither of those capacities would a manufacturer act as main contractor with the turbine builder as sub-contractor. As the turbine is the most expensive part of the set, the cash value of 2½ per cent. on the turbine price may be roughly equivalent to that yielded by 5 per cent. on the price of alternator or condenser.

additional costs actually incurred by the main contractor. The Groups have told us that a turbine builder may in fact suffer a loss through handling a contract and that it is in their view very doubtful whether the commission he receives covers his expenses.

245. Where separate contracts are placed for turbine and condenser, the turbine builder still receives a handling commission from the condenser maker if both manufacturers are parties to the relevant price arrangements; thus, the purchaser pays the full price for the condenser, including the handling commission, even though he has not formally recognised the turbine builder as the main contractor. The small turbine price agreements also provide that when a signatory quotes separate prices, as distinct from a lump sum price, for turbine and alternator (that is in effect when he quotes his own machinery in conjunction with related machinery of non-signatory manufacture), the home price for the turbine as calculated under the agreement must be enhanced by 5 per cent. and the export price by 3 per cent. This addition to the price is intended to ensure that, if a separate contract is placed for the alternator with a non-signatory manufacturer, the turbine builder will nevertheless be compensated for his work in co-ordinating the operation of the two units and for the risk of guaranteeing the performance of his turbine when coupled with an alternator made by a non-signatory, possibly a foreign manufacturer. The Groups have pointed out to us that as the efficiency of the turbine is judged by the output of the alternator, the turbine builder might incur penalty for failure to achieve guaranteed performance* when his machine was coupled to an alternator of inferior design or workmanship. They say also that once an order which involves a turbine and alternator on the one hand and a condenser made by a different manufacturer on the other has been placed, the liaison between turbine builder and condenser maker is very close whether the purchaser awards separate contracts or a single contract for the whole set.

246. The Groups' intercontracting agreements are all generally alike though differing in detail according to the type and size of machinery and the range of production of the manufacturers concerned; and all Group and IEA intercontracting arrangements are concerned in the first place with the maintenance of agreed prices for the set as a whole, more especially where the component machines are made by more than one manufacturer, and in the second with terms and conditions of supply of machinery as between (i) signatories of price arrangements, (ii) signatories of price arrangements and non-signatories, (iii) the manufacturer and the purchaser. The current intercontracting arrangements are not exclusive, that is they do not prohibit signatories either from offering machinery made by non-signatories in conjunction with their own or from supplying their own machinery to a non-signatory, although signatories are under varying degrees of obligation to give preference to, or secure the appointment as co-contractors of, other signatories.

247. In the case of large machinery supplied in the home market, the turbine/alternator intercontracting agreement provides that its signatories shall offer machinery of non-signatory make only on prior notice and "in rare and exceptional cases". Signatories must normally quote a "combined price" (that is, the sum of the standard or maintained prices for turbine and alternator calculated respectively according to the large turbine and large alternator price agreements).† Handling charges apply where a single

* See also paragraph 257 for particulars of performance guarantees and penalties.

† The Central Electricity Authority told us, however, that it "automatically gets a breakdown between turbine and alternator".

contract for turbine and alternator is placed, but not, under the current text, where separate contracts are placed. The corresponding large turbine/condenser intercontracting agreement provides that those signatories who make only turbines or condensers shall, when tendering for machines of the type they do not make, preferably offer machines made by another signatory and that they shall use their "utmost endeavours to secure the acceptance" of signatories as co-contractors. The provisions of this intercontracting agreement differ from those of the corresponding intercontracting agreement governing alternators in that all signatories (including those making both turbines and condensers) must submit separate prices for each of the two machines; they differ also in that handling charges operate irrespective of whether a single contract is placed for turbine and condenser or whether the two machines are each the subject of separate contracts* (see also paragraph 245). There are no comparable arrangements between makers of large turbines and large alternators for export (see paragraphs 242 and 243), but condenser makers who undertake to co-operate on a particular enquiry with the parties to the Turbine Plant Export Agreement undertake that the prices quoted by them "to any other person" shall be "strictly net and . . . not . . . less than [the] minimum . . . obtained from the arrangement" (see paragraph 195).

248. Intercontracting arrangements for small machinery both for home and export are generally similar to those relating to large machinery in the home market; as in the case of large condensers, where separate contracts for turbine and condenser are placed handling commission is payable. In the case of small turbines and small alternators, however, the provisions are more detailed than in the case of large machinery, mainly because "independent turbine builders" (see paragraph 187) wishing to offer sets of a capacity exceeding about 7,000 kW are dependent for the supply of the alternator on the "combined builders" (that is, those signatories who make both types of machine). These combined builders will in some cases themselves be tendering for the same enquiry and may be unwilling to supply the alternator to another turbine builder, particularly as orders for alternators only might unbalance their own manufacturing capacity. The general effect of the more detailed provisions applicable to small machinery, where they differ from those for large machinery, is to place some obligation on the combined builder to supply alternators to the "independent turbine builder" whenever possible on a basis which will allow the "independent turbine builder" to compete on equal terms with the combined builder if the latter is also making a direct quotation, while leaving the "independent turbine builder" free to offer machinery made by a non-signatory if he fails to obtain a competitive tender from a signatory. In the latter event the "independent turbine builder" must give notice of his intention "within a reasonable time" and must quote segregated prices for turbine and alternator. The price for his own machinery must then be the maintained price and that for the machinery of non-signatory make not less than net cost to him increased by 5 per cent. handling commission; he must also be prepared to act as sub-contractor to any other signatory for the machinery of non-signatory make at the price named in his tender to the purchaser, including handling commission. Under the provisions of the main price agreements relating to small turbines he would also when quoting segregated prices add to the price of the turbine 5 per cent. in the case of home market quotations or 3 per cent. in the case of those export quotations where it is known that the purchaser

* The current arrangements operate only in cases where both turbine builder and condenser maker are signatories of the agreement; the former text provided also for payments into the agreement funds where one manufacturer was a non-signatory.

will place separate orders,* and he would lose his 5 per cent. preference (see paragraphs 187 and 192).

249. The provisions of intercontracting agreements operating before the revisions of 1952-53 were in some respects more stringent.† Signatories acting as co-contractors with non-signatories not only forfeited any handling commission which might otherwise be payable but were also supposed to pay what amounted to a fine into the agreement funds, though in practice such payments were never made. Under agreements relating to large machinery the signatory concerned also forfeited a further special discount together with the right to pass this discount on to the purchaser, and might thus find himself in a disadvantageous competitive position in relation to other signatories offering machinery all of which was made by signatories.

250. We have asked the Groups the purpose of their intercontracting arrangements and whether they might not have the effect of deterring signatories who might contemplate resigning from the main agreements from doing so. The Groups have replied that "the Intercontracting Agreement in its original form was framed to counteract the practice of the foreign turbine builders buying British alternators and condensers and competing in the British home market and obtaining orders by virtue of a low price on the turbine". They have also told us that in the 1930's it was comparatively easy to buy foreign alternators, so that a United Kingdom turbine builder, in order to obtain any business at all, might have found himself obliged to quote in a way which would enable the purchaser to couple a United Kingdom turbine to a foreign alternator. The present agreement, however, was not drafted with a view to discouraging such transactions. "Its intention was to afford maximum means for co-operation between signatories. While the terms of the Intercontracting Agreement could be interpreted as a deterrent to signatories who might contemplate resigning from the Agreements it was not the intention, and the terms of the Agreement have never been regarded in this light by the signatories." At the same time they have agreed that the arrangements as a whole have the effects first of ensuring that there is an agreed minimum price for the complete turbo alternator set, secondly of deterring signatories who do not make the complete set on the one hand from coupling their machines to those of non-signatories and on the other from leaving the price agreements, and thirdly of ensuring that however the purchaser may choose to place his order, and however precise his specifications may be, he has in the case of the condenser to pay a charge, being a fixed proportion of the price of the plant, for the manufacturers' co-ordinating services.

251. The manufacturers' arrangements are ultimately dependent upon the purchaser in that it is the purchaser who decides how contracts shall be awarded. The Central Electricity Authority (CEA) has adopted a standard practice of placing separate contracts for (i) turbines and alternators, (ii) condensers, and (iii) feed water heating plant. The Authority has told us that its standard specifications "were evolved in collaboration with the manufacturers" and clearly define the extent of each item, so that a separate contract can be let direct to the actual manufacturer of each machine. Bearing in mind that the Groups' handling commission is payable to the turbine builder where a separate contract for the condenser is placed and that the price of the condenser to the purchaser is deemed to include provision for

* There is no percentage increase for export orders where the purchaser places a single order for both machines.

† The status of the former small turbine/small alternator inter-contracting agreement is obscure; it was never formally completed and two versions existed. Intercontracting arrangements were, however, operated.

such payment, we have asked the Groups whether the emergence of a single main buyer of large machinery in the home market has in any way reduced the amount of co-ordination which they claim the turbine builder must undertake, whether it is an effect of the intercontracting arrangements that the same price is charged for a turbo alternator set even if supplied in circumstances where the services which the handling charge is intended to cover are not required, and more specifically whether this is the case in CEA contracts. The Groups have replied that the OEA's purchasing methods have not affected intercontracting arrangements for large machinery at all, and that the amount of co-ordination which the turbine builder must always undertake in connection with any complete set is unchanged. The CEA for its part believes that, either directly or through its consulting engineers, it takes a more active part than its predecessors in co-ordinating the work of the various contractors both in the factory and during installation, but it does not dispute that a special responsibility still devolves upon the turbine builder.

CHAPTER 11. STEAM TURBO GENERATING MACHINERY : OTHER GROUP AND INTERNATIONAL ELECTRICAL ASSOCIATION LTD. ARRANGEMENTS

(1) Conditions of Sale and Contract and Related Provisions

252. We have described in Chapter 5 the arrangements for standard conditions of sale and contract as applied generally to machinery covered by our reference: we are concerned here only with their detailed application under the Group and International Electrical Association Ltd. (IEA) agreements relating to steam turbo generating machinery in class (a). Most contracts for this machinery cover erection (although in export contracts the manufacturer's services may be confined to supervision) so that of the sets of standard conditions reproduced in the BEAMA "Brown Book", those including erection are usually the appropriate ones. The arrangements of the Groups and of the IEA extend the operation of the "Brown Book" first by making the use of one or other of the alternative sets of standard conditions obligatory for their members in certain cases and subject to certain provisos, and secondly by elaborating certain clauses. The general effect is that where members agree common minimum prices they also offer identical conditions of contract and must agree any subsequent variation with other members tendering on an enquiry.

253. In the home market signatories of Group agreements relating to both large and small steam driven turbo generating machinery are obliged under the terms of those agreements to observe "the rules" for the use of conditions of sale and contract set out in the BEAMA Council's "Instruction to Members". In the export market, Group agreements relating to small machinery provide that unless the purchaser puts forward any general conditions with his enquiry tenderers shall, unless otherwise agreed among them, tender either the appropriate BEAMA Standard Conditions or those of the professional institutions: when the purchaser does issue a set of general conditions, tenderers are to decide whether these conditions are acceptable, whether they should be modified or whether tender and contract shall instead be made subject to one of the "Brown Book" standard models. In the case of large machinery for export (prices for which are agreed within the IEA), the Group notification agreements provide only* that "every Signatory shall conform . . . to any . . . obligations . . . agreed

* Apart from a provision relating to repair contracts.