

LEAGUE OF NATIONS — INTERNATIONAL LABOUR OFFICE

**NATIONAL AND INTERNATIONAL MONOPOLIES
FROM THE POINT OF VIEW OF LABOUR, THE
CONSUMING PUBLIC, AND RATIONALISATION**

BY

PROFESSOR JULIUS HIRSCH

Former Minister of the Reich

Submitted to the Preparatory Committee
for the
International Economic Conference

GENEVA, 1926

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NATIONAL AND INTERNATIONAL MONOPOLIES FROM THE POINT OF VIEW OF LABOUR, THE CONSUMING PUBLIC, AND RATIONALISATION

By PROFESSOR JULIUS HIRSCH, Former Minister of the Reich

I. MARKET RESTRICTIONS

It is generally recognised to-day that free competition, the basis of modern industrial economy, is self-contradictory in its continued development. It is also clear that no legislation can, in principle, prevent the fusion of competitors on the market. If, nevertheless, legislation does make such an attempt, then it simply means that one form of fusion is replaced by another. The fundamental *economic* laws, according to which one form of economic activity, more than others, necessarily leads to the curtailment and finally to the elimination of competitive freedom, have been little observed and elucidated. Wherever the nature of a product itself allows it to compete freely on the open market, competition develops its creative powers of organisation to the highest possible degree. Wherever this freedom of the market eliminates itself the monopoly replacing free competition may carry out the functions of a free market to a more effective and rationalised degree. Frequently, on the other hand, such a monopoly may only reveal the disadvantages of such a curtailment of free competition.

As a matter of fact the combination of a freely competitive system with Government-controlled enterprises and with private monopolies, subject to whole or partial restrictions, characterises the situation as it is at present and as it will remain as far as can be foreseen in the future. We shall try briefly to summarise the most important factors contributing towards the formation of private monopolies.

(1) Almost all industries producing commodities with a small specific value tend to combine, at least on the home market. Commodities with a small specific value are products the value of which is low in relation to their weight. Their weight while they are being transported, therefore, results in an "undisputed area", which is the obvious place for the formation of local monopolies.

(2) At first industries of this kind usually combine into cartels, that is to say, each enterprise as such remains independent, but the relation of all the enterprises involved to their common market is uniformly fixed by an agreement effective for a specific period of time.

(3) In a somewhat different manner those industries consuming raw materials escape from free competition which absorb these raw materials in their finished product to the extent of only a small fraction of their original gross weight. The iron industry is a typical case. The greater part of the total weight of the coke used for production is not absorbed into the substance of the finished product, but serves only as power for the conversion of this substance. In this case the mining and the chief utilisation of the coal are combined at the source, that is to say, the production of by-products in the cokery, the utilisation of coke in the blast furnaces as well as the iron-finishing processes occur in the steel and rolling mills, in so far as one heating operation avoids a further transport of coal, which would mean transportation of power as dead weight and at a high cost. Thus the concentration of the coal and iron-industries at the coal mines results in a local fusion of these industries and then in a so-called vertical combination of the plants involved. In addition adjacent factories frequently conclude agreements the immediate aim of which is market control. In the long run, as far as we can see, the aim of these combinations is a joint ownership of big industrial concerns and ultimately they tend towards a complete trustification of coal, iron, steel, and rolling mills. Plants manufacturing different products are then generally merged into one large concern, and this merging process continues until the concern controls the market to a greater and greater extent. This control of the market no longer depends as much upon agreements, limited in time, which are concluded by independent enterprises, as upon the concentration and unity within the one concern, viz. within the trust. Even among these concentrated trusts it is, however, often noticeable that the individuality of the various enterprises involved does not disappear altogether. The vital importance of the American Steel Trust, which admittedly controls over 50 per cent. of American steel production, and of the three closely-allied German steel trusts, which control about one-fifth of the total German production of coal and the greater part of the German production of iron, steel, and rolling mills products, as well as the French and Belgian trusts, are indicative of this development. In Great Britain, also, where about half of the total iron and steel output is produced by a dozen concerns, a tendency towards further concentration is becoming more and more apparent.

(4) Industries producing commodities which require an intricate and uniform transportation mechanism before they reach the consumer, as well as industries producing commodities which require interdependent appliances for their manufacture, conservation, or distribution, also tend to merge into trusts. The fact that, in practice, railways cannot indefinitely stand free competition has been proved by experience in all countries owning large railway systems, especially in Great Britain and the United States. The necessary sequence of production, transportation, conservation and distribution has made the creation of trust-like combinations, which handle the oil from the well to the tank in the shop of the ultimate distributor, nearly inevitable. Similar trust-like combinations were

unavoidable also in the frozen meat industry, although in Great Britain this meat trust supervises the meat from the time it is slaughtered abroad until it reaches the refrigerators partly belonging to small English retail dealers, partly to the trust's affiliated companies, and although, in the United States, the retail trade is officially independent in its distribution of meat, whereas all other activities connected with the trade are practically concentrated in a few concerns. Similar conditions prevail in the banana industry, the British fish industry, and in other trades.

(5) Almost all of the fashion industries (with the exception of the artificial silk industry) are by nature much less easily merged into cartels; most industries, also, which consist of small and medium sized plants, as well as trading companies, in so far as they are not dependent upon large standing capital, are more difficult to combine. In this connection the utilisation of standing capital is not as important as one frequently thinks. The other incentives, mentioned above, are far more vital.

(6) In industries where, on the other hand, some new invention may endanger the activities of the industry as a whole, or where, on the other hand, fundamental conditions prevailing in the industry may frequently necessitate the systematic adoption of all possible processes of manufacture, some factories are often practically forced to combine because of the great risks and the high costs involved. One experimental company spent about 30 million marks for experiments towards the liquifaction of coal; the equipment necessary for the actual production of liquid coal is by far more expensive. To build up the plant needed for the manufacture of artificial nitrogen the German iron industry for several months was obliged to deliver about half of its total output — and then, in an accident, one of the largest nitrogen plants exploded. Such risks require tremendous capital and any manufacturer assuming them almost always tries to assure himself of the support of his competitors. Their common interest in the patent involved forces manufacturers to combine in such cases. Recent developments along these lines cause possible inventions, which heretofore had been a question of luck or genius, to be tried out systematically with the aid of every kind of chemical and technical device, and such experiments are now considered as regular methods of business operation included in the industry's productive activities as a whole.

(7) All tendencies towards the formation of cartels can be strengthened or weakened by Government intervention, as well as by legislation as by court decisions.

(a) It is not necessary to emphasise here that by keeping out foreign competitors protective tariffs strengthen cartels and trusts. Monopolies are most highly developed in countries with high protective tariffs, but this does not mean that free trade countries are entirely without cartels, for the natural and technical causes resulting in combinations, mentioned in paragraphs 1-4 and 6, are effective in

such countries also. In protective countries, however, high tariffs stimulate this tendency towards concentration enormously.

(b) An attempt is often made to curtail the formation of cartels through legislation. Such legislation cannot, however, prevent industrialists from concluding agreements among themselves when conditions favourable to such agreements prevail. An *esprit de corps* encourages the formation of cartels, whereas individualism tends to work strongly against combinations and trusts.

(c) Recently a number of Governments have been quite frankly and positively encouraging a tendency towards the creation of monopolies in foreign countries. These monopolies have been frequently discussed of late in connection with semi-finished and finished products. Economically, however, the raw materials monopolies, including foodstuffs and other raw materials, which have been organised during the last two decades, are far more important. The Governments and the financiers interested in these monopolies usually combine more or less frankly. The so-called "valorisations", as in the coffee, sugar, rubber, zinc, potash, quinine, quebracho, and many other raw material industries, are well enough known. According to an American estimate, about seventy raw materials, all of them important on world markets, are already included. We shall refer later to the international economic importance of these raw material monopolies.

II. THE ORGANISATION OF CARTELS, TRUSTS, AND OTHER COMBINATIONS

In many countries, where cartels have not been highly developed, the outward organisation of cartels is believed to be much simpler and one-sided than it really is. German experts, in particular, are frequently asked abroad how "the German Cartel" is organised. The author has therefore included a graph listing the various types of German cartels one after another, from the simplest type of trade association to the cartel of sales conditions (*Bedingungsgemeinschaft*); the price cartel and the syndicate maintaining a common sales organisation for the curtailment of production and listing finally the most complicated forms of trusts and the related forms of monopoly combines. Details concerning these organisations are indicated in the note accompanying the graph in Appendix I. The forms of combines listed in this graph indicate, as it were, the development of cartels on a co-operative basis beginning with the associations including enterprises which remain independent. The process of consolidating the capital of various enterprises to the extent that they entirely or partially control the market may perhaps be made more clear by the following statement: A number of individual enterprises are fused into a joint stock company, the combine (*Konzern*), frequently supplying a considerable part of the market demand, which, in turn, is based on the fusion of a number of these joint stock companies. Often this fusion is not frank or complete; instead of a complete fusion the

productive capacity of the factories and enterprises involved is joined together and then, when the leading company takes over the stocks of the various enterprises concerned, these enterprises remain formally and outwardly independent.

In Germany "working agreements" (*communities of interests, Interessengemeinschaft*), representing a partial fusion of enterprises, were then developed. Two or more enterprises in the same industry fuse parts of their plants or their industrial services under a common management and the share of the financial returns of these joint undertakings, allotted to each enterprise involved, are fixed by agreement. In this way a "community of interests of patent rights" (*Patentgemeinschaft*), distribution combines as well as production and administrative combines of various plants and various industrial services, were developed. Usually, as the outward administrative body managing these combines, a "joint committee" (*Gemeinschaftsausschuss*) is formed, and this transaction is connected with a mutual exchange of stocks on the part of the various enterprises. The relative importance of the plants and the industrial services fused determines what percentage of their total stocks are exchanged in this manner.

When a partial fusion becomes a complete fusion, this means that a trust has developed. Usually fusions tend to become trusts; whether this tendency progresses or not depends chiefly upon the nature of the product and upon the extent to which the combines concerned are adapted to becoming cartels or trusts (see above and also Appendix II).

III. THE NUMBER AND IMPORTANCE OF CARTELS AND TRUSTS IN GERMANY: BRIEF INDICATIONS OF CONDITIONS IN OTHER COUNTRIES

The development of cartels has probably been freer in Germany than in any other country. Cartels began to develop in the 'sixties. In the 'eighties they became more general. The compulsory economic regime (*Zwangswirtschaft*) during the World War caused them to become even more general. An investigation, made by the Ministry of the Interior in 1905, reported details about 385 cartels, which had been organised in various industries as follows:

Brickworks industry	132
Other stone and pottery industries	27
Coal mining industry.	19
Iron	62
Chemical	46
Textile	31
Glass	10
Paper	6
Leather	6
Rubber	6
Woodworking	5

In 1908 Schmoller estimated that far more than 500 cartels had been organised. The compulsory economic regime during the war and the State-organised self-administration of commerce and industry during the post-war years greatly stimulated the formation of cartels, so that in 1924, according to a semi-official estimate, 2,500 cartels in industry, 400 cartels in the wholesale trade and 180 in the retail trade had been organised. In 1926 the number of cartels organised by industry was estimated in the Reichstag at 2,000; the number organised by the wholesale trade was estimated at 50, but probably this figure is too low.

Even in Germany the fusion of the capital controlled by various enterprises is far more important than their fusion into cartels by agreement. A recent statistical memorandum, concerning the organisation of combines in Germany, shows surprising results, viz. that of about 12,400 joint stock companies about 2,000 belonged to some combine, which would be less than one-sixth. But of the capital approximating 20 billion marks, owned by these 12,400 companies, not less than 13 $\frac{1}{4}$ billion were controlled by combines. In connection with the fusion of succeeding phases of production in monopolised industries the following quotation from the memorandum mentioned above may be of interest:

During the period of the mark stabilisation there were ten large mixed combines in the Ruhr district. The combines controlled 88.5 per cent. of the consumption quota, 48.8 per cent. of the sales quota and 46 per cent. of the coke quota of the Rhenish-Westphalian Coal Syndicate; 65 per cent. of the pig iron associations' quotas, and 58.7 per cent. of the quota of the steel association. All these combines included enterprises of all kinds, from those producing coal up to companies producing finished products. In the Siegeland ore district they sought a weak substitute for the Lorraine ore mines which they had lost.

It is estimated by the author that at least three-fifths of German industrial production is now controlled by organised companies. In view of this fact one can claim unhesitatingly: about two-fifths of Germany's industrial output is produced by enterprises which tend to monopolise the market either in the form of cartels or in the form of capital fusions of combines or trusts.

A statistical summary of German combines, compiled by the Reich's Statistical Office, is given in Appendix III. This summary indicates that the basic principles described above¹ have actually been confirmed in the German combine development.

Conditions in the United States are not very different. Recent investigations seem to indicate that far more than four-fifths of the country's industrial output is produced by enterprises organised as joint stock companies. It is well known, furthermore, that a large proportion of these companies have joined organisations which control the market to a great extent. According to some estimates this proportion is two-thirds; according to others it is even higher.

¹ See Chapter I, pp. 5 et seq.

IV. THE BASIC SIGNIFICANCE OF THE INCREASING TENDENCY TOWARDS MONOPOLIES

If industry and trade were entirely organised into monopolies a central administrative body would be confronted with the following problem as far as its price-fixing policy were concerned: a price system would have to be adopted according to which the purchasing power of the consumer would be objectively distributed among commodities of prime necessity. This system would have to arrange that the consumers' most urgent needs were provided for first. As a matter of fact, Germany's food policy in 1917 actually attempted to establish such a system (the German law of the "relation of prices"). Free competition, on the other hand, based on market conditions and their changes, creates a price system which maintains its balance because of the ultimate consumers' capacity and willingness to pay and because of the high production costs of the industrial enterprises which are still necessary to supply the consumers' demand.

Even in free competitive systems there are always a few Government monopolies and already to-day, in special cases, the State monopolises certain branches of industry and systematically limits the consumption of their products. Alcohol and tobacco taxation is, at least, so effective in certain cases that it might be interpreted as being a measure to curtail the consumption of these products, especially where this taxation is so severe that it seems above all to aim towards a limitation of consumption, with little regard for the financial returns of the industries. So far this development has been rare. Almost always when a Government controls a monopoly its policy has been to make it pay. In its control of indirect taxes, furthermore, the State can assume important monopoly functions; prices are at least partially fixed through the compulsory power of the State, just as they are in the case of monopolies. It has been the principle of indirect taxation to make as large a profit as the consumers can stand, that is to say, this has been usual unless specific social or political considerations have restrained this taxation policy. But this has been the typical basic principle as far as all private monopolies are concerned. As a result of this price policy it is no longer the free competitive price, depending upon production costs, as well as upon the demand adequate to supply this free market, but the price which is decided by a maximum profit on that part of the market covered by the monopoly which determines the volume of production. The monopoly price is fixed, in part consciously, to restrict the market demand (which would develop if prices were free) according to the monopoly's chances of making profits, and this policy forces the rest of the consumers to pay higher prices. In principle such price-fixing activities are always limited, for eventually the point is reached at which the number of potential consumers is so small that high prices are no longer as profitable as lower prices and a larger number of consumers would be.

This possibility of profiting from some products, despite the fact that its price has been increased and the sales decreased, finds its counterpart in another

monopoly policy, according to which price reductions aim to increase sales as well as ultimate profits as a whole, despite the fact that the profit per commodity unit has been decreased. In a number of cases it is possible even to compromise between these two policies, that is to say, monopoly prices may be regulated according to the tendency towards price increases, on the one hand, and according to sales increases and price reductions per unit, on the other. It then becomes a question of experience which policy is the more profitable. It is even possible, in the case of some products, for the monopoly temporarily to change its price policy. This plan is particularly feasible for incomplete monopolies and, as a matter of fact, most monopolies organised so far are, practically speaking, incomplete. A complete monopoly almost always requires legislative protection. Even then consumers are usually able, by substituting other equally effective commodities, to escape the effects of exaggeratedly high prices. Monopoly price increases are limited to that point at which the price demanded is so high that the consumer no longer considers it worth his while to purchase the commodity in question.

The price policy of private monopolies, which are not world monopolies, is usually determined by two factors. On their controlled market these monopolies aim to make a maximum profit by asking high prices, whereas on the freely competitive market they aim to increase their sales by fixing lower prices. Dumping of this kind is not confined to the export trade; on the inland market as well such "discrimination", viz. different prices for the same product according to the consumers' capacity and willingness to pay, is not unknown. This price policy is most clearly indicated by the rates of the large railways. These railways exploit their monopoly by charging relatively high freight rates for high value commodities, which are thus burdened with high transportation cost, whereas the freight charges for commodities, which are the output of mass production, and the specific value of which is low, are relatively small, so that these commodities can be shipped to as distant points as possible. Thus the railways try to exploit their railroad system to the fullest possible extent. A similar policy is probably pursued by electrical companies everywhere: their charge per kilowatt hour fluctuates according to the capacity and the willingness of their various consumers to pay. Producers of cartelised industries differentiate in the same way between "disputed" and "indisputed" areas. To a certain extent the cartel differentiates prices also as far as the market it controls is concerned. Some cartels, on the other hand, maintain the same prices on the entire inland market, whereas prices for their commodities on foreign markets are higher. In all such cases the development of prices is influenced by the fact that competitors are offering their products or their services on the "disputed" area of the market with the same technical effect, and that, beyond a certain price limit, these competitors can compete with the monopoly. Thus trucks, and even aeroplanes, have successfully competed with the railways as far as the transportation of high value commodities is concerned; and the extent to which industry and trade can be electrified depends upon the relation of the prices of electrical

power to the prices of coal and oil. Even in cases of complete raw material monopolies the power of the monopoly in question may be curtailed by substitute (*Ersatz*) products and by the possibilities of producing these products synthetically. The linen industry lost ground in favour of the cotton cloth industry because of the monopoly policy of flax-producing countries; and the sales of the Chilean and East Indian nitrate and rubber monopolies have been limited to certain prices by the production of synthetic nitrogen and regenerated rubber. If, in practice, as is frequently the case, it is pointed out that "there are still outsiders", that "10 or 15 or 25 per cent. of the market is not controlled by cartels", and that, therefore, no monopoly exists, this statement is incorrect. Even a monopoly which is incomplete exerts far-reaching price-fixing powers. Everywhere practical experience indicates that this is the case and Appendix VII shows how true it is in principle from a theoretical point of view.

The increasingly far-reaching influence of the monopolies' price-fixing policy results in a fundamental change of industrial and commercial conditions. Whereas in free competition producers of various products compete with each other for customers, monopolists try to determine the point at which prices and sales are most advantageous to their production costs and real competition no longer exists for them on their market. Even in the case of an incomplete monopoly the monopoly price policy is not changed in principle, it is only the degree of this policy's influence and the margin of profits which are affected. Free competition, however, still exists as far as the fight around the consumers' purchasing power is concerned. In a centrally-administered monopoly system every branch of industry is allotted its fixed part of the total sales, whereas in free competition, when certain or even many products are extensively monopolised, the monopolies also compete among themselves and with those of their competitors who have remained independent for their market. Market competition thus develops into a fight for power on the market. Even if the monopolies' price policy is somewhat limited by the incompleteness of their monopoly power, considerable profits can be derived from the exploitation of this situation. These profits are usually gained at the expense of the "free" competitors, whose prices depend upon the laws of free competition. This concentration of a considerable part of the total industrial output in the monopolies creates a new distribution of products and of economic power. This new type of distribution should be taken seriously by public opinion, particularly as the majority of the existing monopolies, which are almost all "incomplete", are encouraged, at least, by Government regulations. In free competition a far-reaching automatism regulates production and market conditions; increasing monopolisation, on the other hand, is causing the effects of the mechanical market selection to be replaced by decisions of a smaller and smaller number of individuals. This situation can result in economic or business mistakes which may have serious consequences. It is true, of course, that such mistakes are possible in free competition, where market conditions and development can so easily be misjudged. Usually, however, though by no means always, such

mistakes are checked in time in free competition when competitors confront each other on the market. But in free competition no individuals, responsible for mistakes, are apparent, whereas in monopolies they are apparent to every one. They replace the mechanical functions of the market by conscious acts, which cause free competitors to attempt a conscious supervision of all national industry and trade as well as, increasingly, a supervision of international trade activities.

V. THE INTEREST IN MONOPOLIES ON THE PART OF THE VARIOUS GROUPS CONCERNED

The interest of the employers, the workers, and the consumers in monopolies is so different from case to case that it is daring to make any general statement concerning the attitude of these various groups. Nevertheless a number of Governments, through legislation, are attempting to direct the formation of associations, combines, and trusts so that they will benefit all the interests concerned. For this reason we shall at least indicate briefly the general interests of these groups in monopolies. Among *employers* the situation is as follows: .

Agricultural employers, who are largely organised into co-operative associations among themselves, are probably always sceptical of rigid industrial monopolies. As consumers, agriculturists feel themselves endangered, when the prices for agricultural commodities of production or consumption are kept at a high level by monopolistic organisations. Nevertheless agriculturists do not very often actively support any movements working against such organisations. When the agricultural interests concerned are sufficiently strong they occasionally prefer, instead, to introduce "valorisation" measures with the help of the Government (coffee, sugar, wheat, rye, cotton, etc.).

In general industrial employers appear to favour cartels and especially trusts. Within a cartelised industry, even when the cartel has been rigidly formed, internal struggles do not cease; these struggles merely alter their objective and their form. When a fight for prices is no longer possible and the market has been subdivided, the energy of the employers involved frequently concentrates on improving the internal administration of the organisation. Just as frequently, on the other hand, this energy is directed towards that part of the market which is still free, towards competitors in the finishing industries and in the trade or towards the acquisition of the production rights heretofore controlled by other employers within the cartel. Thus the *contingent*, the cartel quota, becomes a new commodity of sale and trade value. The purchase of these quotas within the rigid cartel is frequently the intermediary step between the cartel and the trust. Besides the employers often concentrate their energy on improving their position for the time when the cartel agreement will have expired. "Speculation on the free competitive market is replaced by speculation and a speculative spirit directed to the moment when the cartel shall have expired."

Periods during which the market tends to be depressed are usually accompanied by a desire on the part of the enterprises involved to leave the cartel. German cartel legislation has strengthened the various enterprises in such cases by conceding alleviations in the relinquishing of the responsibilities involved in the agreement.

Enterprises which are "outsiders" as far as cartels and trusts are concerned, are by no means always opposed to monopolies. In so far as monopolies are not fighting them directly, these enterprises frequently try to exist in the shadow of the cartel, as it were, whereas if they are not burdened with the overhead costs carried by the cartel they can underbid the cartel's prices by a slight margin. The smaller the market the more they are protected in such cases by import duties.

The situation among manufacturer-purchasers of products produced by cartelised industries and trades is entirely different: they can only stand the cartelisation of their suppliers if, through a rigid organisation among themselves, they are in a position to make their customers, in turn, pay the high prices fixed by the cartel. As this is rarely possible, however, cartels are most vigorously opposed by producers in the finishing industries. Despite its great political influence the German iron-producing industry, in 1925-1926, was able to overcome the German finishing industries' opposition to the maintenance of import duties, which were the basis of the national and the international cartelisation of iron, only with the help of considerable financial concessions in the form of export bonuses.

A similar situation prevails in *commerce*. Nevertheless the power of the trade to resist market restrictions, its will to oppose them even, is, in principle, only of short duration in most countries. If a producing cartel assures the trade that it will be able to carry on its activities — and most cartels do this for purely business reasons (the trade assumes the risk for the payments received and for the administration of the commodities and their distribution according to the capital of the trade) — then the trade adopts itself easily and often not unwillingly to the cartelisation of its production; all the more so as producers' cartels tend to guarantee the trade certain minimum profits, although it is true that in other cases the opposition to such monopolies is fortified.

In the formation of such monopolies the *interests of labour* are by no means homogeneous. As producers the workers are primarily interested in the prosperity of their employers. Thus, if through cartelisation or trustification the profit level of an industry is assured and raised, then the wage-earners in this industry are in a more favourable position than they would be without this cartelisation. This possible improvement is clearly effected at the expense of other consumers and especially of other sections of the working class. In spite of the most emphatic references to "professional syndicalism", which has thus arisen, and to "exploitation of the labouring class by labour groups" it has not seldom happened that in the compulsory post-war German cartels the wage-earners have supported the employers in a price policy which, to the Governments and to the general public, seemed an excessive exploitation of those powers which a monopoly confers.

There is no doubt that in the real social struggle the formation of such monopolies worsens the position of the wage-earners. Trade unions are strongest when they are faced with employers in small or medium enterprises. The fighting strength of labour is doubtless weakened by the concentration of administrative powers in the management.

As consumers in general the working classes are weakened by monopolies when these monopolies raise the price level or when they hold up or hamper price decreases. As this occurs at first and frequently lasts for a long time in at least some monopolies, the wage-earners in most countries demand State supervision of those enterprises which have the character of monopolies. In Germany they have recently demanded a strengthening of existing legislation by a special cartel bureau (*Kartell-Amt*).

The consumers' interest in such monopolies is obvious. In so far as fusions eliminate unproductive costs in the industry it creates the foundation for new labour markets, and therefore new possibilities of consumption. In so far, on the other hand, as monopolies raise the price level (without planning future price decreases and consumption increases) the fusion of various enterprises is directly opposed to the consumers' interests. The broad masses of urban consumers are in sharpest opposition to cartels and trusts in all countries.

According to the political influence of the consumers' measures for opposing, regulating or, in certain cases, promoting private monopolies come into consideration. The Government of the country in question will always want to support the monopoly in so far as it believes (rightly or wrongly) that national productivity is increased thereby. It will tend to oppose the monopoly, in principle, in so far as such consequences are outweighed by increased prices which lead chiefly or wholly to increasing the power of the owners of such monopolies.

VI. NATIONAL POLICIES AND PRIVATE MONOPOLIES

The fathers of the present system of industrial freedom were decidedly opposed to industrial fusions. It is probable that in all countries the fusion of employers was considered harmful to trade and industry, seeing that they would restrict and partly eliminate the market's power to organise itself economically, a power in which one had complete faith until then. The attitude of different Governments towards such monopolies in modern times is either positive and results in an extensive State organisation of industry (*Planwirtschaft*) and to the Government cartel (valorisation cartel), or it is repressive, and operates with prohibitions as was formerly the case in America and England. A final method is that of control, in which case a Government tries to restrict the general unfavourable economic effects of monopolies, as is indicated by the latest developments in America, and as Germany has been trying to do since 1923. The rather more far-reaching Norwegian attempt is of no more than theoretical importance because of the small

size of the country and of its industry. The attitude of a State towards cartels is positive above all when it adheres to the principle of economic centralisation in the framework of a general State organisation of industry and trade. So far this system has only been carried out in Russia over a part of its industry. The Russian trusts and State syndicates are, in their outward form, created on the model of capitalistic trusts. At the same time they are dominated by a communist economic conception which does not prevail in the rest of the world. Other States have tried to introduce a kind of State organisation of industry (*Planwirtschaft*), based on the compulsory fusions created during the war, when enterprises in many branches of industry were forced to unite into cartels. After the political upheavals at the end of the World War these States made a special effort to have labour participate in these compulsory cartels. In this way the German "self-administrative organisations of industry" (*Zwangskartelle*) developed, in which the wage-earners participate in the regulation of prices and other vital decisions. Purchasing industries, including the workers these industries employed, as well as the purchasers, as consumers, were also given the right to participate in the self-administrative organisations in this way. When the scarcity of the supply of commodities and the period of inflation were over, the influence of these experiments became very small. In Germany about a dozen of these self-administrative organisations existed in 1919-1921; they had the right of fixing maximum prices and to give prescriptions as to the methods of distribution. To-day compulsory cartels still exist for coal (*Reichskohlenrat*), for potash (*Reichskalirat*), as a mere formality for iron (*Eisenwirtschaftsbund*) and to a limited extent for the electrical industry. The compulsory coal cartel is not really different, in its influence, from any other large cartel, although the State formally still has the right to intervene in cases of price increases. The importance of the self-administration in the potash industry, from the point of view of labour and the consumers, is probably confined, in practice, to the fact that the agriculturists, as consumers, co-operate in the *Reichskalirat* in the fixing of prices. As a matter of fact this is an industry where "valorisation" was made possible through the fusion of German and French enterprises and where this system has been favoured by legislation.

Appendix IV indicates the legislative and interpretative change which has occurred in the United States, where the tendency to repress monopolies is being increasingly replaced by an attempt to control them from the point of view of increased national productivity. In Germany, since the failure of the State organisation of industry idea in 1919, the first legislative measures were passed in 1923. The basic idea of this legislation is, in part, more juridical than economic. A cartel court was founded, with the function of supervising "proper market practices". The Federal Minister of Economics has retained the right to take legal action through the cartel court as well as other powers, in the event that the activities of a private monopoly might endanger industry and trade or the community as a whole. So far the Minister has only once made use of this power, but the

complaint was not carried through. If a private organisation wants to boycott some purchaser of its products the cartel court must first approve this step. After a hearing, in all cases where an individual feels that his economic freedom of activity is curtailed by the cartel to which he belongs (unfair "restrictions"), the court must decide whether his immediate dismissal from the cartel is justified or not. On the basis of its very limited powers the German cartel court has attempted to develop a number of fundamental principles; it is nevertheless very questionable how influential jurisprudence can be in the formation of economic policies, even though, as in this case, a kind of arbitration court with a juridical chairmanship and a neutral tribunal, including economists and business men, has been formed.

Appendix V indicates the fundamental idea governing current German regulations and the text includes the most important paragraphs of present-day German legislation.

VII. THE BASIC PROBLEMS OF THE SUPERVISION OF MONOPOLIES

It is probably a very general rule that any general attempts to prevent the formation of organisations controlling the market must fail. The privilege to exploit his working power, which is granted the worker as a matter of course in all modern States, cannot very well be refused the employer. In the same way, however, no State will remain inactive when the fusion of economic forces, and especially the fusion of forces controlling the incomes of various sections of the population and their purchasing power, becomes apparent. The guiding principles for industry and trade in all countries can probably be summarised as follows: Free competition was never a principle for its own sake, but was adopted because of the correct conviction that this was the best way to organise industry and trade to its highest productivity. When, however, competition among competitors means that a greater part of productive effort and labour is wasted for the same purpose, then the basic idea of free competition is abandoned. For this reason a monopolised system of transportation is at least tolerated, if not particularly created, in all countries where industrial development has reached the point attained in Central and Western Europe and in the United States. The organisation of cartels and trusts may result in an increase of productivity and a decrease of the total costs of industry and trade. Whether and to what extent this is the case obviously varies greatly in various branches of industry. The same legal forms and legal structures may be extremely productive in their effects on one branch of industry whereas on another they may increase costs, cause an uneconomic distribution and be a generally unproductive influence. Government intervention and legislation cannot, therefore, attempt to create one single legal structure; on the contrary, *an effort should be made, along the lines of American experience, to stimulate all tendencies towards increased rationalisation and increased productivity, on the one hand, and to restrain all influences, which, on the other hand, through the fusion of economic power, are working against rationalisation and which*

support the maintenance of unproductive plants and methods of work. Present American legislation probably comes closest to meeting these demands. For the reform of German legislation the author has recently presented a Bill, which will be published soon, and which includes the following fundamental ideas: The Government of the Reich must be able to take action against monopolistic organisations or agreements. At the same time it must also come to the support of such organisations as lead to an improvement in Germany's industrial productivity especially when this improvement is accompanied by a saving of costs in those trades that are of general utility. For this purpose the responsibility should be transferred to one person, advised by experts appointed by himself. This person, too, should not be bound by instructions from any superior official authority, but should make decisions according to the current economic situation and with the view to improving the efficiency of the German economic system as a whole. The clause relating to exclusive deliveries and the rebates should be prohibited. All such transactions should be nullified which involve discrimination against individual purchasers or classes of purchasers. Disputed points should be discussed in public and those responsible should be present at these discussions. The Government Commissar in question, should also have the right to intervene not only with prohibitions but also with compulsory contractual powers in the case of firms violating cartel rules and regulations. As a juridical instrument in dealing with such trades or industries, which follow a policy contrary to the interests of production in general, he should be empowered to submit a public motion to the Reichstag with the view to reducing or abolishing certain custom tariff rates or to take other effective economic measures against such industries.

All national legislation of this kind is invariably made extremely difficult by the often repeated argument that the *international cartel movement* will lead to a state of affairs in which those organisations which are combated do not disappear but transfer their headquarters to another country, so that the producers in their own country are excluded from participation.

VIII. THE SPECIAL CONDITIONS OF INTERNATIONAL MONOPOLIES

(1) *The Great Difference in their Influence and Effectiveness.* — The numerous discussions about international cartels and trusts often overlook the fact that one international monopoly may be partly or even wholly incomparable with another. This is even true of the extent of the power conferred by a monopoly. One can distinguish between such as are valid for only two or three States, which may be neighbours. In that case an international cartel, such as the Central European silk or velvet cartel, is only an extension, or very often no more than the annex, of a national cartel. Latterly cartels have come into existence which do no more than *unite economically* what has been *divided politically*. Before the war the European potash industry was almost completely united in

the German potash syndicate. The Franco-German potash agreement has now restored economically what was severed politically in pre-war conditions. The agreement between the Continental steel producers was, at least at first, little more than the restoration of the unity of those areas of production which, for the most part, had previously belonged to the German customs union — Lorraine, Luxemburg, Polish Upper-Silesia, and the Saar Area. The extensions to other areas embrace only a smaller part of the total complex covered by the European steel cartel.

Contrasted with agreements such as this are the cartels and similar and stronger monopolies that extend to many countries and even to the world market as a whole. In this respect those monopolies which have been created with the help of several States and are *based on raw materials, are by far the most important*. Compared with these monopolies based on finished and semi-finished products are a long way behind and are probably much overrated as a rule.

(2) *Individual Characteristics in the Structure of International Cartels.* — In the development of their organisation international cartels are somewhat different from the national cartels which we have discussed. Not infrequently they chose States in which anti-cartel legislation seems unlikely as their headquarters. Just as in the United States there are several States in the Union, which, because of special laws concerning the organisation of commercial and industrial enterprises, are particularly popular as trust headquarters, a number of the smaller States in Europe are now developing a legislation which will make them the New Jerseys or the Delawares of Europe. The particular difficulties confronting the international cartels are obviously based upon the degree of stability their subcartels enjoy in the various countries in which they are located. In their development international cartels must, for this reason, take the legal insecurity of their subcartels into consideration. Frequently, therefore, among international cartels the same usage, adopted by national cartels, has been introduced, viz. disputes concerning cartel conditions are decided by a court of arbitration. But in the case of international cartels the execution of this court's decision is secured. In Germany, for instance, such security is given in the form of promissory notes, which, in the event of a default against the cartel regulations, can be circulated as a penalty collection without a decision from regular courts. Great Britain was probably the first country to introduce the prepayment of as high a penalty payment as possible to a trustee as this was considered the safest security. In practice international cartels almost all do likewise. The payment of a dollar per ton, which the participants of the European steel cartel have agreed to pay, fundamentally implies the same usage. Other legal forms, which have developed in this connection, have been discussed in such detail in other memoranda presented to the International Economic Conference that the special characteristics of international cartels, as contrasted with national cartels, such as the contingent system of production, but not of price limitations — frequently only a pure community of interests

of patent rights, occasionally even a community of interests to combat patent rights — need not be discussed here.

(3) The *international raw material monopolies*, which we have previously mentioned, *are of world-wide economic importance*. Like most cartels, they were at first "children of necessity". States which were economically entirely dependent upon specific articles of world trade (*e.g.* Greece upon currants or some Brazilian States upon coffee) attempted, in their great exigencies during price disturbances which effected their most important export commodity, with the help of a consolidation of capital contributed by their own Government and by foreign financial powers, to maintain a proper price level for their product and to stabilise these prices as far as possible. Since the beginning of the "valorisation" of coffee, in 1907-1909, a system has become increasingly general for a number of commodities, which has led to a special taxation of the broad masses of consuming nations resulting from normal profits derived by the owners of the raw materials and by the financial interests allied with them.

This system, as it exists, for instance, for rubber, consists of a compulsory Government regulation or of an agreement practically stipulated by the most important country involved, according to which an export quota is fixed, in other words, the quantity of the product in question which can be exported to world markets is limited. This result is achieved either mechanically through an export duty or through the payment of a tax by the exporter, or, as is the case in the well-known rubber valorisation system, it is achieved more organically through an automatic increase and decrease of this export duty in accordance with price fluctuations. Almost always this "valorisation" aims to keep the supply somewhat below the demand, in some cases this system is indeed "an artificial creation of a hunger for commodities", as it was recently called by an American statesman. The special profits which the rubber interests derived from this system over and above a normal profit of from 10-15 per cent. of the value are estimated at 1,200 million marks for 1925. Similar profits, derived from the third coffee valorisation in 1922-1923, when the same amount was produced as during the preceding year, is estimated at 650 millions. The curtailment of the Cuban sugar production by 10 per cent. probably increased the total profits by 20 per cent. (about 200 million marks). Similar conditions prevail in other monopolies. The world raw material tax, which is levied from the consumer in addition, as against the otherwise normal development of the free competitive market, can be estimated at 3,000 million marks annually.

(4) International cartels of finished products or of related semi-finished products of great market importance are now rare. Some of them, like the incandescent lamp cartel, have resulted from the causes concerning inventions which were mentioned above, while others are supported by the tariff policy of the various countries involved. The basis of the German iron cartel is an agreement

concerning the iron tariff, which secures the inland market for the German iron-producing industry and which eliminated the entirely free competition of the others (and partially kept them from functioning on their previous market) just as, on the other hand, other countries had usually secured their markets against each other. In a similar manner the English import duty on incandescent lamps immediately resulted in an agreement between the German and the English producers concerning their market areas. In this tendency semi-finished and finished products cartels are not infrequently a result and at the same time a support of a tariff policy, which is not directed towards economic freedom and does not therefore encourage as large an exchange of goods as possible between various countries.

Whether manufacturers, in the long run, derive a greater profit under the system of restrictions, which lead to the establishment of competitive enterprises, or whether they will derive greater benefits, in the long run, from a freer system, is a question which, in the light of past experience, must almost always be decided in favour of a free economic system. But it is just as obvious that, at present, the security of the market and the keeping off of competitors promises the private enterprise the greater advantage.

IX. CONCLUSIONS AND PROPOSALS

This last observation also shows the very varied effect of monopolies from an international point of view if, in studying them, one jointly considers the nations of the world as a whole and especially consumers, employees, and wage-earners as a whole. The processes entailed in the international as well as the national fusions signify an advance towards a condition in which the economic system is conscious of itself. International cartels as well as other and parallel phenomena denote that the world's economic system is gaining consciousness. In so far as the mechanical determinants on the market enable a general survey of stocks as well as of manufacturing and marketing possibilities to pass into the conscious, in so far as the division of labour and the purposeful refusion of divided labour grows more general and advances more rapidly, a rationalisation on a great scale is effected. These processes can thus, if a long view is taken, also signify an advance in the development of the world's trade and industry.

In so far as agreements in the nature of cartels are effected between the nations, *their greatest use lies in the fact that they bring together economic groups that are still divided into hostile camps under the influence of the world war.* In this important way they increase the mutual understanding for the political decisions of influential classes and thereby operate in an indirectly productive manner.

But it is all the more necessary to emphasise that these *favourable effects* are limited to a considerable and dubious extent and sometimes even cancelled both by *monopolies of raw materials* as well as by many monopolies of manufactured

and semi-manufactured goods because such monopolies occasion an *irrationalisation* of trade and industry, at least in their beginnings and at several important points. Consumer nations are overburdened wherever the so-called valorisations prevail. *They are a new impediment to commerce which must, in the long run, have effects more harmful than those which free competition has on the organisation of the worlds' trade and industry.*

Such an additional tax in the consumer nations and the resulting rise in prices necessarily lead to an increase of the more highly-priced product in other districts or, it may be, to re-installations of producing plant and so, in the long run, to overproduction which, from a general point of view, may and in some cases must, represent a waste of valuable production power and create amongst the nations so burdened the political sentiment that they are unjustly treated economically.

All those international monopolies which have the effect of special taxation rather than of rationalisation that lowers production costs and therefore, in the long run, prices, intensify class emotions, especially amongst the broad multitudes of purchasers such as make up the working class.

The other problem is that of *dumping*, which is chiefly a consequence of cartelisation intensified by productive tariffs. To purchase more cheaply abroad than at home may be right for the private concern or, in certain circumstances, even for the nation involved when the total production is strongly increased by cheap sales abroad and general charges are lowered. But if a broader view is taken, such a process appears uneconomic in the highest degree. The representative of a country which has numerous coal mines, sugar refineries, and oil wells recently disclosed: "If we had no coal, sugar, or oil in our own country, we would live more cheaply. Others would then dump their goods on us, whereas now we dump our goods on them." This pleasantry is, no doubt, one-sided, but it does show the international unreason of developments which in the end must, as the Brussels sugar convention once did, lead to agreements.

With regard to international cartels and monopolies, the above considerations therefore lead to the following conclusions:

I. International cartel agreements do not, in principle differ from national agreements. They may increase production, but they may also hamper economic progress. What is true of the general trend of monopolistic policy at home, as indicated above, is in principle also true of international monopolies.

II. In so far as international monopolies and kindred agreements represent a rationalisation in world trade and industry as well, the favourable effects of this function should be intensified as much as possible. At an international conference the following directives might influence international discussions and decisions with appreciable effect:

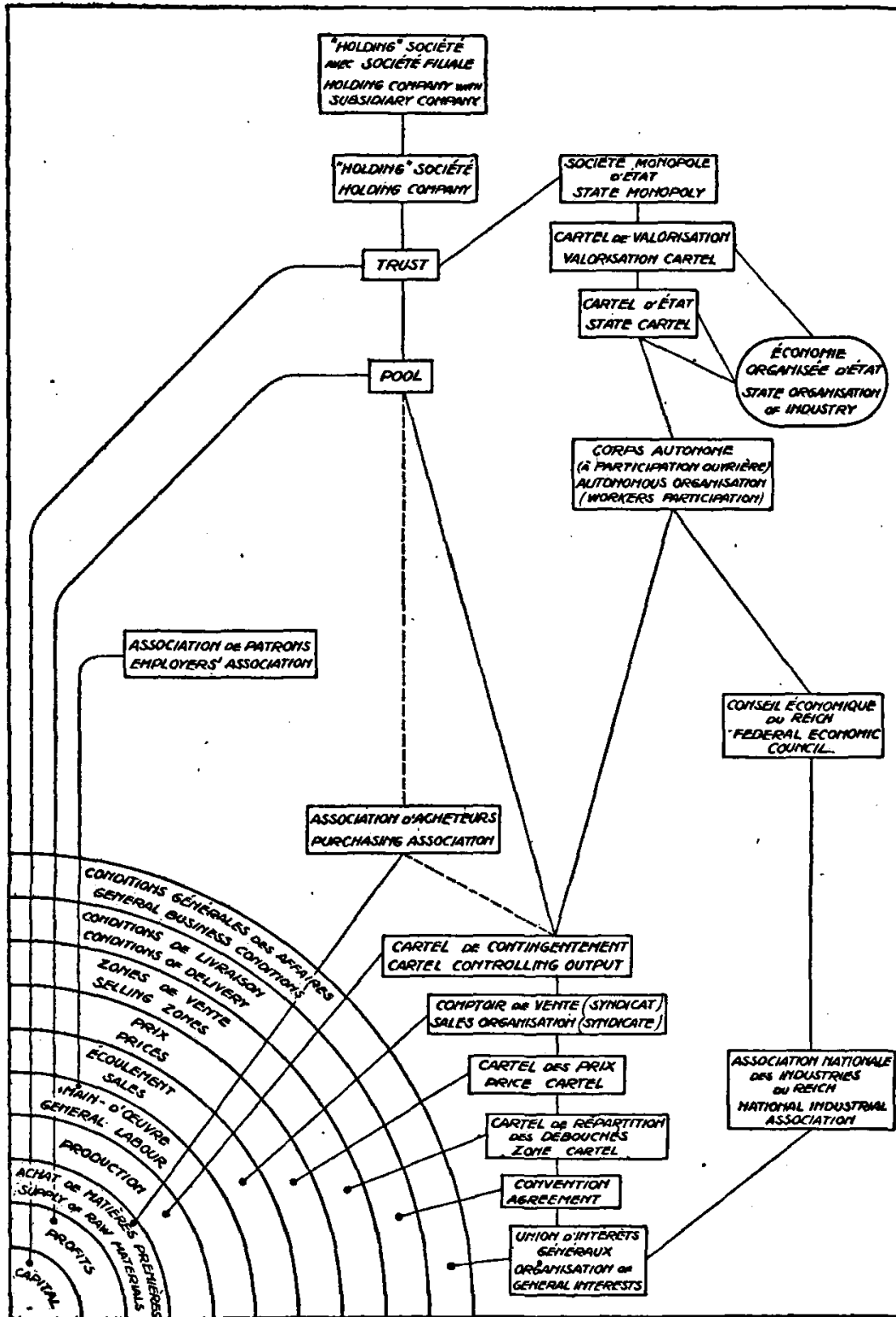
(1) The League of Nations might establish a *general observation post* from which the formation of monopolies in all their varieties, especially those that involve

international agreements, can be observed with a view to determining how far these transformations of the market tend towards rationalisation, that is, towards lowering prices and increasing output of trade in general and of the European economic system in particular. As far as Europe is concerned these observations should above all be conducted with a view to an enquiry into the possibility of *a rational transformation of the European economic system as a whole*, that is to say, of a *"rationalisation of Europe"*. These observations could, in the first instance, perhaps be entrusted to the International Management Institute in Geneva.

(2) The general observation post for cartels and monopolies would also have to observe currently the unfavourable effects of monopolies on the markets and the disturbances caused thereby, and report upon them to the League of Nations. This function might be exercised as follows:

- (a) When all the available material has been drawn upon and when all the interested parties have given evidence (in so far as they are willing) about the unfavourable effects of valorisations, that is, taxes levied on the world's raw materials, *to publish reports on these things* as well as on any undue and excessive use to which powerful economic interests may put their own predominating position in producing and marketing finished and half-finished goods.
 - (b) An independent body should exist to *give a decision in the form of a report or memorandum (which should be made public) in response to a request by this or that party concerning the utility or efficacy of international agreements in so far as they affect the interested producing or market nations.*
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APPENDIX I
Formation of Cartels and Trusts¹



¹ See note on the following page.

NOTE TO APPENDIX I

In the lower part of the diagram, on the left, are represented the most important interests and activities of an undertaking from the general selling conditions to the kernel of the undertaking, the capital. Any one of these may be the subject of agreements and has, in fact, been so. In most cases, however, several interests are combined together in these agreements.

For the purpose of the uniform regulation of *general business conditions* and their presentation to third parties, undertakings combine in an *organisation of general interests*. All the industrial associations of this kind are combined in the German National Industrial Association ("Reichsverband der Deutschen Industrie"), which, in its turn, is connected with the similar associations of other economic groups in the Federal Economic Council.

For the purpose of uniformising *conditions of delivery* the loosest form of cartel, the *agreement*, is formed, also called a *conditions cartel*.

A great restriction of free competition is obtained by a compulsory *selling zone*. A *zone cartel* assigns to each affiliated undertaking its own "uncontested territory".

In order really to ensure to an undertaking increased profits from its allotted territory, the territorial cartel is usually accompanied by a *price cartel*. In that case the undertakings adhering to the cartel protect the particular undertaking in its own sales territory by means of high prices.

In the forms hitherto referred to each undertaking sells direct to customers, but in the next category this function is entrusted by all the firms in the cartel to a single *sales organisation* which, in German, is called a "syndicate". Propaganda and all other matters connected with sales are also carried out by the syndicate. What has hitherto been the simple mechanism of sale thus becomes twofold: the undertaking sells to the syndicate, the syndicate to the purchaser.

As this procedure is not always sufficient to prevent a fall of prices through over-production, the concerns interested proceed to restrict *production*, in accordance with a previously agreed scheme, by means of a *cartel controlling output*. The conflict as to quotas has been found by experience to be the greatest obstacle to all negotiations for the formation of cartels. On the other hand, the purchase of quotas and the taking over of several quotas by one undertaking has often given rise to the most fruitful rationalisation.

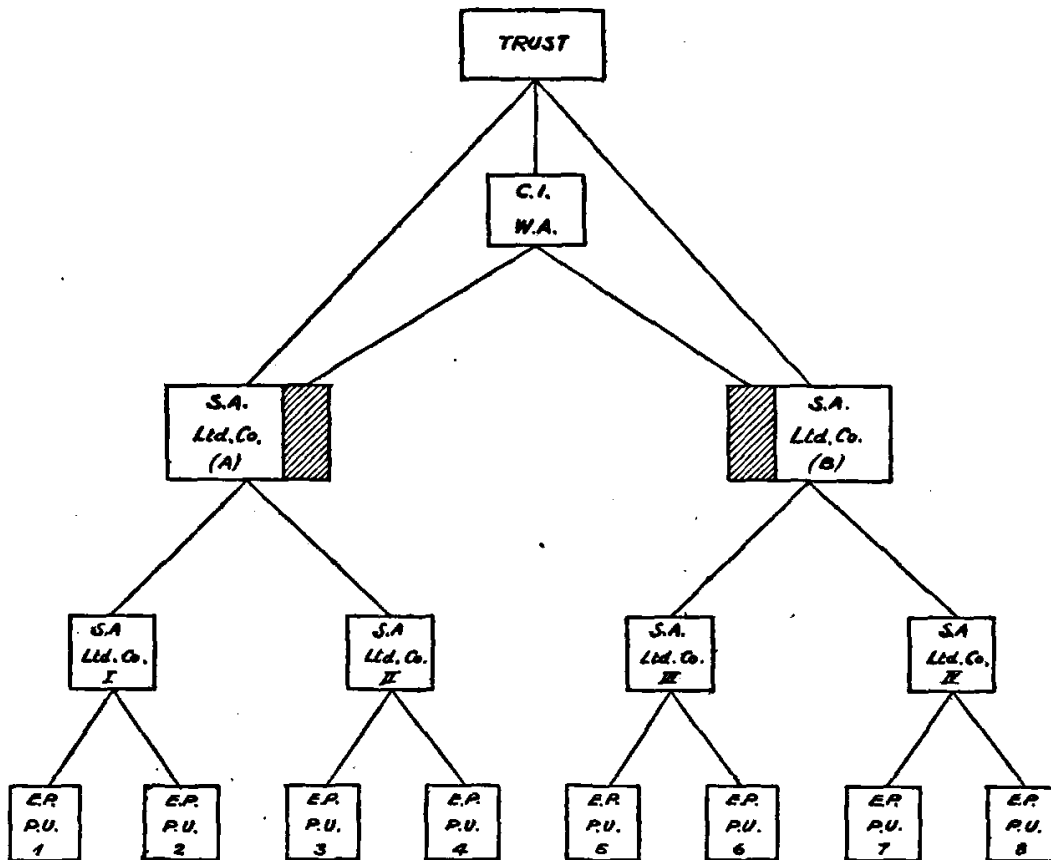
For the purpose of *joint supply of raw materials* on the most favourable conditions undertakings combine, particularly in times of scarcity of raw materials, in *purchasing associations*.

Where the proceeds or *profits* of several companies are divided according to a specified scheme, this constitutes a *pool*. Among the best-known German examples of this kind are the "Siemens-Schuckert-Rhein-Elbe-Union", which never became practical and was subsequently dissolved, and the association of interests of the great chemical works which have since combined to form the Dyes Trust.

The most intensive form of industrial combination is the *trust*, the association *as regards capital* of several previously independent undertakings. This capital combination need not appear on the surface, but can be effected internally by an exchange of shares. Sometimes a separate company — the *Holding Company* — is formed with the exclusive object of administering the majority of the shares of the associated and apparently independent companies.

Finally, it should be mentioned that *labour* in an undertaking may also form the subject of an agreement. Employers' associations form a counterpoise to the workers' trade unions.

APPENDIX II
Konzerns and Working Agreements¹



¹ In this diagram the legal form of the limited company has been chosen, as it represents the usual case. As a matter of principle, the form is indifferent; the only thing that is important is the movement of capital.

The limited companies A and B either combine a *part* of their respective undertakings or functions under a *single* management by a working agreement (W.A.), or they combine the whole of their undertakings in a single undertaking, the trust. (This need not appear in the external form, but may be carried out by means of an internal acquisition of shares.)

By fusion of the limited companies I-IV, a few large companies (A and B) are created, carrying on numerous undertakings (*Konzerne*). A number of private undertakings (1-8) combine to form several limited companies (I-IV).

APPENDIX III

Amount of Share Capital of German Companies¹ comprised in the Concerns dealt with
(Report of the Reich's Statistical Office, 1927)

Industrial group	Joint stock companies in Germany on 31 October 1926		Companies comprised in the concerns at the end of 1926		Share capital of the companies included in the concerns in proportion to the total share capital of the industrial group. (per cent.)
	Number	Nominal capital (in millions of Rm.)	Number	Nominal capital (in millions of Rm.)	
I and II. Agriculture and forestry, fishery	84	77	11	27	35.1
III. Mining	178	1,273	84	1,183	92.9
Coal	25	467	15	421	90.1
Lignite	65	379	39	358	94.5
Potash mining	21	299	20	294	98.3
III ^a . Undertakings connected with mining	84	2,798	54	2,739	97.9
IV. Stone and earth industry	633	623	84	386	45.9
V. Iron and metal extraction	168	446	61	356	79.8
Heavy iron industry	91	300	39	255	85.0
Va. Works connected with iron and metal extraction	57	293	16	244	83.3
VI. Manufacture of iron, steel and metal goods	420	322	42	84	26.1
VII. Engineering and shipbuilding	1,018	1,695	154	737	43.5
Engineering	808	1,245	128	588	47.2
VIII. (1) Electro-technical industry	259	671	63	583	86.9
(2) Instruments and optical industry	104	113	15	45	39.8
IX. Chemical industry	620	1,853	118	1,533	82.7
Dye industry	81	1,147	9	1,105	96.3
X. Textile industry	839	1,081	109	403	37.3
XI. Paper industry and reproducing industry	426	365	31	91	24.9
Paper and cellulose	211	249	24	77	30.9
XII. Leather and linoleum industry	141	168	7	57	33.9
XIII. Rubber and asbestos industry	50	116	6	56	48.3
XIV. Wood industry	430	184	14	11	6.0
XV. Musical instruments and toys	77	44	3	10	22.7
XVI. Food and drink industry	1,312	1,365	217	554	40.6
XVII. Clothing industry	314	170	14	18	10.6
XVIII. Building industry	206	179	22	55	30.7
XIX. Production and provision of water, gas, and electricity	280	1,692	169	1,381	81.6
Production and provision of electricity	206	1,349	135	1,117	82.8
XX. Commerce	3,448	2,549	316	1,504	59.0
Banks	720	1,659	142	1,224	73.8
Mortgage banks	39	188	21	128	68.1
Financing companies	151	198	24	153	77.3
Dealings in land	1,105	295	52	58	19.7
XXI. Insurance	345	566	155	435	76.9
XXII. Transport	483	1,478	168	753	50.9
Sea and coast shipping	75	288	21	233	80.9
Inland navigation	61	79	19	48	60.8
Railways	266	989	102	384	38.8
XXIII. Hotel industry	168	106	11	37	34.9
XXIV. Theatre and sport industry	140	90	21	58	64.4
XXV and XXVI. Other companies	108	37	2	2	5.4
Total	12,392	20,354	1,967	13,242	65.1
Raw material industries	1,120	5,433	299	4,808	88.5
Manufacturing industries	6,290	9,839	962	5,563	56.5
Trade, commerce, and transport	4,584	4,789	671	2,787	58.2

¹ Only companies whose capital is mentioned in marks and, for the Saar Territory, in French francs.

APPENDIX IV

Economic Objects and Effects of the American Anti-Trust Movement

I. HISTORICAL NOTE

The following is a survey of the historical situation.

The first infractions of freedom of competition which arrested the attention of the American nation in connection with the railways gave rise to the

Interstate Commerce Commission Act, 1887.

This placed all matters directly or indirectly affecting the traffic charges, in the first place of railways but also of several other forms of transport undertakings, including pipe lines, under the control of the Union, with powers of direct interference. Then came the

Sherman Act, 1890,

which was aimed at other abuses. This Act directed itself against "restraint of trade", that is to say restrictions on the freedom of competition, in four principal sections:

- (a) Every contract and combination in restraint of trade among the several States or with foreign nations is declared illegal.
- (b) Every person creating any such monopoly as mentioned in (a) is liable to a penalty.
- (c) Jurisdiction in the matter is assigned to the ordinary courts.
- (d) Every person injured, but no other person, may commence proceedings.

The uncertainty of the legal decisions which at first worked for restriction was obvious. The principal object was clearly in the first place to interfere with cartels. This object has apparently been to a great extent attained. A much more cautious procedure is considered desirable against trusts.

In the next place

The Bureau of Corporations, 1903,

was created, an institution which had to investigate the business methods of the great joint stock companies in the first place simply as a commission of enquiry. As a matter of fact it organised extensive publicity in relation to the proceedings of commercial companies in the United States, and aimed at a unification of book-keeping, and to some extent of methods of calculation, which had already been introduced for "public utilities" by the Interstate Commerce Commission. A sharpening of legal decisions against trusts took place under Roosevelt, when a combination which had hitherto been legal in itself, the Northern Securities Company, was dissolved. At the same time a beginning was made with the dissolution of cartels organised in the form of joint stock companies. As a consequence there was considerable legal uncertainty, against which two new Acts, partly explanatory and partly laying down new procedure, were introduced.

A. *The Clayton Act*

This expressly prohibits:

- (1) so-called price discrimination;
- (2) exclusive dealing between individual undertakings and individual purchasers;
- (3) the acceptance of the office of director in several companies by a single person (interlocking directorates).

B. The Federal Trade Commission

was established with four objects:

- (1) Continuation of the statistical and investigation work of the Bureau of Corporations.
- (2) Determination of fair and unfair trade practices. (To this extent, this is a substitute for the legislation against unfair competition, including trade mark protection legislation, which is otherwise lacking in America.)
- (3) To act as an authority for instituting proceedings against schemes for the formation of trusts, which does not, however, possess any power of decision itself, but is rather of the nature of the Prussian War Profiteering Office, which prepared material for legal proceedings by means of reports. At the same time, however, it elucidates the subject of dispute by independent negotiations and endeavours to arrive at a decision by means of Orders. Such Orders, however, have no binding force. They are, according to the case and the State, subject to investigation by the ordinary courts and the Federal Supreme Court.
- (4) Suggestion and preparation of further legal measures in the matter of large undertakings or combinations of undertakings in industries other than agriculture.

From 1914 onwards a *reaction in favour of the great corporations* became evident, apparently emanating from President Wilson personally. Two volumes of memorials by the Commission in 1916 sought to show that the ascendancy of the European and particularly the German manufacturing trade on the world market was due to the freedom for the formation of cartels against foreign competition. Accordingly, the next step was:

The Webb-Pomerance Act, 1918,

which authorised the formation of associations for export trade, provided they were registered. Up to 1921, fifty associations of this kind were registered. During the war, the administration of the railways was taken over by the State, and at the same time there was in the United States, as elsewhere, a strong tendency to combination in various branches of industry as a measure of war economy. An obvious movement in favour of trade associations began. After the war, measures of an uncertain, and often contradictory, tendency were introduced. In the first place there was a further moderation of restrictions by the authorisation of combinations in agriculture (*Copper-Volstead Act, 1923*) and at intervals two measures intensifying the restrictions inspired by political motives.

The Packers and Stockyards Act, 1921,

was directed against the great slaughterhouses and their war profits and marketing methods. It sought to prevent the slaughterhouses from holding shares in stockyards, the retail meat trade, and trade in numerous agricultural products, and in 1921 created a special means of controlling their methods of fixing prices.

The Future Tradings Act, 1921,

was prepared after careful investigation by the Ministry of Agriculture. It seeks to prevent future dealings in wheat by special taxation and direct restrictions on such dealings. The campaign against the slaughterhouses and wheat-dealers was the first consequence of the breaking up of the accumulative tendency which had prevailed during the war. In the

middle of 1925 a significant change set in. It was marked by the replacement of the energetic administration of the Federal Trade Commission by a more conservative policy friendly to combinations. At the same time a significant change of tendency in the administration of railways took place. Competing lines were not only invited by the Interstate Commerce Commission to combine, but in some cases were even compulsorily amalgamated.

II. THE ECONOMIC TENDENCIES OF THE MEASURES ADOPTED IN THE UNITED STATES

The legislation against economic monopolies was based in the first place on the popular sentiment against persons who were practically undermining freedom of competition. The field of action of Federal legislation, however, apart from railways, was restricted by the fact that under the Constitution only trade extending over several States could form the subject of Federal regulation. In individual States, on the other hand, regulation was only possible by the particular State. In the individual States the power of the great economic interests was often so overwhelming that action was very rarely successful.

The result of the earliest regulations in the United States was undoubtedly to be seen chiefly in the fact that *cartels were in the first place practically rendered impossible*. Of the remaining forms of associations met with in Europe, and particularly in Germany, those which henceforth principally appear in the decisions of the American authorities are the associations for the protection of general interests, which, however, have only acquired a really considerable importance during the last fifteen years. From time to time also appear attempts at boycotting by wholesale and retail trading associations against undesired forms of trading, and particularly against dispensing with wholesale or retail trade, and here and there also territorial cartels. On the other hand, the price cartel is a phenomenon hardly to be observed in the decisions. (The principal forms of substitute for this are the so-called Gary Dinners and their variations, that is, public discussion of price bases and price-fixing by the leading undertaking, and simple publication of prices and sale conditions.)

For the rest the development of industry in the United States under the influence of the anti-trust legislation appears from an economic point of view somewhat as follows:

As the cartel was practically prohibited, new forms had to be found in industries working with large amounts of fixed capital. This led to the Trust. The Trust, however, was only possible where the form of the joint-stock company facilitated the impersonalising and concealment of the real decisive power in the undertaking. Thus, *the extraordinarily frequent conversion of undertakings into joint-stock companies in the United States* is undoubtedly one of the external effects of the anti-trust legislation. In 1904, 23.6 per cent. of all non-agricultural undertakings belonged to joint-stock companies and these embraced at that time 73.7 per cent. of the total non-agricultural production. In 1925 the percentage of undertakings was 32, with not less than 88 per cent. of the whole non-agricultural production of the United States.

From the point of view of the organisation of undertakings, however, the result of the first twenty-five years of the anti-trust campaign up to the outbreak of the war appears to be as follows:

As compared with the cartel, the highly developed trust has the advantage of uniform management. This must not indeed be represented even in the most powerful undertakings of this kind as excessively centralised. The historic origins and the administrative needs arising out of such origins often, even in the case of a trust, leave the earlier independent companies and their directors a special interest of their own. Nevertheless, the squeezing out of uneconomic undertakings is in many cases accomplished somewhat more rapidly in the

most highly organised form of trust. In some trusts, however, the "holding company" is nothing more than a more or less concealed form of sales cartel, perhaps formally associated with a pool (sharing of profits). The purchase of the undertaking by the trust at the same time fulfils the purpose of quota selling. Nevertheless, the important action against the Steel Trust on account of its compensation fund (Pittsburg Plus Case, 1924) shows that purely local interests and the interests involved in the distribution of capital, even under the trust system, often result in uneconomic undertakings being not very rapidly squeezed out.

Moreover, legislation, and still more judicial decisions, in the United States since the Sherman Act, have shown repeated fluctuations in which changes in popular sentiment and a clearer insight into the real character of the concentration of undertakings have played a great part. What was desired at first was to brand everyone who undermined economical freedom. "It was assumed that monopoly and restraint of trade are a form of economic wickedness which can be named and criminally punished in much the same way as robbery or poisoning" (Henderson). As, however, the facts in the constitution of a trust are legally far removed from the provisions of the Sherman Act, which were only directed against cartels, and are the less liable to be caught by those provisions the more the actual unity of ownership is concealed by the form of the holding company, the courts under Roosevelt sought from about 1905 to apply sharper methods. In a case of joint ownership by the Harriman and Hill group in the Northern Securities Company a decision was given threatening the combination with dissolution as in fact contrary to the spirit of the Sherman Act. This was the commencement of the series of trust actions, of which the best known are the Standard Oil case, the various actions against the Tobacco Trust and those against the slaughterhouses. There was, however, at the same time, so much uncertainty as to whether the Sherman Act was generally applicable to the manifold forms of company combination, that these cases were often not fought through to a final issue. This uncertainty as to the law was in many cases also accompanied by a recognition that some at least of the combinations had had a favourable effect on the economic life of the United States. Accordingly, there arose in legal decisions the somewhat arbitrary endeavour to distinguish between "reasonable" (that is economically useful) and "unreasonable" combinations in trade. This at first actually increased the uncertainty, and since 1914 this uncertainty has been removed by the so-called Clayton Act and the Act creating the Federal Trade Commission, both by means of a clearer definition of the facts and the establishment of a special body for ascertaining and prosecuting abuses in the matter of trusts and by the concurrence of economic and legal conceptions in the preparation of complaints and laws.

During the war the strongly unfavourable feeling towards combinations was modified here and there. Nevertheless, the popular prejudice against cartels is still sufficiently general. Among the authorities, however, which have as their legal object the prosecution of trusts, there is generally observable a recognition that, although many abuses are associated with the creation and development of the great combined undertakings, these undertakings are on the whole *favourable to the higher development of economic organisation*. Accordingly proposals for the compulsory dissolution of great trusts have become fewer and fewer and it has long been an open secret that the last important dissolution of a trust, namely that of the Tobacco Trust, only exists on paper. The two last Acts of American legislation against such organisation arose especially from the state of opinion in agriculture. The legislation against slaughterhouses has so far practically remained on paper only, mild as it was at bottom in comparison with the first energetic onslaughts of the Federal Trade Commission. It is, moreover, the almost universal view that the Commission went far beyond the goal in this case. The attempts to get rid of future dealings in wheat by a heavy special tax has by general agreement only resulted in the transfer of future business to Canada.

On the other hand the Federal Trade Commission first tolerated and, after America's

entry into the war, openly favoured "Trade Associations", so that in 1914 there were 800 of them and 2,000 in 1919.

From the Commission, probably on the personal initiative of President Wilson, came the suggestion for the general organisation of export cartels, of which, however, in spite of rather full reports by the Federal Trade Commission, only a moderate use seems to have been made¹. In combination with the tendency of the Departments of Commerce and Agriculture, the Commission quite openly favoured the creation of horizontal trusts, provided commerce was excluded therefrom. The same tendency is seen in the systematic creation of agricultural co-operative societies and corporations for linking together agricultural warehouses. It has already been shown how the Interstate Commerce Commission occasionally compelled competing railway companies to combine. The battle against trusts has, at least for the present, lost a great deal of its strength and not only on political grounds.

This battle is in fact crossed by the newer predominant tendency in American industry and economic policy, which may be described as the *national will for the highest degree of rationalisation*, but which in America is generally known as the *battle against "waste in industry"*. American industry is no longer exclusively or even principally occupied with the means of combating trusts, but is dominated by the economic idea of the maximum output. It is, however, very frequently the case that the great concentrated undertakings are the most efficient, and the latest developments in the United States are to be explained by this tendency. If in fact the vertical organisation of undertakings has hitherto been regarded as a specifically American phenomenon, this was not seldom due to the desire to avoid being caught in the definition of "interstate commerce" by building up economic power as far as possible within the limits of a single State. If in recent times, on the contrary, trading systems with branches have spread over the whole Union and branches of great concentrated manufacturing undertakings lie like a net over the whole country, this is due to the fact that such phenomena now remain more or less undisturbed, unless, as in the case of the slaughterhouses, the Tobacco Trust and the Bakery Trust, an excited public opinion compels more or less effective efforts at restriction to be made. *The principal difference between the American development and the European efforts at restriction at present lies in the distinction between combinations which are economically useful and those which are not. In this connection, those combinations are regarded in the United States as most useful which are carried on at the lowest cost.*

The practical situation of the combat against trusts in the United States to-day is somewhat as follows:

(1) One part of the functions of the Federal Trade Commission, namely, the prosecution of proceedings against unfair competition, is only an immediate counterpart of the legislation and legal decisions on the same matters on the European continent. Apart from this, the following phenomena are specifically American:

- (a) *The battle against so-called price-discrimination, that is, against differential treatment of purchasers of the same kind merely for the purpose of securing future customs.*
- (b) *Accordingly, discriminating discounts and similar arrangements are strongly condemned.*
- (c) *Attempts at refusal of supplies directed against undesirable forms of undertaking, particularly attempts to boycott manufacturers who directly supply retailers, ware-houses and the like, are universally repudiated.*

¹ Figures published by Thompson for 1920: 50 associations comprising 1,000 undertakings in 40 States of the Union; aggregate turnover 220 million dollars, that is less than 3 per cent of exports.

(2) The Federal Trade Commission combats the practice of establishing trade usages and similar rules of fair competition in the so-called *trade practice submittals*. These are negotiations with trade associations in regard to permissible and non-permissible trade practices. It is partly a matter of fixing trade practices, as they are known in this country, partly of establishing what is permissible and what is not permissible, as the German cartel tribunal attempts to do, all carried out not in the form of direct legal proceedings but by arrangement.

(3) A very considerable part of the effectiveness of the action against the unfair exercise of monopolies is, in the opinion of all those concerned, due to the *wide publicity of all the proceedings of the Federal Trade Commission*. As it is able to carry on extensive investigations, it is in a position to give considerable information as to the details of the conduct of business, and also of the constitution of the costs, in any branch of industry. By such publications it obtains particularly powerful effects through the enlightenment of public opinion as to economic conditions and abuses.

In judicial proceedings the Federal Trade Commission acts theoretically as an assessor of the court, but practically it most often appears as the technical adviser of the complainant. This attitude has often brought it into sharper opposition to the industries concerned than is desirable for a public authority. The cases in which the Supreme Federal Court has decided against the view of the Commission are probably more numerous than the contrary cases. *Nevertheless, the existence of such an authority, working not by legal proceedings but by public investigations, after the manner of an English Royal Commission, but behind which the menace of legal proceedings always stands, is undoubtedly extraordinarily effective. This effectiveness appears, so far as can be gathered, to have been generally marked by a tendency to increase the productivity of the country.* This tendency appears to have considerably increased in recent years, as it more and more approaches in its means, and latterly also in its conceptions, to the general policy of the Department of Commerce, which is directed to a rapid and conscious rationalisation of industry.

* * *

The author has endeavoured to embody these American conceptions, together with those so far arrived at in the German cartel tribunal, in a Bill intended to meet the conditions in Germany. This is reproduced in Appendix VI.

APPENDIX V

Extract from German Order against Abuse of Economic Monopolies of 2 November 1923

§ 1.

All contracts and resolutions containing obligations relating to the management of production and sale, the application of trading conditions, the mode of fixing prices, or the demanding of prices (syndicates, cartels, conventions and similar arrangements) must be in writing.

§ 2.

All contracts and resolutions of the nature indicated in § 1, for the confirmation of which the word of honour or any similar solemn assurance is demanded and given, shall be null and void

§ 4.

Where any contract or resolution of the nature indicated in § 1, or any particular method of carrying out the same, constitutes a danger to industry in general or to the common weal, the Federal Minister of Economy may:

- (1) apply to the cartel tribunal for a declaration that the said contract or resolution is null and void or for a prohibition of the particular method of carrying out the same;
- (2) order that every party to the said contract or resolution may at any time determine the said contract without previous notice, or withdraw from the said resolution;
- (3) order that a copy of all agreements and arrangements entered into for the carrying out of the said contract or resolution be handed to him, and that such measures shall only come into force after the receipt of such copy.

Industry in general or the common weal shall be considered as endangered, in particular, if production or sale is restricted in any manner not economically justified, prices are raised or maintained at a high level, or, where prices are fixed according to a stable standard, supplements on account of risks are included, or economic freedom is unfairly prejudiced by the cutting-off of any person or persons from purchases or sales or the fixing of differential prices or conditions.

§ 7.

In the case specified in § 4, par. 1, clause (1), the cartel tribunal shall, if it considers that danger to industry in general or to the common weal exists, declare the contract or resolution null and void wholly or in part or prohibit the particular mode of carrying out the same. If it considers the Order provided for in § 4, par. 1, clause (2), sufficient, it may, instead of such declaration of nullity or prohibition, issue such an Order.

Where the cartel tribunal declares a part of any contract or resolution null and void, it shall decide whether and to what extent the nullity of such part involves the nullity of any other part of such contract or resolution.

§ 8.

Any contract or resolution of the nature indicated in § 1 may be determined without previous notice by any of the parties, where adequate ground exists for so doing.

Adequate ground shall in all cases be deemed to exist where the economic freedom of the party so determining such contract or resolution is unfairly restricted, particularly as regards production, sale, or fixing of prices.

The cartel tribunal shall, in case of conflict, decide whether any such determination was permissible on the application of any of the parties. Such application must be made within two weeks after the receipt of such determination. If no such application is made within the period aforesaid, such determination shall be deemed to be effective.

§ 9.

No securities shall be realised or any boycott or other injury of a similar nature be inflicted, by virtue of any contract or resolution of the nature indicated in § 1, without the consent of the president of the cartel tribunal.

Such consent shall be refused if the measure in question would involve a danger to industry in general or the common weal, or unfairly restrict the economic freedom of the person affected thereby

Against the decisions of the president of the cartel tribunal the parties may, within one week after delivery of the same, refuse to accept the decision of the cartel tribunal

§ 10.

Where the trading conditions or methods of fixing prices of any undertaking or combination of undertakings (trust, association of interests, syndicate, cartel, convention or similar combination) are calculated to endanger industry in general or the common weal through the exercise of an economic monopoly, the cartel tribunal may, on the application of the Minister of Economy, generally declare that the prejudiced parties to all contracts entered into under the conditions complained of may withdraw from the same. Where it is to be presumed that such contract would have been entered into in the absence of the conditions complained of, the decision of the cartel tribunal shall only authorise withdrawal from the trading condition complained of or the agreement as to prices entered into on the basis of the method of fixing prices complained of

All contracts entered into under the conditions complained of after the announcement of such decision shall to that extent be null and void

§ 11.

The cartel tribunal shall be constituted in connection with the Federal Economic Tribunal. The presence of a president and four associate judges shall be necessary for the validity of its decisions.

The President of the Republic shall appoint the president and his substitutes. They must possess the qualifications for judicial office.

The President of the Federal Economic Tribunal shall appoint the associate judges. One such associate judge shall be a counsellor of the Federal Economic Tribunal Two of such associate judges shall be appointed having regard to the conflicting economic interests. An expert person shall be appointed as an additional judge, who shall be required to represent the interests of the common weal, independently of the conflicting economic interests. The judges mentioned in the third and fourth sentences of this paragraph shall be taken from lists to be prepared by the Federal Minister of Economy.

§ 12.

The jurisdiction of the cartel tribunal shall be exclusive. The decision of the cartel tribunal shall be final and binding on all courts and arbitral tribunals in relation to the question of the jurisdiction of the cartel tribunal as well as in other matters.

Where the decision of a legal dispute depends wholly or in part upon an enquiry within the jurisdiction of the cartel tribunal, the court shall postpone the hearing of such dispute until the decision of the cartel tribunal. The parties to any such legal dispute shall have the right of independent application to the cartel tribunal, where the Federal Minister of Economy has declined to make any such application or such application is not made within two weeks after the receipt of a request therefor

§ 17.

Any person knowingly disregarding the nullification of a contract or resolution by virtue of this Order or the provisions of § 4, par. 1, clause (3), or § 9, par. 1 or 6, may, on the application of the Federal Minister of Economy, be punished by the cartel tribunal by a disciplinary penalty. Such disciplinary penalty shall consist of a fine, the maximum amount of which shall be unrestricted.

§ 18.

Any person endeavouring to injure any other person in his business or economic activities by reason that such person has made use of his rights by virtue of this Order shall be punished by imprisonment and fine

§ 20.

It shall be the duty of the cartel tribunal or its president to give an opinion on any particular questions submitted to it or him by the Federal Minister of Economy within the sphere of application of this Order and, previously to so doing, to hear any central associations at the request of the Federal Minister of Economy

§ 22.

The Federal Minister of Economy shall issue provisions as to procedure before the cartel tribunal and all other matters relating to the application of this Order.

APPENDIX VI

*Proposed supplemental provisions to the German Cartel Order prepared
by the author in 1926*

Act relating to the Regulation of Economic Monopolies

**Cartel resolutions
must be in
writing.**

§ 1 contains an addition:

The same provision shall apply to contracts, resolutions or agreements under which recommendations of prices, modes of fixing prices, or trading conditions are established. Such agreements and resolutions must be drawn up in such a manner that a reliable examination of their contents is possible.

**Inclusion of
long-term clauses
in individual
contracts**

All individual contracts in which any party, whether expressly or in the form of subsidiary provisions in a contract for the supply of goods, binds himself to undertake or omit any acts not connected with the carrying out of the individual contract, shall be deemed to be contracts of the nature indicated in par. 1 hereof. This applies particularly to attempts to enforce compulsory membership of an organisation, where the same obligations are entered into by a number of persons in regard to individual purchasers or associations of purchasers.

General powers.

The following provisions shall be substituted for § 4.

§ 4. — The Federal Government may adopt the following measures against any contracts, resolutions or organisations of the nature indicated in § 1, if and so far as the execution or activity of the same would injure or restrict the productivity of German industry or any part thereof. It may further adopt the measures also hereafter appearing in the case of any organisations the activity of which may be conducive to an intensification of German industrial production, and particularly to an improvement in production accompanied by a saving of costs in any branch of production of economic importance.

The same shall apply to contracts, resolutions and organisations in economic connection with those hereinbefore mentioned.

**Federal
Commissioner.**

§ 4 (a) — The Federal Government shall appoint a Federal Commissioner for cartels and associations for the purpose of observing and influencing economic monopolies. The Federal Commissioner shall be subject to the Federal Minister of Economy for budgetary and disciplinary purposes. In his practical decisions and measures, however, he shall not be subject to the instructions of any authority but shall adopt such decisions and measures having regard exclusively to the economic situation, with a view to rendering German production as a whole more economic.

Advisory Council.

§ 4 (b). — The Federal Commissioner shall appoint an Advisory Council, consisting of nine persons, of whom three shall be chosen from manufacturers, one from commerce, another from the consumers, two from the workers, and two shall be persons who may be expected to represent the interests of the common weal, independently of conflicting economic interests.

**Obligation
to notify price
resolutions.**

§ 4 (c). — All price resolutions or other resolutions of the nature indicated by § 1 of this Order, adopted by any association, cartel, trust, association of interests or other organisation, shall be notified to the Federal Commissioner within eight days after the adoption of the same. All price resolutions not so notified within the period aforesaid shall be null and void.

§ 4 (d). — If and so far as the Federal Commissioner shall not otherwise expressly permit, all contracts or sale conditions binding the purchaser to purchase exclusively from a particular seller, beyond the limits of the single transaction effected by any such contract, are hereby prohibited. All transactions entered into contrary to this provision shall be null and void. This provision shall also apply to sale conditions indirectly producing a similar effect — as, for example, discriminating discounts or other discount arrangements involving different provisions of otherwise similar customers.

Prohibition of exclusive clauses and discriminating discounts.

All transactions shall similarly be null and void in which economically similar purchasers of the same product are differently treated as regards supply and price by reason of any measures contained in or adopted by contracts and organisations of the nature indicated in § 1. In particular, any such differential treatment shall, as a general rule, not be permissible in purchases of similar quantities under similar conditions of payment. Contracts providing for such treatment shall be null and avoid.

Prohibition of differential treatment of similar customers (discrimination).

§ 4 (e). — The Federal Commissioner shall have the following powers:

In cases where a danger to the interests of German industry appears to result from any of the measures or organisations indicated in § 4 (a), he may:

(1) Order the furnishing of any information which may serve to elucidate the situation in question. For this purpose the Federal Commissioner shall have all the rights conferred by the Order relating to the duty of furnishing information of 13 July 1923.

Duty to furnish information.

(2) The Federal Commissioner may summon the parties interested to confer with him within a reasonable time. He may in particular require that the parties interested shall attend in person and not by their representatives. The Federal Commissioner may also issue summonses for the purpose of enquiring and ascertaining whether any person is participating in any arrangement or organisation of the nature mentioned in § 4, which summonses must be complied with in order to avoid the penalties provided for in § 17.

Compulsory Conferences.

(3) Such conferences with the Federal Commissioner shall in general be public. Only in cases where German industry might suffer injury in its relations with foreign countries may the Federal Commissioner arrange for a private conference.

(4) Where any economic monopoly of the nature indicated in §§ 1 and 4 is shown to be unfavourable to the interests of industry as a whole or a hindrance to its development in the direction of greater economy, the Federal Commissioner may propose any of the following measures:

(a) Public proposal for the reduction or abolition of the customs protection on the basis of which such monopoly has been built up. The proposal of the Federal Commissioner shall be addressed to the Federal Government, and at the same time published, together with the reasons for the same.

Proposal for reduction of customs duties.

(b) The Federal Commissioner may propose the rescission of any contracts or the dissolution of any organisations of the nature indicated in § 1, after proceedings before the cartel tribunal. Pending decision, the Federal Commissioner may, by provisional Order, legally order the dissolution of such organisation or the alteration of its price provisions, sale conditions or other provisions restrictive of the freedom of the branch of industry adhering to or affected by it.

Right of dissolution.

Intervention in the case of concealed boycotting.

(c) The Federal Commissioner may, particularly in cases in which a boycott is conducted in such a manner as to evade the provisions of § 9, par. 1, of the Order against abuse of economic monopolies, require, by a provisional Order, notification of such boycotts or similar measures by the Joint Sales Office of the cartel, trust, association of interests, or similar organisation or body, within the provisions of § 9 of the Cartel Order. Any decision of the cartel tribunal shall be unaffected thereby.

Compulsory contracting.

(d) The Federal Commissioner may provisionally order any undertakings contravening the provisions of § 4 (b) and (c) to enter into any contracts subject to the provisions approved by him. In case the undertakings in question fail to comply with such order, the Federal Commissioner may order their business to be carried on by a supervisor within the meaning of the Business Supervision Order.

Promotion of economic methods.

§ 4 (f). — The Federal Commissioner may, in cases in which agreements relating to prices, production or sale, represent a cheapening of production or distribution in general, publicly recommend any such measures approved by him. He shall be entitled to publish the facts and the measure of economic improvement in such manner as he may think fit, and to propose and publicly discuss any measures which may operate in a similar direction for German industry as a whole.

Criteria of economic restriction.

§ 8, par. 2:

The economic freedom of the party determining such contract or resolution shall in all cases be deemed to be unfairly restricted where the provisions and regulations for the supervision of cartels have not been observed by the party responsible. The economic freedom of such parties shall also, in all cases, be deemed to be unfairly restricted where the possibility of *production, work or sales of an undertaking is restricted by provisions or conditions of the nature indicated in § 1 by more than one-fifth of its full productive capacity.*

The Federal Commissioner for Cartels shall establish further objective criteria of unfair restriction of freedom in consultation with his Advisory Council. Before the issue of any such regulations, the opinion of the President of the cartel tribunal shall be obtained. Any regulations so issued shall form the basis of decisions by the cartel tribunal.

Power to make orders during proceedings.

Par. 4:

The President of the Cartel Tribunal may, on application, by provisional Order valid during the continuance of proceedings before the cartel tribunal, define the legal position of the party determining such contract or resolution in relation to the cartel in a manner differing from the provisions of such contract or resolution. If such determination is found to be unjustified or is withdrawn, the party so determining shall compensate the other party for all damages arising out of the execution of any such provisional Order.

Effect on subsidiary and connected contracts.

Par. 6:

If the determination referred to in par. 1 is allowed, the cartel tribunal shall, on the application of any party, determine whether and to what extent the determination of such contract or resolution justifies the determination of other contracts legally or economically connected with such contract or resolution, particularly a contract for the formation of a company with limited liability (*Gesellschaft m.b.H.*), or any other resolution.

Black-listing equivalent to boycott.

§ 9, par. 1, contains the following addition:

Boycotts or other injuries shall be deemed to include recommendations to break off dealings with a third person or to continue or resume dealings with him

only on less favourable conditions than are given to other contracting parties of a similar kind. The same shall apply to black-listing. It shall also be deemed a boycott where an association refuses admission to a person carrying on any undertaking without exempting him from the disadvantages of non-membership of such association.

Prohibited boycotts of this kind shall be in the same position as all measures of the nature indicated in § 9 undertaken by individual monopolist undertakings.

§ 19 shall be amended as follows:

The provisions of this Order shall apply to public undertakings so far as they have or may have the effect of a monopoly, except as otherwise provided by this Act or regulations for its application ¹.

§ 22 (a). — The provisions of §§ 1 and 4 of this Act shall also apply to contracts and organisations subject to foreign jurisdiction, so far as their activities extend to the territory of the Reich, particularly in so far as German nationals participate in the conclusion and execution of such agreements.

Inclusion
of public
undertakings.

International
cartels.

¹ The Reichsbank and the State railways, having regard to their international liabilities, are intended to be excepted, and also the Post Office.

APPENDIX VII

An Incomplete Monopoly also has the Force of a Monopoly

Has an incomplete monopoly also the effects of a monopoly? It is very often said that a cartel, trust, or similar combination, does not really possess a monopoly. 15, 20 or 30 per cent. of the actual dealings are still in fact entirely free, and this has a quite sufficient competitive effect. The following example, borrowed from an earlier French study, shows that this is by no means the case. Even an incomplete monopoly has, in the absence of other conditions, by no means the effect of forcing prices down to the level which free competition tends to produce, but enables prices to be maintained at a distinctly higher level than that which would result from free competition.

According to the doctrine of prices under free competition, prices will generally be so adjusted that the greatest possible number of transactions will still be carried out with profit. Reciprocal competition will force the market price down to the level allowing such a moderate profit on each individual article. The following conclusion starts from the assumption that for a given article of consumption, say a small machine, 100 would be saleable at the price of 10. Whenever the price falls by one, 200 more articles are saleable. The fact that in reality the increase of turnover has often quite a different relation to quantity, so that smaller reductions will produce greater increases of turnover and vice versa according to the nature of the goods, need not be taken into account in this calculation. It will further be assumed that the so-called fixed costs of the undertaking, the costs of installation, remain always 900, and finally that the proportional costs, that is, the additional costs incurred for every article produced, are always represented by 1. The calculation will then run as follows:

EXAMPLE A. — COMPLETE MONOPOLY

Price	Quantity	Gross receipts	Fixed costs	Proportional costs	Profit
10	100	1,000	900	100	—
9	300	2,700	900	300	1,500
8	500	4,000	900	500	2,600
7	700	4,900	900	700	3,300
6	900	5,400	900	900	3,600
5	1,100	5,500	900	1,100	3,500
4	1,300	5,200	900	1,300	3,000
3	1,500	4,500	900	1,500	2,100
2	1,700	3,400	900	1,700	800
1	1,900	1,900	900	1,900	—900

If the sale of these machines were entirely free, the price would, according to the doctrine of free competition, adjust itself at the level at which a profit would still be obtainable, that is, the price would be about 2 and the quantity sold about 1,700.

It would be quite different as soon as this market fell into the hands of a monopolist. He would not fix the highest possible price, 10, for that would bring him no profit. He would certainly not fix the price to which free competition would tend, namely, 2. *He would much rather seek to obtain the price at which the proportion between gross receipts and costs would leave him the highest profit.* As the above example shows, this price would be somewhere about 6. *The highest possible profit for the producer from the marketing of any article would accordingly not be obtained by the highest production, but at a point which in price lies higher and in quantity of production appreciably lower than free competition would tend to produce and had hitherto frequently produced.*

It will now be assumed that the monopoly is or becomes incomplete. An outsider or outsiders exist whose total capacity for production amounts to 300 articles. In that case the monopolist may embark on a life and death struggle with the outsider. Such a struggle will force the price down to the level at which a profit is still possible, in other words to 2, or probably even lower, if the monopolist desires to annihilate the outsider. In practice, however, the matter usually follows quite a different course. So far from descending to the price level of 2, the holder of the monopoly will say to himself: I will calculate as if I had already lost 300 of the possible sales; let him have these 300 anyhow at any price he likes. How will my account then stand? The following table will show the calculation which he will then carry out:

EXAMPLE B. — INCOMPLETE MONOPOLY

(Outsider can produce 300)

Price	Quantity		Gross receipts	Fixed costs	Proportional costs	Profit with incomplete monopoly
	with complete monopoly (above example A)	with incomplete monopoly				
10	100	—	1,000	900	100	—
9	300	—	2,700	900	300	—
8	500	200	1,600	900	200	500
7	700	400	2,800	900	400	1,500
6	900	600	3,600	900	600	2,100
5	1,100	800	4,000	900	800	2,300
4	1,300	1,000	4,000	900	1,000	2,100
3	1,500	1,200	3,600	900	1,200	1,500
2	1,700	1,400	2,800	900	1,400	500
1	1,900	1,600	1,600	900	1,600	—900

It will be seen that, even with so high a share in the hitherto most favourable turnover which was represented by a production of about a thousand articles, the monopolist need by no means go down to 2. The most favourable price for him is now 5. The consuming public also has an advantage. The monopolist and outsider now produce about 1,400 articles, while under free competition it would be 1,700. If the calculation is continued, it will be found that the effect of the monopoly will still be felt where the share of the outsider is as much as 40 per cent., and only from that point will the situation begin to approach that of free competition.

In practice it often happens that even the outsider does not adopt a policy of complete price-cutting. Where a strong cartel exists which lets outsiders live, the outsider usually adapts himself pretty closely to the price of the cartel. He is then free from the costs of

the cartel organisation itself and the costs of any struggle with the cartel and is better off by that amount. At the most the outsider will only lower prices in periods of severe depression. At such times the cartel will also probably do the same thing, although not to the same extent. The substantial conclusion from the foregoing is the following:

Ceteris paribus a monopoly keeps the quantity of production lower than a free market when it is most completely able to be a law unto itself. Even an incomplete monopoly still generally has the force of a monopoly. Only the loss of a really considerable part of the command of the market gradually forces monopolists back into the position of the free market.

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