

H. U.
postwar

Section 2. Cartels and Combines (Decentralization of Economic Structure).

1. In the political field I could report that the idea of a German or European federation is shaping up and that the work in our zone opens the possibility in either direction. A similar optimistic report cannot be given in regard to economic decentralization, whose failure may have serious repercussions on the process of political decentralization. It is the old but bad recipe to establish new agencies whenever in substance an actual plan cannot be found. As already discussed, ^{Fn.} outside of the operating Industry Division a special agency dealing with all cartels and a board dealing with one combine (I.G. Farben) have been established. The I.G. Farben board, in its inter-zone relations, had the bitter experience that a "steering committee" on I.G. Farben organized by the four occupying powers, never would operate successfully. I had a very pleasant contact with some of the lawyers of the I.G. Farben control board (Major Lane, Major Bechter and Major Donald McLaren (British) to whom, on their request, I gave a copy of my paper on "Technique of Disestablishment of Combines". From them I learned of the problems arising out of the attempt to deal with corporation issues before the political structure and the form of general economic organization within which the corporation has to operate, are clarified. It is not possible to come to a sensible solution with regard to combines before the market conditions in the principal products have been clarified. It is also not possible to deal with "one" combine unless the basic principles of a policy in regard to combines in general are established. However the finding of general rules again depends on a previous solution of the general political and economic problems, wherefore the success of a law drafted by the Legal Division of Military Government providing for general

Fn. Compare Chapt. II, Sec. 1.

provisions on the dissolution of combines is subject to substantial doubt.

The existing division of cartels and external assets may find work in a study of the historical material. It is to be expected that some unknown material out of the pre-war or war period can be obtained, although in this point the investigation of I.G. Farben's documents, which took place under the very efficient leadership of Ritchin, was disappointing. However the cartel agency cannot influence the future development if it remains outside of the scope of the economic branch. In my routine work as German agency officer during the relatively short time of my presence in Germany, I could learn a great deal about the cartel and combine policy. I came closest to the problem in connection with the following parts of my assignments:

1. Assistance to the export and import section.
2. Substitution of the dissolved "Wirtschaftsgruppen".
3. Request of the Bavarian government for protection against combines.
4. Assistance to I.G. Farben control board.

In these activities I found a number of basic trends which in the following are going to be explained on the basis of some cases, each exemplifying one of the trends.

1. Attempt to save monopolistic position of one combine (exemplified by the Zeiss case). The Zeiss Endowment and its most important enterprises, Carl Zeiss and Schott & Genossen, exercised a complete control over optical glass and over a very important part of optical instruments. Jena, where the principal plants

Fn. The material in each case included in this discussion is attached in special memoranda covering each of the cases.

were situated, was occupied by the Americans between the end of May to July, 1945, when it was taken over by the Russians. Although the Russians up to now have not removed the Zeiss and Schott plants from the Russian zone the Zeiss people consider their plant as lost. Since there is no inter-zone trade between the Russian and other zones, the western zones appear as economic entities. In the western zones there were political competitors of Zeiss in the optical glass field: Steinheil & Sohne and Rodenstock. Furthermore, there were potential competitors in the optical instrument and camera field: Steinheil and Leitz. During the war Zeiss began to build up optical glass plants outside of the eastern zone. They established the Vereinigte Farbenglaswerke Zweissel and Hansold in Witzler. The Zeiss people were very much embarrassed about the possibility of the development of competitors in the western zone.

They succeeded in persuading members of the Air Force (especially Mr. Tate and Col. Hubbard) to take the leading Zeiss inventors out of the Russian zone and to establish a research undertaking in the works of Steinheil & Sohne under the management of the Zeiss inventors. Thereby they came in contact with Steinheil and reached the following working agreement:

- a. Steinheil will not produce optical glass.
- b. Steinheil will bring out similar cameras and optical instruments under the Zeiss trademarks.
- c. The optical instrument people of Zeiss will be employed by Steinheil.

The Zeiss people furthermore succeeded in obtaining complete freedom of movement through the country. Since Dr. Kuppenbender and Dr. Heinrichs operated under the protection of the Air Force their party membership was no cause for their exclusion from business. They successfully threatened Leitz and other firms

in our zone and in the British zone, that any attempt to go on the optical glass market will be punished by boycott in regard to other articles. ^{Fn.}

The Zeiss case, as any other monopolistic case, has international implications. Since non-German firms which have patent or other agreements with Zeiss are afraid that any development of competitive forces in Germany may in the end disturb the existing balance of power they may have an interest in helping the Zeiss people in sustaining their power in Germany. Under the present conditions the Zeiss people are successful. If the Jena plant should definitely not be taken out and if the Russian zone and the western zone should again be combined the previous condition will be reestablished. If Jena should be taken out or the eastern zone not be re-connected with the western zone, the present set-up of Zeiss in the western zone ^{Fn.} is sufficient to reestablish the monopolistic position for western Europe.

The Bavarian government is quite concerned about transactions such as that between Zeiss and Steinheil, since they believe that those transactions will finally bring about the failure of the political decentralization. They realize that political decentralization is impossible if the most important parts of Bavarian economy are under the control of people principally interested in territory outside of Bavaria. They have expressed this view, especially in the Laender conference in Hoechst.

2. Reestablishment of monopolistic position exercised by a number of combines exemplified in the case of bulbs. Before 1938 the German bulb market was under the control of the firms belonging to the Phoebus cartel, especially Osram G.m.b.H.K.G. (A.E.G., Pintsch, Siemens, Bergmann and General Electric, all subsidiaries of firms belonging to the Phoebus cartel). In 1938 when the basic patents came to

^{Fn.} The documents on which these statements are based are included in special reports submitted in each case.

^{Fn.} Urgent patent problems arose in this connection which are discussed in the chapter on "Research and Patents".

an end competition began to develop, which undersold the cartel. However the political influence of the cartel succeeded in compelling all producers to join a "Gemeinschaftselectrischalampen" under which rules only the former cartel firms could produce standard bulbs while newcomers were limited to the production of certain special products. The manager of this "Gemeinschaft" was an employe of Voight & Haeffner (subsidiary of Continentale Dessau Gas A.G.). When the European war broke out in 1939 the Phoebus cartel was declared interrupted for the time of the war and substituted by "Europaeische Abrechnungsstelle" to which the former German Phoebus members, as well as Hungarian Tunggram and the Austrian group belongs. Philips (Holland) did not join officially.

The whole European system was only a part of the world bulb system in which General Electric was leading. The problem at the end of hostilities was whether this balance of power within the cartel can be reestablished. The Military Government was very much interested in the production of bulbs not only because it was considered one of the obligations of Military Government to take care of the light needs of the population, especially of hospitals, but also for reasons of security. The Russians took out of the Berlin district the Osram and Pintsch plants which produced a very large percent of the total German production. Because Military Government had no governmental channel to bring up such questions, an advisory committee of industry was appointed by the electrical section of the Industry Division of Military Government, in which we find the representatives of A.E.G., Siemens, Brown-Boveri, Braun & Hoffmann and Voight & Haeffner. In this meeting the A.E.G.-Siemens group took the view that nothing could be done to relieve the severe bulb shortage. After this view was expressed I took up contact with the Brown-Boveri group, which was the only possible competitor of the A.E.G.-Siemens

group. Mr. Rechel of Brown-Boveri, a very efficient and active technician, immediately declared his willingness to produce bulbs. He had no doubt they would be able to produce all requirements needed for the western zone; however, he declared that this production could not come under way until General Electric gives a license to Brown-Boveri for the manufacture and use of "Glaskalbenmaschine". This statement was related to the A.E.G.-Siemens groups with a quite surprising effect. Only a week later Mr. Buecher, general manager of A.E.G., one of the most powerful leaders of the Osram group, appeared in Hoescht and informed the Military Government that, surprisingly, machines of every kind have been found in the American zone and the annual production of 20 to 25 million bulbs sufficient to cover the needs of the U.S. zone could begin in a very short time. ^{Fn.}

It is obvious that this development has international implications. I asked Mr. Rechel of Brown-Boveri and Dr. Siemens whether Philips in any way appeared in this situation. I was told that Philips has made no attempts to contact any of the German firms. To what extent other firms interested in the sustaining of the bulb control have interfered is not known now, and should be investigated.

3. Utilization of military power for strengthening of world monopolies, exemplified in the case of Henkel & Co. - Unilever.

The only competitor of Unilever (England) and Proctor & Gamble (U.S.) is Henkel & Co. operating under the trademark "Persil". Henkel & Co. had a very efficient management and earned considerable profits. The profits were invested in the acquisition of a strong participation in the Degussa (Deutsche Gold und Silber Schiedanstalt) and the Metallgesellschaft. In technological respect the Henkel firm concentrated on the manufacturing of soap and laundry material. In connection

Fn. The case is stated in full, with all documents in a special report.

with this production an extensive research took place, which had important results not only in the soap and military field but also in the pharmaceutical field. Henkel has a general agreement with I.G. Farben in accordance to which these firms do not compete. They consider their fields of operation as divided, and the pharmaceutical developments of the Henkel research were given to I.G. The chairman of the board of supervisors of Henkel & Co., Dr. Ernst Petersen, related the following situations:

a. For years Unilever has tried to get control of "Persil". They even succeeded in getting the trademark "Persil" in France by an exploitation of a mistake of Henkel's trademark lawyer. All in all, Henkel was anxious to keep its independence as well as the independence of the "Persil" subsidiaries abroad. In this fight Henkel was supported by its information exchange agreement with Proctor & Gamble, with which friendly relations existed until 1940.

Now the British Military Government arrested the Henkel management and urged the transfer of the Henkel interests everywhere to Unilever. Proctor & Gamble did not make an appearance and did not raise any objection, and Dr. Petersen is afraid an agreement between Proctor & Gamble and Unilever has been reached about the division of markets.

b. Petersen suggests dissolution of the Henkel combine. All financial investments such as Deutsche Gold und Silber Schiedeanstalt are to be assigned to an Allied Control Board; and under the supervision of the Allied governments the independent position of Henkel in the soap and laundry field is reestablished.

There is no doubt that we have a very substantial interest in this case, which affects not only the British zone in which, by accident, the headquarters are located, but the entire German economy as well as the international market.

Therefore, I suggest the establishment of an Anglo-American committee to handle this case in cooperation.

4. Prohibition of "German participation" in international cartels is insufficient, exemplified by the Brown-Boveri case. In the antitrust investigation in the field of electrical machinery it always remained an open question how the Brown-Boveri A.G. Mannheim (and subsidiaries) production was affected by the existing agreements. The relations between the Swiss Brown-Boveri and the German Brown-Boveri remained dark. The German Brown-Boveri (General Manager Dr. Schnetzler) and Mr. Rechel are fully aware of the fact that Germany has to export sufficient to pay off the costs of import of food, etc. In this connection they themselves brought up the question of their relation to the Swiss Brown-Boveri. I have submitted in detail a description of the documents of this case in a special report. In this connection, however, it may be said that the German Brown-Boveri, in consideration for the technical information obtained from the Swiss Brown-Boveri, promised not to export any product manufactured by Brown-Boveri in Switzerland. That includes the entire electrical field with the only exception of insulation material. All patents acquired by the German Brown-Boveri (with the exception of insulation material) have to be assigned to the Swiss Brown-Boveri. The Swiss did not inform, and had no reason to inform the German Brown-Boveri to what extent they made agreements with other firms in regard to the fields under Swiss control. However, Rechel has no doubt that Brown-Boveri entered agreements in the fields of dynamos, generators, turbines, compressors, etc., under which Brown-Boveri obtained a strong participation in exports to Russia, the Far East, Southeastern Europe, Spain and South America. A.E.G. and Siemens continuously objected to the Brown-Boveri Germany--Brown-Boveri Switzerland agreement.

It is suggested to consider whether the enactment of statutory rules in Germany relating to contracts with foreign firms are necessary.

5. The reestablishment of combines interrupted by the Russian removal policy is exemplified by the Siemens case. While Germany is declared to be an economic unit there is no connection between the Russian and the western zones. The electrical combine has its headquarters in Berlin. The contact between the subsidiaries and the headquarters is Berlin. The contact between the subsidiaries and the headquarters is completely interrupted. It is obvious what that means in regard to powers of attorney, financial instructions, etc.

Under the Potsdam Declaration the Russians are entitled to remove from their zone any capital equipment in which they have an interest. That has been done to the extreme in regard to the electrical industry, including Siemens, A.E.G., Osram and Telefunken. This removal of capital equipment, however, does not dissolve the legal entities which own, besides this capital equipment, shares, patents, trademarks, etc. of the combine structure. The subsidiaries in the western zone are in continuous doubt how this legal power embodied in the Berlin headquarters may one day be utilized against their activities and against their very existence.

Confronted with this situation the general managers of the Berlin headquarters of Siemens and A.E.G. left Berlin. While A.E.G. has only a relatively insignificant foothold in the Russian zone Siemens-Halske and Siemens-Schuckert have substantial plants there.

In observing the activities of A.E.G. and Siemens we have to keep in mind the general financial liquidity of all these concerns, only limited by their present difficulty of discounting war bonds. The policy during the war supported

Fn. The report on Brown-Boveri contains interesting material on the general relations between Brown-Boveri, A.E.G. and Siemens. Reference is furthermore made to the memo on Siemens-Schuckert of Oct. 11, 1945, relating to cartels.

the big combines in every possible respect. From the files of the Deutsche Bank in Frankfurt, where I studied the development of the Metallgesellschaft and other metal firms, I learned not only that the average profit of German metal and electrical concerns amounted to 33.26% of the stock capital in 1940 or 335% of the actual investments, but the war profit tax legislation taxed away profits made in excess of the amount made in 1938 with the understanding that all corporations belonging to a combine are to be considered as one tax entity. The big firms merged into themselves weaker enterprises which had lost money before and during 1938, with the effect of saving war profit taxes. Mr. Buecher arrived in Bavaria with 150 million marks in cash which he immediately invested by buying up small enterprises.

Siemens-Halske A.G. and Siemens-Schuckert A.G. established temporary headquarters - Siemens-Schuckert in Erlangen with Director Scharowsky and Ernst von Siemens in control; Siemens-Halske in Munich with Ernst von Siemens in control.

I am going to submit special memoranda with documents of Siemens-Schuckert and Siemens-Halske which report:

- a. The present set-up of the entire Siemens concern in the western zone.
- b. The supply sources of the concern.
- c. The production in each of their plants as well as the number of employees and the managers.

Furthermore, the report on foreign agreements of the Siemens concern by which export is affected will be submitted. Dr. von Siemens and Mr. Scharowsky told me that this is the best evidence, since the original contracts were taken out by the Russians. My detailed report on the Siemens case gives other information in the same direction.

These instances should be sufficient to show the trend and pattern which the

development threatens to take. The German local governments, fully aware of the cartel and combine problem, repeatedly complain about the fact that Military Government, especially the Finance Division, rather supports the combine development than hinders it. They refer to the following fact: in Bavaria the Bavarian government has asked at least five times for permission to enact legislation by virtue of which the sale of business enterprises, blocks of shares, etc. shall be prohibited unless licensed. They have never received an answer and therefore had to remain absolutely passive in spite of the dangerous developments in Bavaria described in the Zeiss and Siemens cases. The two economic representatives of the Bavarian government in Hoechst, Dr. Liermann and Dr. von Scharpenberg, asked to bring this point in the minutes of the conference, which was done. They cooperated closely with Franz Boehm, the excellent leader of the German anti-trust movement, who was unofficially present at the conference. Franz Boehm submitted a statement in regard to a German anti-monopoly legislation. This statement of Franz Boehm has an important history. Under the Nazi system, after 1939, Dr. Goerdeler, the chief of the revolt of July, 1944, built up a German group willing and prepared to take over the government. One of the plans of this group was dissolution of cartels and combines. Franz Boehm was reporter to the committee to which the very brave professors Aucken, Bietze, Lampe, Ritter and Erwin von Beckarath belonged. With the exception of von Beckarath and Boehm all these gentlemen were members of the Friburg faculty.^{Fn.}

This anti-cartel and combine thinking is not limited to this liberal group but is very strong in the Christian Social movement which beyond any doubt, in spite of the opinions expressed by newspaper correspondents, has the majority in

^{Fn.} Franz Boehm who was professor in Jena until 1936, was fired without any compensation. He was declared unworthy of having any position because of his anti-Nazi activities. After the Nazi breakdown he was made rector of the University of Friburg and is now Minister of Education of Hessen. He was with me for about two weeks of my work in Germany.

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Bavaria and a very strong position in the whole Western zone.

The Bavarian government, very much in favor of the anti-cartel and combine movement, is very much concerned about the idea that action has to be postponed until an agreement between all Allied governments can be reached. They are afraid that the present actual trend to increase concentration described above will go faster than the enactment, and especially the enforcement of a statute of the Allied Control Council. They are afraid that in the final end the Allies will come to an understanding with the cartel and combine powers which may offer some advantages in regard to a centralized execution of the reparation program, and which have their private international connections with the local governments which the anti-Nazis do not have. They believe that they should be authorized to enact legislation by virtue of which they can declare subsidiaries of combines which in themselves are economically independent, separated from the combine connection. They believe that the compensation of the shareholders may be prepared by the courts, which may use their experiences in receiverships. They believe that this policy is necessary to meet the present dangerous condition of complete separation of the operating subsidiaries from the chief management. In the Hoechst conference the Bavarians suggested that they will contact the secretariat of the Laender within the American zone established in Heidelberg, before action is taken, provided that the Military Government permits any action. The idea was expressed that contact with the secretariat of the Laender in the British zone may be arranged and as soon as possible a similar contact with the Laender in the Russian zone may come up. However the German representatives in the Hoechst conference did not see

Fn. It shall, however, not be overlooked that strong Socialist tendencies exist in the Christian Social movement. The so-called Frankfurt principles of the Christian Union (Catholic and Protestant) express themselves in favor of socialism as the future economic firm in Germany.

any reason why the disestablishment of the machine industry of Wurttemberg and the chemical industry in Bavaria from combine management should be postponed.

In the interest of successful completion of the economic decentralization program it is necessary to open doors to every possible movement acting in the interest of an anti-combine and cartel program. It is impossible to impose such a program on any society. The program has to be coordinated with every step of the economic policy. I recommend that:

1. Legislation be enacted, if possible by the Allied Control Council, or if that should be impossible, by the governments of the Laender, which authorizes the government of each Laender, with the approval of Military Government, to take over business enterprises which are capable of operating as independent entities. In this operation the Land governments should be free to act, provided they act with the approval of Military Government. Some of the complexities of breaking up industrial concentrations of economic power are outlined in my paper on the "Technique of Disestablishment of German Combines".

2. The Allied Control Council should enact legislation in accordance to which nation-wide disestablishment of certain enumerated combines has to take place within a period of six months, with the understanding that Land governments would be free to go on in any case in which these enumerated combines were not disestablished within the period provided.

3. In the Economic Branch of Military Government an office of Economic Decentralization should be established which represents U.S. Military Government in the Allied committees operating in the economic decentralization field and which within the American zone, exercises all rights under the supervision of the chief commander of Military Government in this field.

4. In regard to the enumerated combines (No. 2 supra) the Economic Branch, section on Economic Decentralization, may request the secretariat of the Laender to prepare the plan of dissolution, in cooperation with the secretariat of the Laender in other zones. The final decision on the basis of this suggestion should be made by the Economic Branch.

5. The Economic Branch, section of Economic Decentralization should have on the basis of a loan agreement, members of the staff of the Antitrust Division of the Department of Justice. This division shall be asked for its opinion on the effect of each disestablishment on the international, especially European-American trade relations.

6. The State Department through the Political Division of Military Government, should be informed continuously about the developments and should, in cooperation with the Antitrust Division, observe the effect of the development on the American international trade policy.

7. Military Government should appoint a number of American and German experts who have to observe the effect of the economic policy in regard to industrial disarmament, reparations and minimum standard of living, taxation and currency and regulation of research on the monopolistic conditions. The same experts shall try to work out a program in which, in spite of the existing scarcity and rationing system, a road to free enterprise can be found.

The following instances best show the need for this policy. The question was submitted to me how a market in agricultural machinery, which is very scarce, can be established without cartelization or government regulation covering everything from production to consumption. On August 20, 1945 I answered this question to Colonel Martin, as follows:

"It is very inadvisable, if not impossible, to establish principles of production in the American zone without having revived the operations of all those elements which determine the actual needs of the market. A successful exercise of production control depends upon a decision who shall determine requirements and distribution in each field of production. This decision should be reached in cooperation of our agency with all agencies in G-4 and G-5 interested in the economic organization.

It was decided that the production of farm machinery shall be reassumed with all possible speed. While for the time being an order has been given to go ahead on the basis of previous specifications, the establishment of a new market organization in this field cannot be postponed. Otherwise the German industry would practically return to their old cartel practices and military government would have lost its chance to break monopolistic control in Germany.

The following principles--as a basis of discussion--are suggested:

The very substantial excess of demand for farm machinery over anticipated production makes the immediate return to free trade impossible. However, the basic elements of free trade especially the determination which types of machinery are needed by the consumer and the method of negotiations between consumer and manufacturer should be adopted, as far as possible under present conditions. All artificial restrictions of production, especially in pursuance to any kind of contracts, should be removed. For example, it is known that certain farm machinery manufacturers have contracts with their material suppliers which prohibit the suppliers from supplying any competitive enterprise with materials as well as prohibited the suppliers from engaging in farm machinery manufacturing.

The machinery for determining requirement and distribution is best reestablished if the local German District Governments are encouraged to organize purchasing agencies in form of private corporations, composed of farmer-cooperatives or municipal organizations (the potential purchasers under South German customs) for each county (Kreis). These corporations shall try in regular business practice to place their orders for the next three years with the manufacturers available. However, these orders cannot exceed the weight of machinery, which, during the last three years, became practically unuseable, plus a certain percentage to be determined on the basis of the probable available raw material and labor. The solicitation of offers by the purchasing agencies shall take place in a way which guarantees that every producer or every potential producer is given a chance. The purchasing agencies shall be responsible for a complete consideration of each opportunity to manufacture within their county.

"The offers shall be made on the basis of a price determined by the price of iron or steel plus a percentage for coal, power, labor and additional material and for overhead and profit. The percentage for overhead and profit should be determined by individual companies. Any conspiracy by companies to fix standard overhead and profits should be subject to severe punishment.

The purchasing agencies are bound to submit the offers and a certificate which offer they would like to accept to the local government which after consultation with Production Control finally approves the contract. The local Government may suggest to the purchaser to place their orders in whole or in part with other manufacturers even if the price should be higher, provided such difference is reasonable. They may suggest the purchase of other types or less machinery than planned by the purchaser, if such changes would be helpful to the overall program. If the suggestions of the local Governments are rejected, the local Government may disapprove the contract between purchaser and supplier. Under this plan Production Control would be limited to the following activities:

(1) To supervise the production, the supply of raw material, power, coal, and labor to the manufacturers.

(2) To assure full utilization of all available industrial equipment for the production of farm equipment with respect to the needs of the market demands.

(3) The types of farm machinery produced, the distribution of orders and the preparation of conditions of sales would be administered by German authorities under efficient supervision."

This policy on economic decentralization has certainly to be closely correlated with our program on control of industry through government, therefore I refer to Chapter II, Sec. 3.