

REPORT ON GERMAN REACTION TO THE OPERATION
OF THE DECONCENTRATION AND DECARTELIZATION
AGENCY

Deconcentration and Decartelization are among the solemnly announced aims of American policy in Germany. Since the beginning of Military Government a special U. S. Agency operates in Germany in this field. A critical analysis of the work done and of the reaction of the German people to this work, as well as an examination of future possibilities of a liberal economic policy in Germany, can only be successfully undertaken if the actual end of Deconcentration and Decartelization is clearly defined and understood.

The writer of this report, who since 1942 participated in all discussions of the German cartel and monopoly problem, understood the aim to be:

(a) In the International field:

1. To coordinate Germany's economic system with the European and American system in order to make Germany a part of the Western liberal trade area - open trade road to Germany and from Germany was the final aim.

2. To prevent Germany from obtaining, by cartel agreement, exclusive positions in business fields or certain territories (including Germany proper) but to give Germany an equal competitive position on all markets.

(b) In the German Domestic Field

1. To open the closed economic roads to the persons offering the best performances.

2. To free Germany from the threat of control by organized business groups or single combines.

All in all the aim was to make Germany economically and politically a healthier nation than she was.

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And yet this memorandum is going to show that after five years of deconcentration and decartilization, it is the general public opinion in Germany that deconcentration and decartilization serve the purpose of destroying Germany's efficiency and the strengthening of American and British monopolies. Even worse the most careful Germany economic observers agree that never before have economic concentration and restrictive agreements governed the German scene as much as it does today. I refer to the attached resolution of the German professors of economics combined in the Board of Economic Advisors of the German Administrative Counsel.

It is submitted that the Deconcentration and Decartelization Agency in Germany from its very beginning did not pursue the aims of the U. S. policy as envisaged by its instigators. Unfortunately it cannot be denied that in the opening stage the Agency was aiming to discourage Germany's productivity rather than at a transformation of Germany's economic policy into a basic liberal policy. The preamble of the decartelization statute, in the opinion of German lawyers, and rightly so, admitted the pursuance of this aim.

The second phase of Deconcentration and Decartelization should be understood as a period of reaction against the first destructive period. It was a period of very limited activity. Unfortunately the selection of the limited number of cases give the impression that Deconcentration is being used to favor specific American and British combines at the expense of German enterprises.

Deconcentration and Decartelization takes place without clear coordination with operations in other fields. This memorandum is going to show that many present American undertakings of official and private character really support the development of concentration in Germany. The very obvious support

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given by the British Government to concentration, governmental and other, makes the condition even more confused. Lack of clear lines of American policy and confusion of American-British cooperation give German monopolies and German bureaucracy an excellent chance of destroying the effects of our policy in Germany.

II. In the following I am going to report the effects of our operations in the Deconcentration and Decartelization fields as they are seen by friends of our policy in Germany.

(a) Banks. The deconcentration of the banks took place by separating the principal branch offices of the former chain banks from the headquarters. Each new bank was put in the hands of a trustee appointed and controlled by the Government. The relations of the shareholder of the old banks to the new banks remain unsettled.

The entire set up is being dominated by the Government's of the lender and the trustees appointed by them. A few of these trustees have a bankers background. Most of them are purely political appointees. The actual management is in the hands of the former branch directors or of a few former members of the central management of the large banks. Governments and this group of all officials of the large banks have a trend to new concentration. The lack of any final solution of the problems resulting from the interest of the shareholders of the former large banking institutions increased the ^{tendency} ~~danger~~ to new concentration, for instance establishment of a holding company owned by the old shareholders and reconstruction of the new banks into subsidiaries of the holding company.

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The tendency of concentration becomes especially apparent by the fact that credits rejected by one of the banks are almost unobtainable by any other

bank. Every bank expert with whom I discussed this matter stressed this very fact. The exchange of information between banks operating on the same basis is rather effective. The former branch offices of the same central bank in different parts of the country remain close to each other partly because of necessary consultation relating to transactions ~~undertaken~~ before the deconcentration, partly because of the habit of the officials to work together.

Most vital, however, is the fact that Deconcentration took place on very accidental lines. Unfortunately Deconcentration did not take place by re-establishment of formerly independent banks organized only during the last two decades into the large units. Firms, unknown to everyone, without any tradition and with entirely meaningless firm names came into existence. The literal formal breakdown into too many entities discouraged rather than enabled the development of a number of sufficiently strong banks competitive in character. Such breakdown either lead to fast reconcentration or to actual destruction of the banking system. Again the two unfortunate phases of Germany's deconcentration policy becomes apparent.

The cooperation between "deconcentration" banks each of which again has a number of branches and the establishment of special banks such as the central office of savings banks, leads to a dangerous advantage in favor of a small number of bank managements in the field "money creation". Banks inter-related to each other can make "money" by mere bookkeeping transactions, while the other banks can only grant credit in the scope of their own capital and the credit given to them by the Federal Reserve Bank. This point is especially stressed by Mr. Veit, President of the Central Bank of the State of Hesse.

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guarantees bring the entire process of deconcentration in the banking field into a doubtful condition. Public opinion and leading lawyers and businessmen consider this entire transaction as a temporary measure.

This opinion is being strengthened by statements made by representatives of leading American Banks. Two chiefs of German Federal Reserve Bank offices independent from each other told me that representatives of large American Banks informed them, as well as big German industrial firms that deconcentrated firms or other middle class enterprises have no chance of getting any foreign credit.

Germans were told by these American bankers that deconcentration is only an aim of a few Washington radicals and should be completely disregarded by the Germans.

In fact a credit policy of American banks or of the E.C.A., as outlined by these American bankers in Germany would bring to an end any German liberal movement. Furthermore it would give American statesmen the reputation of being hypocrites.

(b) Iron and Steel Industries. Here the British Military Government is leading. It was announced that enterprises "healthy and independent of combined control" "entities of reasonable size having a clearly defined scope of responsibility" are to be established. An absolute separation of these enterprises from the former owner was promised.

In fact ownership of plants and equipment did not change. However, between the owner and the newly established corporation, a contract was made in pursuance to which plants and equipment are leased to the new corporations. These new corporations run the iron and steel business. The old corporations participate in the board of the new corporations with 67 seats out of 265 seats (25%). The other seats are not in any free hands engaged

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in an open market competition, but 40% are controlled by labor unions, 18% by Governments and 17% by the trustees appointed by the German Government (decree No. 7, relating to Military Government Statute No. 52). It is obvious that corporations controlled by the same people and the same interest do not compete, at least not more than Russian Government trusts compete with each other.

The most important concentration, however, took place in the Government appointed and controlled "Treuhandverwaltung" (below referred to as TV). I was told that the management of the new corporations have to make reports to TV not less far-reaching than a regular subsidiary corporation used to make to the management of the parent corporation. Every financial and business item has to be disclosed. If we consider the fact that the same TV has delegates in the board of each corporation, we can fully realize the meaning of the fact that the TV receives reports about every sale and every price calculation.

Furthermore TV has the last word who becomes or who remains a member of the management of each new corporation. Every investment of one of the new corporations requires approval of TV. In fact the management can only operate in the scope of usual business. Everything beyond usual business is up to TV in all new corporations. Therefore Geiler, President of Heidelberg University and leading experts on cartels and monopolies are justified in calling TV a trust.

Nobody in Germany considers the condition in the iron and steel industry independent of the general Ruhr statute. The very purpose of the establishment of the Ruhr authority is the distribution of coal and steel products in the Ruhr territory between domestic Germanyconsumption and exports. The fact that TV is in charge of iron and steel industry and the

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the Ruhr authority are clearly interrelated and that a distribution of Ruhr production has a cartel-like effect and gives the impression that coal, steel and iron are on the way to an international cartel or international government regulation, even exceeding the 1939 level (however giving Germany low quotas.) The selection of the personnel of TV raised serious doubts in the sincere attempts to deconcentrate industries. Some of the Commissioners are known to me. They are typical private bureaucrats (syndici, German word for power hungry bureaucrats without actual experience and knowledge and devoted adherence to a planned economy.)

(c). I. G. Farben - This case is the only case well-known to the American public and the American officials. The Nuremberg trial against I. G. Farben and the rather depressing methods used in this procedure, made I. G. Farben a German national symbol. The methods used by Deconcentration are no less depressing than the methods used in Nuremberg. Everything was left uncertain. Only a number of skeleton enterprises were established, all under Angus, French and British Military Government direct control. The management, as far as known to the public, appears to be highly suspicious from a liberal point of view. In this memorandum it should be sufficient to mention the penicillin and dyestuff case.

Every layman can imagine the actual needs for penicillin in post war Germany. In spite of an almost unlimited demand, opinions furnished by American-German "experts" to the Governments showed that Germany can only sustain a certain maximum production of penicillin. This production is in fact monopolized in Hoechst, one of the I.G. Farben firms. A contract between Merck of N. J. and Hoechst, approved by our Government, gave Hoechst an allegedly necessary know-how. The contract on its terms is not exclusive but in fact no other production came into existence. Military Government officials told me that a number of these American firms expressed an interest in additional pro-

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duction in Germany. However, after consultation between these interested firms and Merick or Hoechst, no production came into existence. Chief advisors of German hospitals told me that only rich people can be supplied with penicillin. The public funds available for the purchase of penicillin at the present price - the daily requirement of penicillin in the usual case costs as much as an average weekly earning of a laborer - only permit the use of penicillin on the critical cases. Having in mind the fact that only a few years ago the German pharmaceutical industry was the most efficient one in the world, the condition called for careful unbiased investigation.

In the dyestuff field I was assured by a number of leading German chemical merchants that Ludwigshafen (the former Badische Anilinan) was incorporated by the French Military Government to accept a plan of production exactly following the methods of the pre-war dyestuff cartel - the only distinction being that the German quota is lower. Up to this date the former cartel partner of I. G. Farben in France, Francolac, is controlled by the French Government, just as the French are using their influence in the French Zone to re-establish the potash cartel, they are reestablishing the dyestuff cartel in Germany. In the potash field, in spite of the protests of the Government of the State of Borden, the potash plant in Buggigere was leased to a corporation controlled 55% by Mines Domaniales des Rotasse de Alsache et Societe Commerciale, 45% is owned by Germans formerly closely connected with the German potash syndicate. These potash cases were only used as an example of re-establishment of cartels by the French Military Government and as an illustration of the general conditions in which industries within the French Zone, especially the dyestuff industry, operate and to show that it has another direct impact on the I. G. Farben case. Potash and nitrogen are being used in Germany as fertilizers in a certain ratio to each other. Cartelization of potash leads indirectly to cartelization of the total fertilizer field. I. G. Farben's successors control nitrogen.

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. In Germany the opinion prevails that the actual aim of our management of I. G. Farben plants is to delay the reappearance of independent German chemical industries on the world market. The production figures seem to give some basis to this opinion. The leading lawyers of the I. G. Farben corporation assured me that in spite of all newspaper reports to the contrary, the successor firms would be financially and technically prepared to go on if only the American control office would come to an end. Certainly the Germans connected with I. G. Farben's successors believe that in the final end I. G. Farben is going to experience the same as the iron and steel industry is experiencing right now.

This can be shown best by reference to the following affair: The U.S. management of I. G. Farben addressed the German Governmental agencies and requested the appointment of a German committee authorized to represent German interests in the deconcentration of I. G. Farben. In the answer of the German Administrative Counsel a list of suggested committee members was submitted in which nine out of ten persons were at present or formerly employees of the I. G. Farben corporation. The only "neutral" observer was a former member of the Board of the Deutsche Bank, one of the former banking institutions closely connected with I. G. Farben.

The recent announcement that Amgus wished to sell at public auction parts of I. G. Farben appears on its surface to be a genuine attempt to solve the problem. It is submitted, however, that such public bids are very dangerous devices of deconcentration. As a member of the staff of the Anti-trust Division for many years, I might be permitted to express serious doubts whether, after the above described management operated for a few years, an independent purchaser strong enough to break through cartel walls already built up, has any chance. Usually the purchaser in a public bid is either the management itself, or one of its friends, or a group so large that no control stronger than the management can develop.

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Here as in the bank case the rights of former shareholders cannot be overlooked. I refer to my own plan of dissolution of I. G. Farben submitted in 1945 to General Clay.

(d) Brown-Boveri (BBC) and other cases handled by Deconcentration and Decartelization and related agencies. The U. S. Agency started with substantial vigor a case against BBC on the ground that the Swiss BBC in control of the German BBC restricts trade and production by a contract imposed by the parent subsidiary in pursuance to which German BBC cannot export newly developed equipment in the heavy electrical field unless the Swiss BBC approves such export. Long briefs were exchanged. Threats of far reaching character were made and then nothing happened.

After long discussions with the people in Military Government handling this case and the lawyers and managers of the German BBC, very serious doubts came into my mind whether there are any really good reasons for selecting this case of the parent subsidiary relationship. No harm, however, is done by going into a case with such a vigor as done here, only the withdrawal later silently. My discussions did not leave any doubt that the case could have been brought to a consent decree, or to a similar solution if our officials had not clearly indicated to BBC that by doing nothing the case could be brought to a standstill. Furthermore the BBC people were informed by someone that the British element of Deconcentration doesn't mean business after all. Such cases do serious harm to our European reputation. Our Agency did not even contradict a statement of Dr. Boveri made in the shareholders meeting of the Swiss BBC and published in the Swiss newspaper alleging that the U.S. was prohibiting the use of patents for monopolization of entire fields as being only used as devices to get rid of patents owned by foreigners. The BBC is considered by the European cartellists as a test case showing the mere nuisance value of our anti-cartel policy.

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The Basche case is pending. The German public opinion, under the impression of the cases described above, is convinced that the Basche case is another case of straight nuisance and destruction. In fact the Basche case should be used to work out really unworable and senseable tests for the finding whether they are monopolistic organizations or not. We have especially to clarify whether Deconcentration shall be used as a device of security measure, besides that of demontage or whether Deconcentration is exclusively a device of liberal economic policy. Furthermore the issue has to be raised whether the finding of monopolization shall be based only on the condition of the German market or whether the Western European market should be examined as a unit in pursuance to the recent statements of Mr. Paul Hoffman made at the Paris Conference of the E.C.A. Most of all it should be understood that every monopoly case is bound to end the same way as the case described above and as long as these cases are not being subordinated to a general policy covering the entire German economic field. I refer to later parts of this memorandum.

At this point it shall not be omitted to state that German public opinion critically asks why cases are only started against Basche and similar firms, while the largest automobile plant remains controlled by General Motors, the largest soap plant was brought under British Military Government scope, under effective supervision of Unilever, the largest British producer and while the gasoline field is being brought under effective control of an American-British group, which in addition is to make impossible the production of synthetic oil.

III. Under I reference was made to an expert statement of German professors of economics allegedly that German economic concentration in 1949 exceeds even the monopolistic condition of any earlier period. I tried to find out the actual meaning of this statement which impressed me since Dr. Mueller, lawyer for largest industrial enterprises and advisor of many section of Military Government, expressed

The Basche case is pending. The German public opinion, under the impression of the cases described above, is convinced that the Basche case is another case of straight nuisance and destruction. In fact the Basche case should be used to work out really unworable and senseable tests for the finding whether they are monopolistic organizations or not. We have especially to clarify whether Deconcentration shall be used as a device of security measure, besides that of demontage or whether Deconcentration is exclusively a device of liberal economic policy. Furthermore the issue has to be raised whether the finding of monopolization shall be based only on the condition of the German market or whether the Western European market should be examined as a unit in pursuance to the recent statements of Mr. Paul Hoffman made at the Paris Conference of the E.C.A. Most of all it should be understood that every monopoly case is bound to end the same way as the case described above and as long as these cases are not being subordinated to a general policy covering the entire German economic field. I refer to later parts of this memorandum.

At this point it shall not be omitted to state that German public opinion critically asks why cases are only started against Basche and similar firms, while the largest automobile plant remains controlled by General Motors, the largest soap plant was brought under British Military Government scope, under effective supervision of Unilever, the largest British producer and while the gasoline field is being brought under effective control of an American-British group, which in addition is to make impossible the production of synthetic oil.

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his full agreement with this opinion.

The test which I used was whether newcomers having sufficient capital can actually start a business. It is known that Military Government abolished all restriction on trade (licenses etc.) resulting from public law. Furthermore it is known that the Military Government permitted the reconstruction of economic associations under the express conditions that these associations are not going to engage in restrictive practices of any kind. Theoretically, therefore, there should be an open road for newcomers ~~spring~~ into business. In fact the conditions are quite different. The following example might show the point in issue. The present Mayor of the City of Mannheim (Dr. Heimrich) gave me material in the case of the pharmaceutical ~~products~~ industry. Before his recent election as Mayor of Mannheim, he practiced law in Mannheim and Heidelberg. He represented the interests of a wholesaler of pharmaceutical products who formerly did substantial business in Eastern Germany until he was deported from his home. He had sufficient business capital to pay cash for the merchandise needed by him. He tried to re-establish his business in Heidelberg. On his request for merchandise each of the three big producers (Merick, Boehringer and Knoll) refused to supply him. Heimrich, when given a power of attorney by the wholesaler, urged the three firms to change their position. They finally admitted that at a meeting of the pharmaceutical industry it was agreed that merchants in Western Germany should not be supplied with any merchandise unless they did business before 1946. Under the threat of a law suit one of the three firms agreed to supply the wholesaler. However, since the field of production of each of the three firms is strictly separated from the production of the other, such delivery of products of one manufacturer would not give merchants any chance for doing business. No retailers purchased from wholesalers who have only products in one specific field and only products of one firm. I convinced myself that this case is absolutely typical. Today in Germany it is almost impossible for young people or for refugees from the East to start independent business activities.

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There is not only restriction by the devices of economic associations in regard to the opening of business but there continues to be an efficient system of price fixing and restriction of production. The enforcement of this system takes place by boycott or similar social forces. An interesting example is the trade in books. The cartelization of the book trade was the first case brought to the courts in 1894. Therefore, this case was always considered to be typical for the German market restrictions. One of the most efficient publishers told me that the price rules established by the publishers and by their informal association for all phases of trade, wholesale and retail, did not change after the enactment of the decartelization statute. Every wholesaler and retailer knows that he will never again be supplied if he ~~any~~ ever should dare to make price concessions ~~in~~ of any kind. The hardship is especially apparent in the case of student books. The prices are entirely out of reasonable bounds and they are sustained by cartel operations.

Immediately after World War II the lack of patent protection might have worried cartel lawyers. They might have asked themselves how after a currency reform the restrictive policy could be enforced again. In fact the lack of the patent system is leading to the exact opposite. The courts adopted a rule that because of a lack of a patent statute, everyone might enjoin his competitor from manufacturing certain products if he can show that he produced those products earlier. Under the old German patent statute, a very rigid search was made before a patent was granted, and while a court would never have given protection unless a patent was actually granted, today the protector who comes first has an excellent weapon. He can threaten everyone with a law suit on "unfair competition" if any one should dare to enter his field.

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Military Government officials of the purchasing section of this organization told me that every attempt to obtain competitive bids for phosphate failed. The Americans who are the largest producers, sell through channels of a British firm, which in turn follows the cartel practice. The prices are described as ~~xxx~~ exorbitant. It is interesting to observe the interesting relations between the international cartel activities in Germany and the currency practice of Java. Our Deconcentration and Decartelization Agency did absolutely nothing in this entire cartel field which, after the currency reform, became much more important than all the cases handled there.

IV. The legislation enacted by the several Military Governments, or under their responsibility by the German Lender, or the economic counsel or the administrative counsel, as well as the general economic and administrative policies are not coordinated with our anti-trust policy.

Reference was already made to statutory rules and decrees in the iron and steel field or in the I. G. Farben case. A general examination of the statute books would show very interesting cases. In this memorandum I have to limit the discussion of this point to a few cases.

(a) It is an old German device to build up economic concentration by holding companies and by the participation in many different corporations, amounting to not more than two controlling interests. The new tax legislation expressly prevents this system. If the corporation A has an interest in the corporation B exceeding a certain percentage, the corporation A does not have to pay a dividend tax for the income it takes from the corporation B.

A similar tax device operates in the field of sales tax, preventing again the monopolistic organization.

(b) Recently the Economic Counsel enacted legislation, with the approval of the American Military Government, in accordance to which subsidiaries are paid to German merchants to enable them to compete in the agriculture field

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