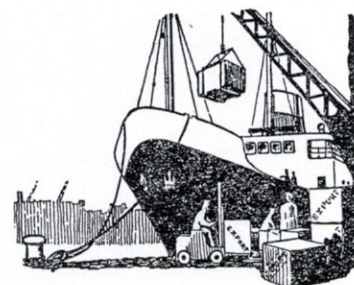


Restrictive Practices—The Government as Accomplice



RESTRICTIVE PRACTICE is a term much used in business, and many will know precisely what is meant by it and why. Many more will have not the remotest idea.

For these people a recent issue of *The OECD Observer*, published bi-monthly by the Organisation for Economic Co-Operation and Development, sets out some useful definitions.

The definitions were collated by a committee of experts created within OECD to examine the problems arising from all kinds of restrictive business practices. Their *Guide to Legislation on Restrictive Business Practices* has been described as the Committee's "most important publication" and we are told that the five fat volumes so far written will be kept up to date. In addition, there have been numerous supplements, a comparative summary of legislation and a glossary of terms.

This last contribution does not set out to provide definitions which may supersede the legal concepts, but simply to lay down common basic terms for the lack of which comprehension among experts and progress in international discussion has been impeded. There has been in the past far too much fruitless controversy over terminology.

The following examples (there are many more) show briefly how this organisation defines some of the more representative business practices.

1) CARTEL OR ENTENTE

"Any agreement between enterprises that has the purpose of preventing, restraining or distorting competition."

The word *cartel* is used not only in the restricted sense of a horizontal agreement, but also to designate agreements to restrict competition between enterprises at various stages of production or marketing. The word *combine* is sometimes used as synonymous with *cartel* or *entente*. The following *examples* illustrate various types of cartel:

- a) *A price cartel* in which prices, or price levels are agreed.
- b) *A quota cartel* in which a quantity or value of goods or services is agreed.
- c) *An allocation cartel* in which participants agree to assign certain customers, territories or divisions of the market.
- d) *A standardisation agreement* in which members agree to produce their products to stated specifications or standards.
- e) *A specialist agreement* in which members agree that

each will produce or sell only certain commodities or services.

f) *A costing agreement* which establishes approved accounting or the exchange of cost information, or an agreement to fix arbitrary figures for certain items of cost.

g) *A rebate agreement* in which members agree on the amount or basis of rebates to be granted.

h) *A compulsory cartel* in which membership is required by government authority.

2) CONSCIOUS PARALLEL ACTION

"A uniformity or harmonisation of the market behaviour of enterprises that comes as a result of individual actions within a group of enterprises in which each is aware of the corresponding acts."

This usually has the same economic effects as restraint of competition by agreement.

3) RESTRICTION

"A limitation upon production, services, sales, suppliers, customers, territories, research, technology or any other part of trade, resulting from agreement."

The following examples illustrate various types of restriction:—

- a) *A restriction of entry to the market* in which it is made impossible or difficult for a newcomer — by allocations, boycotts, exclusive dealing or refusal to sell.
- b) *A restriction of inventory* is a limitation of the amount that will be held in inventory, or to a designated percentage of sales or shipments.
- c) *A restriction of production, supply, sale or shipment* which is a limitation of the amount of a commodity produced, supplied, shipped or sold. Enterprises may restrict by agreeing to reduce plant facilities, or not to increase such facilities.
- d) *A restriction of purchase* is a limitation of the amount that will be bought.
- e) *A restriction of product lines* binds an enterprise not to produce or sell designated products or to incorporate certain materials or characteristics (i.e. stainless steel or aluminium) in a particular product.
- f) *A restriction on export or import* may apply to products to or from foreign countries. This may be imposed by sellers on buyers, or by licensors of patent, often to ensure the functioning of an allocation of markets brought about by cartel agreements.
- g) *A restriction of research* is a limitation that curtails

the conduct of research, such as confining facilities to limited areas of research or forcing research to rely solely on designated research sources.

h) *A restriction of technology or industrial property rights* curtails the use of designated inventions, patents, processes, machinery or material, or agrees to use only specified ones.

4) *BOYCOTT*

"An agreement not to do business with or to withhold supplies from, a designated enterprise."

This is often done to exert economic pressure upon the enterprise boycotted. Collective resale price maintenance may be attempted among suppliers who will refuse to sell to those dealers who do not observe prescribed resale prices. Dealers may take common action against suppliers who do not prescribe resale prices. A secondary boycott is the refusal by a group of suppliers to sell goods to retailers who purchase products from some other supplier which has been "blacklisted."

5) *EXCLUSIVE DEALING AGREEMENT*

"An agreement between enterprises that one or both will deal exclusively with the other, and refuse to deal with third parties."

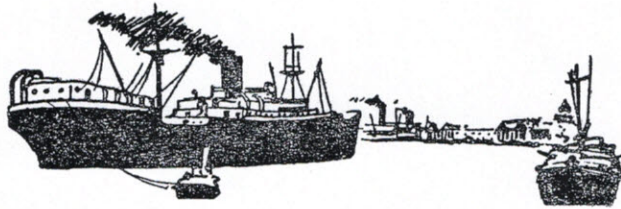
This is usually of a vertical nature and may denote an agreement between a manufacturer and distributor that the latter will refrain from handling competitors' goods. Exclusive dealing relationships may exist between wholesalers and retailers, and may involve agreements limiting sales to particular customers. A sole or exclusive agency may give exclusive territorial rights: a dealer may enjoy exclusive right to distribute within a certain area.

6) *RESALE PRICE MAINTENANCE, INDIVIDUAL*

"This is the practice by a producer, manufacturer, wholesaler, importer or distributor of enforcing retail or wholesale prices for the resale of his goods."

In some countries a supplier may take legal action to compel the prices prescribed. Where prescribed resale prices are prohibited by law they are sometimes replaced by recommended or suggested resale prices and enforced by economic or social sanction, for example by refusal to supply, or by indicating the price of the product on the wrapper.

If the restrictive practices of Governments, i.e. protective tariffs, import quotas, licences, merchandise marks, regulations, etc., were abolished, it would open up competition from all the world and torpedo most, if not all, of these private restrictions on free trade.



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