luxury category. Canada has had debit balances from all current account transactions with the United States each year consistently with the exception of the latter period of the war when there were abnormal large receipts from sales of munitions and grain. As current account deficits are likely to continue to be characteristic of Canada's current account with the United States in normal years in the future as well, this United States dollar revenue from travel will continue to have a special international financial significance for Canada. It will be particularly significant as long as Canada's sterling income is not entirely convertible into U. S. dollars.

The American tourist dollars is therefore a very desirable source of Canadian income to attract. It is usually spent on the employment of existing Canadian resources and capital facilities, serving to reduce Canadian overhead costs. It does not, however, deplete resources in the way that exports of some primary products to the United States do. Furthermore, capital invested on improved transportation facilities and tourist accommodation not only brings in returns in the form of larger tourist income but develops facilities used by Canadians as well, sogenerally raising the Canadian standard of living.

Combines in Restraint of Trade and The Canadian Policy Towards Them

By C. H. Herbert

The Economics of Combines

The argument of the anti-monopolist is simple. It is directed against monopolies, cartels, combines, and all other forms of agreement, whether formal or tacit, in restraint of trade. It states: The general purpose of such agreements is to fix the price of a product at a point where it will yield the maximum profit to the producer and not where it will encourage the maximum consumption of the product. This is accomplished by a restriction of competition and limitation of output. Furthermore, in order to protect their capital investment, monopolies and other combines will try to prevent the introduction of new and more efficient processes which might render their own equipment obsolete. The restriction of output, the enhancement of price, and the interference with technological progress all tend to prevent the public from enjoying as much as they otherwise would the products of industry. It is claimed, in other words, that the national wealth is kept below its potential maximum.

Two extreme examples of a monopoly keeping the price of a product at a level that was highly detrimental to the public interest can be found in Scandinavia in the cases of the galosh and the electric light bulb cartels. In 1926 the Swedish co-operatives decided to break the galosh monopoly, which had been in existence since 1911, and immediatly on the announcement of their intention to do so the price of galoshes was reduced from $2.27 to $1.74 per pair. The Co-operative Union was not content with this and started the operation of its own galosh factory which finally brought the price down to 93c per pair and resulted in the virtual doubling of the use of galoshes in Sweden. In the case of electric light bulbs, Swedish co-operators took the lead in founding the North European Luma Co-operative Society which started to manufacture electric light bulbs in

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competition with an international cartel. As a result of this the price of the standard 25-watt bulb in Sweden fell from 37c to 22c, and as the yearly consumption in Sweden alone amounts to between 10 and 12 million bulbs, there was a saving by consumers in that country of between $\$1\frac{1}{4}$ million and $1\frac{1}{2}$ million a year. Many similar, if less spectacular, examples can be found on the North American continent, some of which are quoted in Mr. F. A. McGregor's report on "Canada and Inter-national Cartels."

A case of a cartel agreement attempting to restrict the use of new or alternative processes can be found in the manufacture of gyroscopes, artificial horizons, etc. where Sperry Inc. had agreements with companies in Japan, Italy and Germany (the latter supplying also Switzerland, Austria, Holland, Sweden and Norway) which largely restricted those companies to the manufacture and distribution of Sperry products. An outstanding instance of a combine interfering with technological progress to the clear detriment of the national interest can be found in Great Britain, where the British Iron & Steel Federation seemingly did its best to prevent the Richard Thomas Company from installing, and later from successfully operating, a continuous strip mill at Ebbw Vale. The case of this type most frequently cited on the North American Continent is that of General Electric, who were alleged to have bought up the patent rights of fluorescent lighting and successfully kept this development off the market for some years because its introduction would have rendered obsolete much of General Electric's equipment. To my knowledge, however, this charge has never been properly substantiated.

There is no doubt that agreements which control competition, restrict output, and enhance prices to the degree mentioned above are against the public interest. On that point there can be little argument. This does not mean, however, as it is so often taken by certain economic writers to mean, that *all* agreements to stabilize prices are *under all circumstances* detrimental to the public interest.

There is a tendency to forget that the type of competition which gives stability to the market and tends to produce a fair price for a product is competition among a large number of relatively small firms and when entry into and exit from the industry is relatively easy. When you have in an industry a small number of large firms, and when the high capital investment required makes exit from the industry or even temporary curtailment of production very costly, then price competition will produce unstable conditions and if carried to its logical conclusion will result in price cutting until all firms excepting one have gone bankrupt and a monopoly has resulted. The only alternative, therefore, to monopoly in an industry of this type is some form of price agreement which will provide a reasonable degree of stability.

Under certain conditions, such as when the market is limited, a monopoly is sometimes the most efficient form of industrial operation, and it is then economically retrogressive to retain competition. But apart from these cases it seems desirable to keep more than one firm in an industry. It is true that in the absence of price competition other competitive practices will emerge which will be expensive to the consumer, such as excessive advertising, excess retail outlets, etc. The disadvantages of these, however, will probably be outweighed by the beneficial forms of competition that will also emerge, the chief being the stimulus given to technological developments which will improve the quality of the product and will, eventually at least, tend towards a lower price in spite of the presence of price agreements.

In addition to being essential if competition is to be preserved in industries of this type, some degree of price stability is also necessary if new industries requiring high capital investment are to be established. Investors will need a clear indication of stable earnings for a considerable period ahead before they will

be willing to risk the large amounts of money required.

Professor Joseph Schumpeter, in his vigorous defence of combines in Chapter VIII of "Capitalism, Socialism and Democracy," goes so far as to argue that a price appreciably higher than the competitive level for the product of a "high capital requirement" industry is a reasonable assurance premium against the premature obsolescence of the capital due to technological progress. He also argues that the possibility of creating conditions which will give monopolistic profits is an inducement to capital to enter a field which it might otherwise avoid, and therefore in the long run these so-called "restrictive practices" actually contribute to technological progress rather than hinder it.

In my view, Schumpeter has pushed his case too far in espousing price *enhancement* and monopolistic profits. The argument is strong, however, in favour of price *stability* for the high capital industries. It should be a degree of stability that will avoid seasonal changes and the periodic violent fluctuations that occur from price wars but which will not deprive the consumer of lower prices due to technological developments or to economies derived from expanded markets.

Another factor affecting the desirability or otherwise of agreements to stabilize prices is the state of economic activity in the country at the moment. If business is expanding and employment is rising, a policy which promotes the maximum degree of competition will be beneficial, for competition encourages the most efficient use of resources. To be specific, if a combine is keeping an inefficient plant in operation by maintaining high prices, and if government policy then forces a reduction of those prices and puts the inefficient plant out of business, the labour so released will be quickly absorbed by increased production in the remaining plants or into some other industry. The consumer will benefit from a lower price for the product which will permit him to buy more either of that or of some other product.

It is much less clear that a policy to lower prices by enforced competition is beneficial during a time of depression and declining employment. In theory, a reduction of prices will stimulate demand, and thus increase output and employment. In practice, however, it frequently does not work that way. As far as consumer goods are concerned, the spending of the individual purchaser may well, with unemployment or fear of it rife, be declining so fast that the stimulating effect on demand of falling prices would be scarcely noticeable. As for the buyer of capital goods—either the corporation or the individual willing to spend some of his savings—there will be a tendency during a time of falling prices to delay rather than hasten purchases in the hope that prices will go still lower. On the other side of the picture, attempts to force competition will probably result in many firms going out of business; bankruptcy and unemployment will thus increase, and the prevailing deflation will be intensified. In short, during a business decline a policy of increasing competition to force prices lower may in some lines give little stimulus to demand and may well have a net deflationary effect because of the additional people put out of business and employment. In these cases, therefore the policy will be neither politically feasible nor economically desirable.

It is true that one of the factors exaggerating the decline of business activity during a depression is that the incomes of the raw material producing sections of the community shrink rapidly while the prices of the manufactured goods that they wish to buy remain relatively rigid. Yet to attempt to rectify this by giving flexibility to the prices of finished goods would be only to produce economic chaos. Take the case much publicized in the Stevens Price Spreads Report, the relation between the prices for farm products and the prices of farm machinery. To have reduced farm machinery prices

to a point which would have appreciably increased the demand would, so far as one can tell, have put the machinery companies into immediate bankruptcy, and would only have aggravated the overall picture. The best solution to the problem is to try to give some stability to raw material prices, a policy which has already been adopted in Canada in the shape of floor prices for farm and fishery products and which is now proposed on an international level. This is certainly not to say that complete rigidity of prices for manufactured goods is desirable or that all anti-combine activity should cease during a depression. What is intended is that discrimination should be used and that the wider implications of too drastic action be considered.

Dr. Lloyd Reynolds in the course of his long and carefully argued attack on Canadian price rigidities in "The Control of Competition in Canada" admits that the existing level of employment bears an important relationship to the desirability or otherwise of an anti-combine policy. "It is clearly desirable," he says, "to free labour and capital by a more efficient organization of industry if there is an active demand for both. The desirability of such a policy is much less certain if the 'freed' men must remain unemployed because of general depression." (Page 277). Professor V. W. Bladen recognises this point when discussing the international regulation of cartels in his pamphlet "Canada and Cartels" and urges that a negative policy of controlling cartels be accompanied by a positive policy of promoting full employment, relieving depressed areas, and stabilising raw material prices. (Page 21).

If a policy of forcing competition is beneficial in an expanding economy but may be detrimental in a contracting economy, the next question is how does it work in an economy which is neither expanding nor contracting but which seems to be "stagnating" somewhere below a level of full employment. This may be the $64 question, for such were the economic conditions which we experienced in the late thirties and which may quite well recur before long. The answer is not clearcut, for it will depend largely on the circumstances surrounding the particular industry. If it is one with a relatively large number of firms, if the demand for the product is elastic, and the dislocation of labour and capital caused by a lower price not too great, then the net result would be stimulating; otherwise the reverse would probably be true, although account would have to be taken of the fact that if a lower price did not increase the demand for that particular product, the extra purchasing power thus created might increase the demand for other products. In short, each case should be examined according to its own particular conditions and according to the prevailing economic trends at the moment.

The foregoing summary of the possible economic effects of combines, of their potential dangers and of their usefulness, is extremely brief. It is adequate, however, to suggest that the correct policy towards them should be one of regulation and not of elimination. There is no argument at all against the contention that a combine may quite easily be in a position where it can exploit the market to the serious detriment of the public interest, and regulation to prevent this happening is essential. On the other hand, it is just as important that this regulation should not be of the type that will prevent the operation of arrangements beneficial to the economy.

The administration of a policy of regulating combines is, of course, no simple matter. It involves a judgment not only as to the direct effect of a certain price policy on the capital, labour and consumers connected with the industry in question, but also as to its indirect effect on capital, labour and consumers connected with other industries. It requires a determination of what is a fair rate of profit, and perhaps the establishment of a criterion by which to measure the profits of an industry. It requires a decision as to what degree of

protection should be given to what industry under what conditions.

Certainly it is harder to make all these decisions than to administer an unequivocal rule of restoring competition. Nevertheless, such decisions are constantly being made in regard to tariffs and other foreign trade restrictions. They are also being made along broader lines by exchange policy, interest rate policy, and fiscal policy, for policies in all these fields are bound to benefit one economic group at the expense of others. What reason, then, is there for dodging the responsibility for making them in the one field of combines regulation? Surely it is better to face this problem than to force competition when competition is not always in the best national interest.

Canadian Anti-Combine Policy

The extent to which Canadian anti-combine policy is concerned with the economic effect of an agreement rather than the legal fact of its existence is not too easy to determine. The legislation on which the policy is based is the Combines Investigation Act and Section 498 of the Criminal Code. The Combines Investigation Act is directed against any merger, trust, monopoly or agreement which restricts trade or enhances price "*to the detriment of the public interest*", (the *italics are* mine). Section 498 says that it is a crime "to *unduly* limit" production, "to *unduly* limit" competition, or "to *unreasonably* enhance" price (the *italics are* again mine but the split infinitives, as the Privy Council has also pointed out, are those of the draftsman of the Criminal Code).

To the layman this would seem clearly to indicate that the Commissioner of the Combines Investigation Act is intended to take the economic effects of an agreement into account when making his investigations, and therefore to consider —among other things—whether the price fixed is reasonable or not. It is thus somewhat suprising to find the Commissioner himself stating:

> Fortunately Canadian legislation and the judical interpretations of it make it clear that the government administering agency does not have to decide whether prices that are fixed by private agreement are reasonable or not. Our first inquiry in peace-time is not what is your price, but how did you get it, on a competitive basis or by collusion with your competitors? Over and over again Canadian courts have interpreted the law as condemming the agreement to lessen price competition rather than condemning the prices themselves as excessive. Extract from an anticle "Control of Prices in War and Peace—Some Contrasts," by F. A. McGregor, in *The Commerce Journal*, University of Toronto, May 1945.

The apparent contradiction between the layman's interpretation of the law and its judicial interpretation is to some extent explained by the fact that Canadian anti-combine activities, on account of constitutional problems, are based on criminal law. Consequently, the main sanction against combines is to prosecute them in the Courts, and there has been an understandable tendency on the part of the Courts to avoid delving into the economics of the case and to confine themselves to the determination of legal facts. As Mr. Justice Hope, of the Supreme Court of Ontario, has quoted Sir Frederick Pollock as stating, "Our Lady of the Common Law is not a professed economist." A further point is that the Commissioner has as yet never recommended prosecution in a a case where there was not ultimately proved to be very substantial interference with competition quite apart from price stability. This has significance in two ways: firstly, it has given practical implementation to the phrase "to the detriment of the public interest"; and secondly, it means that no judgment has so far been given on a case where price stability was the main point at issue.

Up to the present the Combines Investigation Act has worked satisfactorily and to the benefit of the Canadian economy without requiring a determination of the economic effects of any given agreement. It is problematical, however, whether this can continue indefinitely, particularly if, as is now proposed, the

investigations are to cover a much wider field. Suppose, for example, that a company in an industry with a high capital requirement is prosecuted for having entered into an agreement to stabilize prices. Suppose, furthermore, that the company presents a well founded argument that: (1) prices have only been "stabilized" and not "unreasonably enhanced": (2) production has not been "unduly limited"; (3) competition has not been "unduly restricted"; (4) price competition would ultimately have resulted in putting all other firms in the industry out of business; (5) sufficient capital would not have been forthcoming to establish the industry without the promise of price stability; (6) it would have been "to the detriment of the public interest," including both labour and consumer, if the industry had not been established. Can the Court then refuse to listen to this argument without denying any real meaning in the economic sense to the words "to the detriment of the public interest" in the Combines Investigation Act and the words "unduly" and "unreasonably" in Section 498 of the Criminal Code? And is it not the economic sense which is important, since combines are primarily an economic problem?

Consider two other cases where it is difficult to avoid determining whether the price fixed is or is not an unreasonable enhancement. As it functions at present, the Combines Investigation Commission can recommend prosecution only in cases where an agreement can be proved, and the remedy—apart from punitive fines—is to have the agreement abrogated and competition restored. This means that it is powerless to operate against a case of "price leadership" where no agreement exists but where all other companies in an industry follow the price set by the leader because they decide that it is in their own interest to do so. An agreement cannot be proved because an argeement does not exist, and so there is no ground for prosecution; further, it is hard to see how firms can be *compelled* to compete when of their own free will, and without any compulsion, they decide not to do so.

Another case where it is difficult for the Combines Investigation Commission to operate efficiently on the present basis is against a true monopoly—i.e., a one-firm industry. Monopolies which operate to the detriment of the public interest are included as illegal combines in the Combines Investigation Act, although the constitutionality of so including them has been questioned. Even, however, if monopolies are covered by the Act the remedy of restoring competition is not applicable to them, for the creation of a competing firm would be difficult, if not impossible; and furthermore, as pointed out earlier, some industries are most efficiently operated by a monopoly and therefore to return them to competition would be economically retrogressive.

The following methods of dealing with such cases as these—price leadership and true monopoly—are mentioned in the report "Canada and International Cartels":

(1) A reduction of tariff, to bring in competition from abroad. This is provided for in Section 29 of the Combines Investigation Act, but at present only in cases where a combine has been proved. Parliament might be asked, however, to enlarge the scope of this section to permit the Combines Investigation Commission to request a tariff reduction in the case of price leadership or true monopoly. That seems quite fair, *provided* it is first shown that the price leadership setup or the monopoly has raised the price substantially and harmfully above the general level at which competition would have placed it. I have heard it argued, nevertheless, that it is *not* necessary to prove an enhanced price, but only to show that competition does not in fact exist, for then the government is justified in promoting competition from abroad. To me, it seems unfair to deprive an

industry of protection merely because price leadership or monopoly exists without consideration as to whether that price leadership or monopoly has in fact enhanced the price. Tariff protection is frequently given to an industry where competition does exist, so why should it be taken away from an industry which of its own free will decides not to compete but which, in taking this action, does no harm—and perhaps does good—to the public interest?

(2) Directing publicity to these cases. Here again in all fairness it would be necessary to show that the price fixed was unreasonably high.

(3) Discriminatory taxation, which would impose a higher rate on low production than on high production. This is a clever idea with serious administrative difficulties. For example, it would be hard to prevent the tax being a burden to industry at a time when production was falling through no fault of the industry, say during a depression. To my knowledge, it has not so far been adopted in any country.

(4) Nationalization of the industry or the creation of a government-owned plant to act as a "yardstick." Nationalization raises questions far beyond the scope of this article. If a "yardstick" company were to be created it should include in its expenses a tax payment equivalent to what would be required from a private business and also a reasonable allowance for "profit" if it is to be a fair "yardstick" for a private enterprise economy.

Perhaps the main reason for Mr McGregor's apparent reluctance to consider whether an agreed price is reasonable or not stems from the administrative difficulties of doing so. For example, the case of a multiple product industry is sometimes quoted, where even the industry itself maintains that it cannot tell how much it costs to make one particular product. To the suggestion that the Commission need not take one product but should consider the overall profit of the company it is pointed out how easy it is to use accounting methods to hide profits. This view has some justification and it may have carried more weight before the war when the Commission was seriously understaffed. If, however, the staff is to be expanded and the appropriation for the Commission enlarged, it is hard to feel that the administrative problem of determining the reasonableness of a price will be insuperable. Moreover, it is economically so important to regulate combines according to their effect on the community rather than to condemn them outright that every effort should be made by the Commission to overcome these problems.

If it is agreed that the economic effect of a combine should be considered when judging whether or not the combine is "to the detriment of the public interest," and whether or not it has "unduly" limited competition, the question arises as to what type of body is best fitted to deliver such a judgment. It is doubtful whether a Court of Law is, because judges are not customarily trained in economics or in business problems. To people who are not versed in economic concepts and economic jargon, the conflicting views of economists as expert witnesses are likely to be highly confusing. The matter might be simplified if the Court could have on the bench as a technical adviser an economist who could participate in the private discussions of the Court and explain the conflicting views to them. Such a practice, however, while found in certain countries, is not provided for in Canadian law.

The Tariff Board has been suggested as a body to hear combines cases when a reduction in tariff is proposed as a remedy. It would seem desirable, however, that all combines cases should be considered by the same body, and if the number becomes substantial it is doubtful

whether the Tariff Board would be equipped to deal with them in addition to its regular work. It is particularly important that there should be some body which can hear cases and issue a report when publicity is the only intended sanction and neither prosecution nor tariff reduction is planned. If such cases are not brought before a tribunal but are merely dealt with in a report prepared by the Commissioner, then the Commissioner is acting as both prosecutor and judge. On principal this is highly undesirabe.

With all these considerations in mind, the best solution would seem to be to create a special Court or Board before which the Commissioner can bring all his cases, irrespective of the form of sanction that is proposed, the body consisting of men competent to consider the economic implications as well as the legal aspects of the case. It has been suggested that this would raise constitutional problems, for it is argued that such a body would have to determine what is a fair and reasonable price for a product, and all previous legislation designed to give to a federal organisation the power to determine prices has been declared unconstitutional. The function of this Court or Board, however, would not be to declare that such and such a price is a fair price, it would be to decide whether under prevailing conditions such and such a price does or does not represent an "unreasonable enchanement" and whether the limitation of competition involved in creating price stability is or is not an "undue limitation" of competition. If the price were judged "not unreasonable" there would be no guarantee that such a verdict would still be given in a few months' time if basic conditions in the industry had changed. In other words, the whole purpose of this body would be merely to give effective and realistic meaning to words that already exist in the Combines Investigation Act and Section 498 of the Criminal Code, legislation which has already been declared to be constitutional.

Community Planning in Canada

By JOHN BLAND

THE idea of community planning already has passed the preliminary stages of growth in this country. It is now generally accepted as a "good thing," and appears to be well on towards the next stage, that of being considered a "necessary thing." It is recognized in the National Housing Act of 1944, which allows a thirty year amortization period for buildings in a planned area and a twenty-five year period for other buildings. This admits a calculable monetary value in town planning and in the last five or six years nearly every city in Canada has taken steps to develop a town plan for itself. It is a good time to take stock and consider the value of our methods, the extent of our progress, and the future of this work in our country.[1]

In the first place what is meant by community planning? I use this term in preference to town planning because it is broad enough to include rural areas as well as towns and cities. By it I mean the systematic investigation of conditions, trends and resources in order to provide a basis for broad plans of development. Such planning covers the physical aspects of our communities —the use of land chiefly. There are in addition, social and economic factors which must not be ignored if physical planning is to be valid. The planner takes these things into consideration in drawing up a master plan.

In Canada the procedure has been the employment of a town planning consult-

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