

252. E.L.M.A. further submits that the practice whereby its members agree together not to provide manufacturing assistance to non-members is a necessary corollary of the agreement to share manufacturing experience. It is E.L.M.A.'s opinion that, if a company has not the right to keep its manufacturing experience to itself, incentives are destroyed; at the same time it is also "in the public interest that a firm should have the right, by freely negotiated agreement, to share this experience". E.L.M.A. maintains that it is therefore in the public interest that a group of companies be entitled to agree not to divulge information so shared to companies outside the group.

### **Restricted Membership**

253. E.L.M.A. submits the following case in support of restriction on its own membership:—

"(i) E.L.M.A. has grown up during the years as an arrangement between firms accepting certain common standards of commercial dealing and able to accept competition without preventing real and effective co-operation in certain spheres. The essence of such an organisation can only be retained if absolute control is retained on the entry of new members.

(ii) E.L.M.A. depends on willing co-operation rather than on penal rules for enforcement of its obligations. That spirit can only be maintained by control of new entry.

(iii) E.L.M.A. is in certain respects a partnership. It is an essential element of such partnerships that new partners can only be admitted by agreement and not as of right.

(iv) E.L.M.A. does not desire to become a monopoly in the generally accepted sense of the word."

## **CHAPTER 17: CONCLUSIONS AND RECOMMENDATIONS**

254. In this chapter we use the term "the E.L.M.A. system" to describe the complex network of arrangements governing the production and distribution of lamps in the United Kingdom which we have described in the earlier chapters of this report. All these arrangements are the responsibility of the members of E.L.M.A.; in general, the lead is taken by G.E.C. and the A.E.I. Group, but among the other members is the British Philips Company, a subsidiary of Philips (Holland), one of the major lamp manufacturers of the world. The expression "the E.L.M.A. system" covers all these arrangements but, as will be clear from the earlier chapters, E.L.M.A. itself as an association is concerned with only some of them.

255. Total production in 1950 was just over 250 million lamps, value £13½ million; the production of E.L.M.A. members is shown in paragraph 3. It has been shown in paragraph 208 that only about 10 per cent. of the total capital employed by the E.L.M.A. members in the whole of their undertakings is employed in their home lamp business but that, immediately before the war, the estimated distributed profits on this business were nearly 30 per cent. of the distributed profits on the whole of their undertakings. This fact appears to us to explain to some extent the very large amount of care and attention which has been devoted by E.L.M.A. members, over a large number of years, to regulating the trade in electric lamps.

### **THE MANUFACTURING SIDE**

256. The general structure and many of the details of the E.L.M.A. system as we find it at the present time are of long standing: several of them are heritages from the Phoebus Agreement. It is for this reason that we

have in earlier chapters described the Phoebus Agreement and the organisation that went with it so far as they affected the United Kingdom market. The representatives of E.L.M.A. members have claimed in evidence to us that the general results of the Phoebus Agreement were beneficial to the United Kingdom lamp industry. Whether this was so (despite the organisation's many extremely restrictive practices) we are not called on to judge. We are concerned with it because of its influence on the present system, in which many of its features can be seen.

257. The E.L.M.A. system, on the manufacturing side, presents today the following picture, which is a simplified outline of the complicated arrangements described in detail in earlier chapters. The companies which constitute E.L.M.A. are bound together in what they themselves describe as "in certain respects a partnership", which is not dissoluble until 1955, and in which two senior partners (G.E.C. and the A.E.I. Group) play a predominant role. These two are between them responsible for over half of the production of lamps by the members of E.L.M.A. and work very closely together in all matters concerned with lamp production: they take the initiative in E.L.M.A.'s price-fixing activities and they jointly own the factories making bulbs and caps which supply most of the other members' needs as well as a considerable part of the requirements of the Controlled Companies and Independent Manufacturers. Patents, which have been, and as regards fluorescent lamps still are, of great importance in the industry, are mostly controlled by a few members, including particularly G.E.C. and the A.E.I. Group, but are made available to most of the others. Six of the E.L.M.A. members undertake a certain amount of research but most of this is done by G.E.C. and B.T.H. in friendly rivalry. The results of this research, and other manufacturing knowledge, are passed on to the other members, except Crompton,\* B.E.L.L. and Aurora. Members at present have access also to patents, research and manufacturing experience originating in the United States and Holland. A rapid and comprehensive exchange of information about new developments, as they occur, has encouraged the more rapid application of new discoveries and must also, we believe, make more effective the efforts of individual research departments. We have noted the invention of fluorescent lighting and the technical advances made in production methods by E.L.M.A. members. Although we have recorded our opinion that prices were unduly high before the war, none the less it is only fair to record also that much of the benefit of this technical progress has been passed on to the public in a progressive and substantial reduction in the prices of lamps; in the case of general service filament lamps this trend has continued even during the last twelve years when prices of most other goods have been rising, though we have noted in paragraph 202 the circumstances in which these more recent reductions of price were made. We call attention also to the rise in output per man-hour (see paragraph 214).

258. E.L.M.A. members manufacture only such types of lamps (a very wide range) as E.L.M.A. sitting in council agrees upon. The Council fixes the price at which each type is to be sold by all the members who make it, and by laying down the prices to be charged by distributors E.L.M.A. ensures that uniform prices are charged at any given stage of distribution. Each E.L.M.A. member, therefore, foregoes any competitive advantage he might secure over other members by fixing lower retail prices or giving larger discounts to distributors, by developing different types of lamp, by ownership

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\* Crompton obtained such information in the discharge field until the end of 1949 (see Appendix 10).

of patents or new discoveries, or by superior manufacturing methods. Competition is, in practice, confined to advertising and salesmanship. Though each is selling his lamps under his own brand, all members, so far as any given type is concerned, are selling practically identical lamps at a common price.\*

259. Each E.L.M.A. member is free to secure as many orders as he can for any approved type of lamp. The principle of the sales quota system as inherited from Phoebus, however, is that each member is entitled only to a fixed percentage of the total trade in E.L.M.A. lamps of all kinds taken together, on the ground that all are entitled to share *pro rata* in any change in the level of the trade of the members. Any member who sells more than his quota has to make a compensatory payment and any who has sold less than his quota receives a compensatory donation. There is no restriction on the total number of lamps of all kinds sold by E.L.M.A. members, and the total volume of production is free to grow or diminish according to the demands of trade.† Under the provisions of two international agreements, imports from the American G.E.C. and its subsidiaries are excluded and imports from Philips (Holland) are limited.

260. This short general description relates to the present position. If the picture had been painted in 1939, it would have shown a very much greater degree of restriction both in the practices and in the policies of the members of E.L.M.A. We are not asked to say whether the conditions restrictive of competition in the supply of lamps have operated against the public interest in the past but whether they do so now or may be expected to do so in the future, and for this purpose it is necessary to record the change which has come over the E.L.M.A. system in the last few years, and to consider to what extent this change may be expected to be permanent. We note here, therefore, the following important differences between the practices of the E.L.M.A. members in the supply of lamps now and in 1939.

(i) The prices fixed before the war were unduly high in relation to costs, whereas those fixed now are on average moderate, although the prices for motor lamps still provide very high profits to the manufacturers and distributors' margins which are considerably higher than those obtained on most electrical goods.

(ii) Until the war, members of E.L.M.A. were parties to the Phoebus Agreement under which action was taken to hamper the growth of independent competition and to extend the scope of the ring by bringing independent manufacturers within it, both by the control of materials and by means of patent litigation. By 1939 the main independent manufacturers of the inter-war years had been either absorbed into E.L.M.A. (Crompton) or purchased by E.L.M.A. members (Britannia and Ismay). There is no sign that any such policy is being pursued at present.

(iii) The parties to the Phoebus Agreement maintained fighting companies as another means of attacking independent manufacturers; one of the objects of the E.L.M.A. members in buying Britannia and Ismay was to get control of the market for cheap lamps and to use these companies with Splendor as a means of "taking business away from the remaining outsiders", that is to say, as fighting companies. The evidence is, however, that these companies have in fact been left to run their business largely independently of

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\* There is a certain amount of manufacture by members of other members' branded lamps and, indeed, provision is made for this in some of the agreements between members. E.L.M.A. has told us that in other parts of the Commonwealth there are jointly owned factories each of which regularly produces lamps bearing the various members' brands.

† Except to the extent that the obligation to make compensatory payments may indirectly restrict the output of individual members.

the shareholders' management committees; there is no evidence that they have been used as fighting companies and we are assured that there is no present intention of so using them.

(iv) The patent licensing policy of the members of E.L.M.A. was extremely restrictive before the war so far as non-members were concerned. In only one case did an Independent Manufacturer (British Luma) receive a licence from members of E.L.M.A., and even in this case the grant was part of a bargain made by the Phoebus organisation with the Swedish Kooperativa Förbund, and was given subject to some very strict conditions. The patent policy now proposed by the members of E.L.M.A. who own patents is much more liberal.\*

(v) There were no provisions in the Phoebus Agreement for amendment of the sales quotas which the members of E.L.M.A. enjoyed before the war and they were not in fact amended except for adjustments to accommodate new parties: the penalties were extremely heavy, involving the loss of considerably more than the profit made if quotas were greatly exceeded. Under the 1948 Lamp Agreement the penalties are much less in amount and no compensation is payable in respect of a deficiency of more than 15 per cent; further, we are informed that the intention is to review the quotas in 1955.

(vi) Under the Phoebus arrangements, there were upper limits on the life of lamps made by the members, with penalties if these were exceeded. There are now no such provisions except in the case of Type B lamps.

261. In considering how far these changes might be expected to be permanent in the absence of any recommendations by us, it is necessary to consider the circumstances in which they were made. Counsel, towards the end of his submission to us on behalf of E.L.M.A.,† expressed the view that times had changed and that the past had little significance today, not so much "for what may be called political reasons" as because of the degree of competition from Independent Manufacturers. We note, however, as regards the price reductions made during and since the war that they were made either at Government request or in response to public policy in relation to monopoly, that the new patent policy has avowedly been evolved in the light of the new Patents Act and the Monopolies and Restrictive Practices (Inquiry and Control) Act and that, in the period of shortage of bulbs during and since the war, a Government allocation scheme has operated. Moreover, old Phoebus ideas of a very restrictive kind are certainly not dead. In all the circumstances we do not feel that the present improved state of affairs could be relied upon to continue if the E.L.M.A. system were left without considerable amendment and additional safeguards in the public interest.

\* But see paragraph 273 regarding the position of Philips (Holland).

† Extract from Counsel's speech—E.L.M.A. Hearing 12th April, 1951. "In that connection you may very well think that the original intentions of the founders of the Phoebus arrangements are of very little significance indeed today and those of the founders of the E.L.M.A. organisation of very little more. After all, even if those people a long time ago did dream of a monopoly, of a real monopoly in the proper sense, as they sat around the table in Geneva or wherever it was, any serious prospects of such a thing becoming effective in this country must have faded away long ago, and, as I understand it, no one today seriously envisages the possibility of any such thing coming about.

I think Mr. Williams [formerly Chairman of E.L.M.A.] put it in his evidence quite clearly, from his great knowledge of the matter, that in recent years, in recent times at any rate E.L.M.A. has never seriously contemplated any kind of closed shop, not for what may be called political reasons, although those no doubt come into it, but simply because it is just not on when you have got people like Mr. Thorn in existence, who tells everyone, and it may very well be perfectly right, that he is now one of the three biggest manufacturers of electric lamps in the country and will soon be even more, you do begin to see that the atmosphere is quite unfavourable to any kind of monopolistic operation".

262. We see considerable advantage in the exchange of technical knowledge within the industry and much force in the argument that it could not continue if there were price competition between the companies concerned. The manufacturers' price ring, therefore, has this advantage to offset its potential dangers. We note also that the prices fixed under it are now on average moderate in relation to costs and that there is at present a considerable measure of efficient independent competition ; we estimate that 27 per cent. of filament lamps are supplied by Independent Manufacturers and 13 per cent. by the Controlled Companies and that, in the case of fluorescent lamps, the Independent Manufacturers supply between 30 per cent. and 40 per cent.\*

263. On balance we see no sufficient reason why the E.L.M.A. system should be completely broken up, but we think that the system may be expected to operate against the public interest in the future unless considerable changes are made and additional safeguards for the public interest provided, as described in paragraph 264. Given these, we do not recommend that the members of E.L.M.A. should be prohibited from continuing to fix minimum manufacturers' selling prices for agreed types of lamp sold by them to wholesalers, to retailers or to users, provided two conditions are fulfilled. These are first, that the E.L.M.A. members should take steps to ensure that the system of exchange of technical knowledge extends to all manufacturers who are within the system of common prices, and second, that the level of the prices fixed by E.L.M.A. should be reasonable. We think that the Government should review the prices from time to time. This is our present recommendation as regards the system of common prices ; for the future we record our view that if at any time changes occur which substantially reduce the degree of competition with E.L.M.A. which we advocate in the following paragraphs it will be necessary for this whole question to be examined afresh.

264. Our recommendations for changes in the system and for safeguards on the manufacturing and on the distributive side to maintain and strengthen effective competition are given below ; we list them together here because, though each is dealt with in turn later, the practical effect of each cannot be considered in isolation. In summary they are:—

(i) that E.L.M.A. should undertake that members who sell lamp components (other than patented components and ready-coiled filaments) will make them equally available to members and non-members at prices which shall not be higher to non-members than to members ;

(ii) that, if the working of the new patent policy results in an appreciable reduction of the degree of competition to which E.L.M.A. is subjected, the whole question should be examined afresh ;

(iii) that the E.L.M.A. members should give an assurance that the Controlled Companies will continue to provide a measure of competition as suppliers of cheap lamps, and that they will not be used as fighting companies ; †

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\* As we explain in Chapter 13, these percentages are only approximate. We think that filament lamps are supplied to the home market roughly in proportion to production, as between the three groups of manufacturers: the Controlled Companies' share of the home market for general service filament lamps, however, is almost certainly higher than 13 per cent. As regards discharge lamps, the Independent Manufacturers have a bigger share of output than of sales in the home market because they export more of their products, relatively, than the E.L.M.A. members.

† i.e. companies which, as a matter of policy, sell lamps regardless of cost, specifically in the markets of Independent Manufacturers.

- (iv) that the sales quota system should be brought to an end ;
- (v) that E.L.M.A.'s rules about Type B lamps should be altered to remove quantity and quality restrictions ;
- (vi) that the arrangements for exclusive dealing and aggregation of quantity rebates should be brought to an end ;
- (vii) that payments to associations of distributors should be brought to an end ;
- (viii) that the enforcement of resale price maintenance by means of the collective sanctions of fines and the Stop List should be brought to an end ;
- (ix) that E.L.M.A.'s Rules should be altered to permit other distributors as well as co-operative societies to give "dividends".

### **Competition from Independent Manufacturers : Supplies of Components**

265. E.L.M.A. members are the main manufacturers of lamp components and the only manufacturers of machine-made glass bulbs for general service filament lamps. The independent manufacturers competing with E.L.M.A. before the war were dependent to a very considerable degree for their components on imports from abroad. During the war when imports were cut off arrangements were made under the auspices of the Government for the component-making members of E.L.M.A. to supply the Independent Manufacturers as well as the other members of E.L.M.A. with components such as bulbs, caps and tungsten and molybdenum wire. The Independent Manufacturers have continued to buy a large proportion of their components and materials from E.L.M.A. members up to the present time, and there will be found at Appendix 15 (Table 4) particulars of the agreed prices at which the E.L.M.A. members sell to them. E.L.M.A. has said in evidence to us that its members do not want all present competition wiped out and to become monopolistic (using the word in its normal sense), and that their present policy is to supply all materials and components freely and at reasonable prices, except those components which they consider "embody to a very substantial degree the vital techniques and 'know-how' of lamp manufacture".

266. The supply of glass bulbs made on the new Ribbon plant constitutes a special case among components since it is, or shortly will be, in effect a monopoly arising inevitably from technical development. This new plant when in full production will be capable of producing more than enough bulbs for the whole of the lamp industry of this country, and there will be no room for a competing plant. E.L.M.A. has informed us that the proprietors of the Ribbon plant fully recognise the special obligations which fall upon them in view of their monopoly position and they have given an undertaking to the Ministry of Supply, a copy of which is attached at Appendix 12, that they will supply bulbs made on this plant to all purchasers in the United Kingdom without discrimination, and that the prices will be the same to all purchasers except for the proprietors themselves (G.E.C. and B.T.H.) and the Controlled Companies.

267. It seems doubtful whether the present situation under which Independent Manufacturers are so largely dependent upon E.L.M.A. members for their supplies of components, and are able to obtain them, could have arisen save under the strain of war, but it follows from what we have said about the need to maintain and strengthen independent competition that we think it important that these supplies should continue. We recognise that the members of E.L.M.A. cannot be expected to share all the benefits of their own knowledge and skill with their competitors, and we think the line is

reasonably drawn at present, the only components which are not supplied freely to Independent Manufacturers being fluorescent powders (covered by patents) and ready-coiled filaments. Further, since the manufacture of many of these components involves the application of technical knowledge of the sort that is exchanged among the members, we do not recommend prohibiting the fixing of common prices for components, given the safeguards we recommend. We consider, however, that the E.L.M.A. members who sell components and materials should give an undertaking similar to that already given to the Ministry of Supply in respect of bulbs made on the Ribbon plant (see paragraph 266) that they will make them available equally to members and non-members at prices no higher, quantity for quantity, to non-members than to members, subject possibly to lower prices being charged to parent, subsidiary or fellow-subsidary companies of the supplier.\* Should the members at any time cease to agree among themselves the prices at which any components are supplied, we think they should continue individually to observe the principles we have recommended.

268. As regards bulbs made on the Ribbon plant there should in our view be an additional safeguard to that contained in the undertaking already given, namely that the supplying company should publish a price list showing the gross prices and quantity discounts at which it is prepared to sell.

269. Should temporary shortages of any materials or components arise and some form of allocation between purchasers be necessary, we suggest that unless the Government takes direct responsibility by imposing control E.L.M.A. or its component-making members should keep in close touch with the responsible Government Department in order to ensure that no misunderstandings arise about the fairness of the shares received by Independent Manufacturers.

### Patents

270. We have described in Chapter 5 the patent policies formerly followed by members of E.L.M.A. and the new policy they propose to follow in the light of the passing of the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, and the Patents Act, 1949. The new policy represents a major change, since the use of patents as a buttress of the E.L.M.A. system is to a large extent abandoned. The decision to grant licences to non-members goes well beyond the obligations placed on patentees by the law. The dropping of the requirements that licences be taken under all patents or none, and the abandonment of the control of prices of non-patented articles and of the control of output of any articles, are all changes of which we approve.

271. There are, however, two features of the new patent policy on which we must make some further comment. The first is that a patent licence will still fix the price at which the lamps under the patent are to be sold. It is, as we have said, common for patentees to fix prices in this way, and it is no doubt natural to do so when those settling the terms of the licence have agreed common prices among themselves. The new policy does, however, make it easier to bring the whole industry into E.L.M.A.'s system of common prices for those lamps which are covered by patents (because other onerous conditions have been abandoned), and we have explained above the importance we attach to securing that E.L.M.A. members face an adequate amount of price competition from outside. Where the patents

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\* At present the British Philips Company, Stella and Cryselco among the members of E.L.M.A., get preferential terms for glass tubing and rod under agreements with G.E.C. and B.T.H.—see Appendix 15 (Table 4).

cover only minor improvements or very special types of lamp, as is at present the case with filament lamps, the point is unimportant. The patent position for fluorescent lamps, however, is not entirely clear and it is possible (we cannot assess the probability) that fundamental patents exist and that the application of the new policy would result in the extension of the system of common prices for fluorescent lamps to the whole industry.

272. If at any time the application of the new patent policy results in a substantial reduction in the degree of competition to which the E.L.M.A. system is subjected, either through the acceptance of price conditions in patent licences by Independent Manufacturers or by successful patent litigation against such manufacturers or in any other way, we recommend that the whole question whether the continuance of the E.L.M.A. system, in the form it would then take, would be likely to operate against the public interest should thereupon be examined afresh.

273. The second comment we have to make about patents arises from the circumstances that some of the lamp patents to which members of E.L.M.A. have access are owned by Philips (Holland), which is not itself a member of E.L.M.A. though it is a party to the 1948 Lamp Agreement; we are informed that the new patent policy will be pursued by E.L.M.A. members but that licensees who wish to use patents belonging to Philips (Holland) will have to approach that company separately. It follows from the approval we have expressed for the dropping of many restrictive features in the new patent policy of E.L.M.A. members that, if any substantially more restrictive policy were to be pursued by Philips (Holland)—if, for example, any restrictions were placed on the quantity of lamps supplied to the United Kingdom market through a patent licence to a United Kingdom manufacturer—then a state of affairs contrary to the public interest might well exist. In these circumstances—which are quite hypothetical—the procedure laid down in Section 40 of the Patents Act, 1949, might be appropriate.

### **Competition from the Controlled Companies**

274. Splendor was one of the original Hydra companies: it has long been under the control of E.L.M.A. members and is now owned by them. Britannia and Ismay (and Britannia's subsidiary Gnome) were acquired jointly by E.L.M.A. members in 1938, the method of acquisition being that laid down in the Phoebus Agreement\*; the objects of the E.L.M.A. members in acquiring them were both to gain control of the market for cheap lamps "with the least possible injurious effect on the regular Phoebus business," and to use the companies, if required, as fighting companies. The Controlled Companies make lamps of satisfactory quality which are marketed through the chain stores and in other ways, usually at lower prices than E.L.M.A. lamps; they buy most components from E.L.M.A. members at lower prices than do other manufacturers. Both the price differential between the lamps of the Controlled Companies and those of E.L.M.A. members, and the proportion of the market supplied by the Controlled Companies, are less now than they were before the war.

275. There is a Management Committee for Ismay and Britannia appointed by the E.L.M.A. members who are shareholders, but both E.L.M.A. and the companies themselves have said in evidence that there is no interference by the E.L.M.A. members in the administration of the Controlled Companies and that they are left to run their business very much as they did before they were acquired. Splendor is supervised similarly. While, however, so far as the general public and other users are concerned, competition

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\* There is a similar provision in the 1948 Lamp Agreement.

between the Controlled Companies and E.L.M.A. members undoubtedly exists, E.L.M.A. has admitted to us that so far as practicable the policy is not to compete in E.L.M.A. markets, i.e., at the wholesale and retail levels: indeed, competition at the wholesale level could only be conducted by trying to persuade E.L.M.A. wholesalers to break their exclusive dealing agreements, and many retail outlets are similarly barred to the Controlled Companies through exclusive agreements between retailers and E.L.M.A. We cannot overlook the fact that E.L.M.A. members are in a position at any time to control the policy of the Controlled Companies and that the termination of the system of exclusive dealing (see paragraphs 287 to 292) would create a new situation in which they might be tempted to do so.

276. In our view it is important, if the E.L.M.A. members themselves are to be left to carry on with agreed manufacturers' prices, that the Controlled Companies should continue to provide a measure of competition as suppliers of cheaper lamps and should not be used as fighting companies; and we recommend that the E.L.M.A. members should give an assurance that this will be done.

277. The preservation of the Controlled Companies as competitors would become even more important if E.L.M.A. or its members were to absorb any of the Independent Manufacturers. Although we have seen nothing in evidence to suggest that either E.L.M.A. or any of the Independent Manufacturers are contemplating this absorption, we cannot ignore the possibility of its happening in view of the past history of the trade (see in particular paragraph 28). We recommend that if it does, or if the Controlled Companies cease to practise an independent price policy, the position of these companies should be reviewed in the light of the situation as it would then exist.\*

### Quotas

278. The system of sales quotas established under the Phoebus Agreement is continued in a modified form by the 1948 Lamp Agreement†; we have noted that the latter provides both for less severe penalties and also for an upper limit to the compensation to parties who fail to sell their full quotas. These changes substantially reduce the practical effects of the system, so much so that the elaborate machinery of administration described in paragraph 102 seems out of all proportion to the result achieved. We have been informed that the parties regard the agreement as a means of meeting unitedly any potential competition; no doubt, too, it is a means of maintaining good relations with Philips (Holland) in the markets in which the British manufacturers are principally interested. E.L.M.A. has said as regards the present position that "since the manufacturer retains a substantial proportion of the profit, there remains an adequate incentive to increase his share in the market. Further, the quota will be reviewed in 1955 and this gives him an additional incentive to get as much of the trade as he can before that date".

279. While the practical effects of the sales quota system may not now be large, we cannot see that any gain to the public interest is secured by it, and we think that it is contrary to the public interest in the following ways:—

- (i) The principle on which the system is based—that all changes in the market should be shared *pro rata* very largely on the basis of members' shares in 1924, regardless of any changes in relative efficiency—conflicts

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\* See Addendum by Mrs. Robinson, paragraph 296.

† The quotas of B.E.L.L. and Aurora have been determined, not by the 1948 Lamp Agreement, but by separate agreements made concurrently with their patent licence agreements. These agreements have expired but we understand that new agreements providing for bigger quotas are being negotiated.

with the need, so strongly emphasised in Section 14 of the Act, for "the fullest use and best distribution of men, materials and industrial capacity in the United Kingdom".

(ii) We see no reason why compensation should now be paid to a manufacturer for failure to sell his full quota of lamps.

(iii) The quotas cover such different articles as motor lamps, projector lamps, general service filament lamps and fluorescent lamps, with the result that an increase in a member's share of the market for one type of lamp must be offset by a decrease in his share of the market for other types unless penalties are to be incurred; in particular we note that there have been no adjustments in the quotas settled many years ago for filament lamps only, consequent on the introduction of fluorescent lamps. (This point was put to a representative of E.L.M.A. who replied that in practice "everybody would sell as much as they could and pay the compensation"—a reply which only reinforces the view expressed in (iv) below.)

(iv) If the lower scale of payment and compensation under the 1948 Lamp Agreement does not force members to keep to their quotas then an elaborate and unnecessary piece of administrative machinery is being maintained.

For these reasons we recommend that the sales quota system in the United Kingdom should be brought to an end.

### **Restrictions on Imports**

280. Imports of lamps are restricted in two ways. First, certain E.L.M.A. members are parties to agreements under which imports of lamps from the American G.E.C. and its subsidiaries are excluded. As we are asked to consider only the supply of lamps to the United Kingdom market and this arrangement forms part of a wider whole we express no opinion on it. In any case, as is explained in paragraph 63, these agreements will end when the current United States action against the American G.E.C. and I.G.E.C. under the anti-trust laws is concluded. Secondly, as Philips (Holland) is a party to the 1948 Lamp Agreement, the quota system formally limits imports from Holland, though in fact that company's quota has been largely filled by the production of its two United Kingdom subsidiaries, the British Philips Company and Stella. We have recommended that the quota system in the United Kingdom should be brought to an end, and this step would automatically terminate this theoretical restriction on imports.

### **Type B Lamps**

281. E.L.M.A. provides in its rules for members to make, if they wish, general service filament lamps called "Type B" for sale at lower prices than E.L.M.A. lamps proper. For these lamps, which do not bear the usual trade marks of E.L.M.A. members, a maximum efficiency and a maximum life are laid down by E.L.M.A., and each member's sales are limited in quantity. The fixed prices of these lamps have not been changed since before the war, while the prices of E.L.M.A. lamps proper have been (see Appendix 15 (Table 6)), and production is now very small, being practically entirely confined to Crompton's "Kye" lamp. We recommend that E.L.M.A.'s rules should be altered so as to remove both the limitation on the quantity allowed and the upper limits on efficiency and life of these lamps. No doubt the lower limits of efficiency and life would have to be below the limits for E.L.M.A. lamps proper, but upper limits are contrary to the public interest.

### **Life Standards**

282. The members of E.L.M.A. and many non-members make lamps to B.S.I. specifications where these exist. Although B.S.I. has a certification

marking scheme for general service filament lamps and nearly all members of E.L.M.A. and one non-member hold licences to use the mark, none of them uses it (except in respect of London County Council contracts which prescribe it), the members of E.L.M.A. in fact agreeing together not to do so.

283. As regards life standards, before the Phoebus Agreement and to this day the general service filament lamp was and is designed to have, on average, a minimum life of 1,000 hours. It has often been alleged—though not in evidence to us—that the Phoebus organisation artificially made the life of a lamp short with the object of increasing the number of lamps sold. As we have explained in Chapter 9, there can be no absolutely right life for the many varying circumstances to be found among the consumers in any given country, so that any standard life must always represent a compromise between conflicting factors. B.S.I. has always adopted a single life standard for general service filament lamps, and the representatives of both B.S.I. and B.E.A., as well as most lamp manufacturers, have told us in evidence that they regard 1,000 hours as the best compromise possible at the present time, nor has any evidence been offered to us to the contrary. Accordingly we must dismiss as misconceived the allegation referred to above.

284. The attitude of E.L.M.A. members to this matter, however, strikes us as rather arbitrary. When asked whether it would not be possible to market a type of lamp with a longer life in order to test whether the public in fact liked it, their reply was to the effect that this was a matter on which the public could not judge and which ought to be left entirely to the manufacturer, and that in any event users as well as manufacturers are represented on the B.S.I. committees which draw up the specifications to which they manufacture. The whole question contains technical difficulties and is best left to B.S.I., the appropriate body to keep it under review in the interests of both consumers and manufacturers. We have noted the general efforts of B.S.I., described in the report of the Cunliffe Committee on the Organisation and Constitution of the British Standards Institution (1950), to associate representatives of users and consumers more closely with its work. Effective representation of consumer interests is particularly important in this case, where many of the manufacturers' representatives are bound together by close commercial ties and trading agreements.

### THE DISTRIBUTIVE SIDE

285. The E.L.M.A. system on the distributive side presents the following picture. There are uniform fixed prices and discounts for each type of E.L.M.A. lamp,\* and those handling E.L.M.A. lamps do so only on condition that they maintain these prices and terms and require the same condition of those to whom they resell (if not users). Thus there is no price competition between E.L.M.A. lamps at any stage. No distributor may deal in any E.L.M.A. lamps unless he accepts these conditions and their observance is enforced by E.L.M.A. by means of fines and the power of the Stop List. In addition, all wholesalers of E.L.M.A. lamps must undertake not to sell lamps made by non-E.L.M.A. manufacturers (whether Independent Manufacturers or Controlled Companies) and retailers get extra discounts if they agree not to sell non-E.L.M.A. lamps. These exclusive agreements are enforced by E.L.M.A. by fines and the power to cancel agreements; in the case of a wholesaler, cancellation of his agreement has much the same effect as the use of the Stop List, since without an agreement he cannot deal in E.L.M.A. lamps on wholesale terms. There are also aggregated quantity rebates payable to wholesalers and retailers and some users based on their

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\* Flash lamps and cold cathode discharge lamps are excluded from the system, though the E.L.M.A. Rules lay down common manufacturers' selling prices for flash lamps.

total purchases during the year of all E.L.M.A. members' lamps. Finally E.L.M.A. makes payments to certain associations of distributors based on the volume of business done by their members in E.L.M.A. lamps.

286. The E.L.M.A. distributive system is, therefore, based on the prevention of price competition at all stages and on a substantial measure of exclusive dealing by distributors. It is extremely elaborate and involves a considerable administration. E.L.M.A.'s individual agreements with distributors run into many thousands and the provisions for the payment of aggregated quantity rebates must involve the dissection of some thousands of invoices a day.

### **Exclusive Dealing and Rebates**

287. The two fundamental features of the system of exclusive dealing established by E.L.M.A. are:

(a) E.L.M.A. members will not supply any concern on wholesale terms unless it signs an agreement containing an undertaking not to sell any non-E.L.M.A. lamps.

(b) A retailer who is willing to sign an agreement containing an undertaking not to sell non-E.L.M.A. lamps gets an extra discount of 5 per cent.\*

288. E.L.M.A.'s argument for requiring its wholesalers to be exclusive is that they must be given confidential lists of customers (with details of the special discounts allowed in some instances), and that it could never take the risk of entrusting this information to a wholesaler who also dealt with its competitors. E.L.M.A. points out that there are many other wholesalers who, since they do not trade in E.L.M.A. lamps, are available to the Independent Manufacturers. It follows that the Independent Manufacturers are at little risk of being completely shut out of the distributive trade, but we have noted that the exclusive E.L.M.A. wholesalers form a considerable proportion of the leading electrical wholesalers. The denial of all E.L.M.A. lamps to wholesalers who will not sign exclusive agreements is clearly a powerful inducement to them to sign, and the arrangement accordingly hampers the competition of the Independent Manufacturers. The reason for it adduced by E.L.M.A. does not seem to us at all conclusive. In view of the importance we attach to the existence of effective competition we consider that it is against the public interest that exclusivity should be required as an essential part of the contracts under which E.L.M.A. lamps are supplied to wholesalers, and we recommend that the practice should be brought to an end.

289. It will be seen from the figures in paragraph 155 that, out of an estimated total of about 35,000 retailers of general service filament lamps, 19,000 have each signed an exclusive agreement with E.L.M.A., entitling them to the 5 per cent. extra discount. The 5 per cent. discount for exclusivity has a less serious effect, in relation to the public interest, than a completely exclusive system which would shut independent traders out of the market. Nevertheless, the effect of the special discount is important. Gross margins are of the order of 20 per cent. to 30 per cent. of the retail price for most lamps other than motor lamps and 30 per cent. to 38 per cent. for motor lamps; and although there are no data on which to estimate net profit margins with any precision, it seems probable that 5 per cent. of the retail price is, in many cases, a figure comparable with that of the net profit margin made by retailers from the sale of lamps; this special discount therefore puts a very severe pressure on retailers to accept the exclusive arrangement and so reduces the effectiveness of the independent competition on the strength of which we rely in our judgment that the E.L.M.A. system of agreed uniform manufacturers' prices need not be prohibited. In practice, Independent Manufacturers

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\* Sometimes rather more in the case of motor lamps—see Appendix 15 (Table 5).

compete by offering higher margins to retailers rather than a lower price to the general public, so that the effect of E.L.M.A.'s preferential discount has been to transfer competition from the stage of the consumer to the stage of the distributor ; consequently, the consumer has been deprived of the benefit of the price reductions which the Independent Manufacturers have made. It seems to us that competition in the margins allowed to distributors is a poor alternative to competition in price to the public. We conclude that it is contrary to the public interest for E.L.M.A. members to give retailers a pecuniary inducement to buy their lamps exclusively, and that this practice should be brought to an end.

290. It is perhaps useful here to recall (see paragraph 176) that B.E.A. when reviewing its own system of retail lamp distribution decided not to sign any exclusive agreement with E.L.M.A., though many of the former supply undertakings which it had absorbed had previously done so and nevertheless B.E.A. enjoys the same discount as retailers who sign exclusive agreements.

291. A few large users of lamps receive special terms from E.L.M.A. for which one consideration is an agreement to buy E.L.M.A. lamps for the whole, or a stated proportion, of their needs. These users are, no doubt, capable of looking after their own interest, but the principle of exclusivity is, none the less, against the public interest, in that it limits access to these markets by the non-E.L.M.A. manufacturers and so weakens their competition. The practice should therefore be brought to an end.

292. A further point which arises in connection with the distribution system is whether or not it is against the public interest for E.L.M.A. to give to wholesalers, retailers, and users (whether exclusive or not) an aggregated quantity rebate based on their total purchases during the year of all E.L.M.A. members' lamps, and to users a discount which is virtually a quantity discount of a similar kind. This is less important than the two matters dealt with in paragraphs 288 and 289 above, but it follows from the conclusions we have expressed there that in our opinion this practice is also against the public interest. It is certainly a form of pecuniary pressure to buy exclusively from E.L.M.A. members. In considering the matter, it is also difficult to ignore the waste of effort and manpower that occurs from the elaborate statistical machinery which must be used to calculate the aggregated rebates due to each recipient, and the amounts payable by each E.L.M.A. member. We recommend that the practice should be brought to an end.

293. Another practice of E.L.M.A. in relation to distribution is that of making payments to certain associations of distributors proportionate in amount to the volume of business done in E.L.M.A. lamps by the members (see paragraphs 184 and 185). In the case of motor lamps the overriding commission paid to M.F.A. is  $2\frac{1}{2}$  per cent. or  $4\frac{1}{2}$  per cent. on the net value of purchases by members who have Factors' or Wholesalers' Agreements, respectively, with E.L.M.A. In other cases these payments are on a low scale, but we see no advantage in the practice ; its effect though small appears to us to be contrary to the public interest in the context of a continuing agreement between the E.L.M.A. members to maintain uniform manufacturers' selling prices, since it tends to weight the scales against the Independent Manufacturers. We recommend that all these payments should be brought to an end.

#### **Resale Price Maintenance\***

294. We are concerned in this section of our conclusions not with the prices at which E.L.M.A. members themselves sell at the various stages of distribution but with E.L.M.A.'s system of resale price maintenance

\* See paragraph (xiii) of the Introduction.

whereby E.L.M.A. fixes uniform resale prices to be charged for E.L.M.A. lamps by distributors and enforces the maintenance of those prices by the distributors by means of fines and a Stop List, i.e. by collective action by all E.L.M.A. members. The following are the outstanding facts about this system as disclosed in the course of our inquiry:—

(i) There is no price competition between E.L.M.A. lamps at any stage of distribution.

(ii) E.L.M.A. does not object to payment of “dividend” on its members’ lamps by co-operative societies, but does not allow similar freedom to other distributors.

(iii) Fines and the Stop List though effective as methods of enforcement have been used by E.L.M.A. with moderation and for the specific purpose of enforcing resale prices.

(iv) A distributor of lamps has little choice as to accepting a condition to maintain resale prices since in addition to all E.L.M.A. lamps many of the lamps made by Independent Manufacturers are price maintained.

295. We consider that the collective enforcement of resale price maintenance by E.L.M.A. by means of fines and a Stop List should be brought to an end and should not be replaced by any other method of collective enforcement. We are satisfied that it is not in the public interest that E.L.M.A. members should any longer use collective sanctions to enforce the maintenance of the resale prices they themselves fix. We think, too, that E.L.M.A.’s Rules should be altered to extend the permission given by E.L.M.A. to co-operative societies to pay dividends on E.L.M.A. lamps to cover any general price reduction made by a distributor by means of a dividend or other method which does not single out products of particular manufacturers. These changes will in our view assist in keeping the E.L.M.A. prices and distribution system reasonable and so add appreciably to the safeguards for the public interest which are needed so long as E.L.M.A. members continue to fix common manufacturers’ prices.

R. H. A. CARTER (*Chairman*)

G. C. ALLEN

C. N. GALLIE

FREDERICK GRANT

JOAN ROBINSON (subject to the  
Addendum below)

H. L. SAUNDERS

GORDON STOTT

JOSIAH WEDGWOOD

R. E. YEABSLEY

ALIX KILROY (*Secretary*)

31st August, 1951.

296. *Addendum to paragraphs 276 and 277.* It seems unrealistic to expect the Controlled Companies to compete freely and effectively with the members of E.L.M.A. while they continue to be owned by them. I therefore recommend that the Government should acquire the share capital of these companies at a fair valuation. There would be no need to make any change in the management of the companies. By this means, these companies would be freed to take advantage of the situation created by the abolition of E.L.M.A.’s exclusive dealing arrangements, a modicum of competition would be permanently secured, and the effect of our other recommendations generally strengthened.

JOAN ROBINSON