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The effects of national price controls in the European Economic Community

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The effects of national price controls in the European Economic Community

Research Report
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INTRODUCTION BY THE COMMISSION

According to the concept underlying the European Treaties, the prices of goods and services are usually formed by market economy principles, independent of State intervention. This statement only has to be qualified for certain fields where the market economy "laws" either cannot provide a yardstick of scarcity at all or cannot do so to the best economic and social effect. The EEC Treaty contains no specific price rules.

As against this, the Member States take numerous price formation and price control measures whose methods and intensity are hard to determine. These measures pursuant to price laws and regulations are generally considered to include all direct price control measures taken by the State—in particular those described as "close to the market". Such measures have many legal forms—maximum prices, minimum prices, fixed prices, price margin and price publicity arrangements, in particular. The economic impact of State price arrangements—especially on competition policy—is complex. The present study has been rendered necessary by the varied nature of the subject matter and the extreme difficulty of ascertaining with sufficient accuracy the economic effects on the common market of varying national price laws and regulations.

Professor Jürgensen, for many years head of the *Institut für europäische Wirtschaftspolitik* of Hamburg University, deserves praise for the attempt he has made to study exhaustively the impact of national price provisions in the European Economic Community. His study is based on a list of current price provisions (situation 1968) drawn up in co-operation with Member State experts. It works out the effects of the national price provisions, first in a closed economy and secondly in an open economy; a distinction being made between provisions to influence and control price formation and provisions to regulate price levels directly.

The special, novel feature of the study would appear to be that it constitutes the first analysis ever of the conformity of the fairly numerous price provisions still effective in the individual Member States to the system postulated by not only the national but also the Community concepts of the way in which the economy should be ordered. This forms the theoretical basis from which action can be taken. With the help of tables and diagrams a clear summary is given of all national price provisions which Professor Jürgensen considers inconsistent with the conception developed of the way in which the economic union should be organized, and therefore to require practical measures on the part of the Community. The compiler makes the final pragmatic point that national price provisions are only one of the many kinds of intervention likely to hamper the growth and affluence expected from integration, so that the required, feasible measures to harmonize price legislation or co-ordinate price policy can only make a small contribution towards completing the economic community and union on economically sound lines.

The Commission considers that the report—whose contents cannot, of course, prejudice in any way its own attitude to the many individual points examined—affords and excellent basis for the continuation of present work on harmonizing the economic laws of the individual States.

FOREWORD

The present study contains a description of the price controls currently in force in the Member States of the European Economic Community, a theoretical deduction of the effects of these controls and an assessment of these effects. The original plan was to ascertain the effects empirically. But, while it is easy to plan the broad outlines of a study of this kind, it very soon proved extremely difficult in practice to assemble the information needed to carry it out. Faced with the impossibility of compiling the necessary documentation on the markets subject to price control, and with the great difficulty of collecting the necessary details on the structure and application of these controls, a more modest way of analysing their effects had to be found.

Starting from the principle that every economy based on the division of labour finds itself faced, whatever the ruling economic order, with problems of development, allocation and distribution, seven price regulation functions (*Steuerungsaufgaben*) have been formulated, which the State can either leave to the automatic operation of the market, or can ensure through the autonomous action of economic policy. The analysis assumes that, under the ruling conception of economic order, all these regulating functions are left to the operation of the market mechanism, and goes on to inquire into the effects of price controls on these functions. In order to assess these effects, consideration is then given to the way in which, under the ruling economic order, competence in respect of these regulating functions is divided between the EEC and its Member States and an opinion is expressed on the extent to which the controls discussed are consistent with the economic order.

While it was originally intended that concrete recommendations should be made to the economic policy authorities on the basis of the empirical findings of the research, the change in the conception of the task has meant that this Report can only serve as a basis for further work in this field. It nevertheless constitutes a contribution towards a more systematic study of the operation of mixed economies, as well as providing concrete elements for wider empirical studies.

The basic document for the description of price systems has been an Opinion addressed to the Commission of the EEC by the Institute of Comparative Law of the University of Paris, with the co-operation of Professor Champaud. In order to fill the gaps in this document, and partly to obviate the approximations resulting from repeated translations, other publications available in Germany have been used, and the national authorities of the EEC Member States have been invited to co-operate. With the exception of the Netherlands, all countries have provided valuable additions and corrections to the description of existing controls. In the case of France, the experts named above were able to provide further particulars. Since personal contacts were ruled out for reasons of cost, it has not been possible to clear up every question. In assessing the effects, it has therefore sometimes been necessary to make working assumptions, the validity of which cannot be tested here. In every case, it has been taken as a principle that the controls in force are applied by the State in question and observed by the economic transactors concerned. For example, the opinion cited above contains the warning that the practical effect of the French controls should not be overestimated, since the authorities in that country often prefer to make a parade of force, rather than actually using it, and the effects inferred in this Report may therefore seem greater than they really are in practice. It has been impossible in this study to take account of the fairly widespread illegal practices, and it must be left to the economic policy authorities to assess the true extent of the effects discussed in this study.

In spite of every effort to ensure completeness, it cannot be guaranteed that all controls have been included. To facilitate the application of the analysis to any control which may have been omitted, the general comments on individual types of control have been kept relatively broad.

Our warmest thanks are due to all those who have co-operated in this research.

HARALD JÜRGENSEN

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PART I

OBJECTS AND CRITERIA OF THE STUDY

CHAPTER 1

OBJECTS AND PLAN OF THE STUDY

Ever since the signature of the Treaty constituting the European Economic Community (the EEC Treaty), on 25 March 1957 at Rome, the signatory countries have been endeavouring to create the conditions of an internal market within the whole economic area which it is desired to integrate. To this end, it was decided not only to institute a common market, but also to harmonize and unify the economic policies of each Member State. Although the "Founding Fathers" regarded the economic community as a first step towards political union,(1) the criterion set by the Treaty for assessing the degree of harmonization of economic policies is not political identity or unification, but economic expediency, in the light of the agreed objectives and procedures. In view of this limitation, all economic policy measures must be analysed in the light of their consistency with the objectives set and with the economic order envisaged. This limitation no doubt complicates the work of the Commission responsible for applying and enforcing the Treaty, but it also gives all Member States a great opportunity for a new and rational orientation of their national economic policies.

In considering *national price controls*, the present study is concerned with one of the most controversial categories of economic policy measures and of economic science. It will have achieved its object if it serves both to facilitate the action of the Commission and to stimulate national reflection on the soundness of the different economic policies.

The present study consists of a description of national price controls, an analysis of their effects and an assessment of their consistency with the ruling economic order.

The descriptions of the controls and the analysis of their effects are grouped in Part II, which is planned in the light of the classification outlined in the next following section of this introduction. In the descriptive part we have tried to give the fullest possible description of the controls, but we cannot guarantee that there are no omissions, since our experience in compiling the documentation inspires us with a certain mistrust.

The analysis of the effects is designed to show how, and with what results, the economic process is affected by the national controls within each State and the controls affecting intra-Community relations. It is certainly impossible within the framework of the present study to make an empirical inquiry, owing to the large number of controls, the products covered, and the information which would have to be compiled on the true facts of the markets controlled. We have therefore had to confine ourselves to the theoretical plane in inferring the possible results. Since competition and market mechanisms play an undoubted, but variable, role in regulating economic phenomena in all Member States, Part II is devoted to a deduction, on the basis of the criteria set out in Section 3 of Part I, of the possible effects on the market mechanisms and the driving force of the market, namely competition. In the case of each control, we consider first the national and then the international effects.

In the separate consideration of national effects, we disregard the interdependence of markets from the point of view of external trade. The field of application of the price controls and the market area of the products are then identical. The conditions of competition of all market participants in direct competition with each other are defined by the same controls. The duty to act or to refrain from acting can be escaped only by abandoning the price-controlled activity or by resorting to illegal practices. (2)

In theory, this part of the analysis corresponds to the premises of a closed economy. In practice, it virtually corresponds to the situation of the EEC countries before the commencement of institutional integration. No doubt external trade already existed at that epoch, but it could be limited or halted by economic policy measures in order to avoid disturbance to the national economy. It would nevertheless be a mistake to think that the underlying premises of this section are bound to lead to unrealistic results under existing conditions. In the first place, the effects

(1) It is an interesting historical sidenote that Lbdc advanced the same idea in connection with the trade unification of Germany: "Trade unity and political unity are twin sisters. One cannot come to birth without the other." List, Friedrich, Collected Works, Vol. 7: *Die politisch-ökonomische Nationaleinheit der Deutschen; Aufsätze aus dem Zollvereinsblatt und andere Schriften der Spätzeit* (Ed. Lenz F. and Wiskemann E.) Berlin, 1931, p. 276.

(2) Owing to the severity of the punishments meted out by States, the controls will not be evaded unless they are felt to be particularly intolerable; we have therefore largely disregarded in this study the possibility of illegal practices.

inferred in the context of a closed economy also make their appearance as a trend in an open economy. The importance which they may assume in each particular case depends essentially on the question whether the products are capable of external trade or not. [3] The subsequent enlargement of the framework of the analysis thus calls in the first case for a modification in the fundamental tendency, while no change is needed in the case of products inherently incapable of external trade. Secondly, the whole of the integrated territory of the EEC resembles a closed economy. While the individual Member States are hardly any longer in a position to adopt a protective economic policy in their external trade, the EEC is well able to close its markets to third countries.

The subsequent consideration of the effects which follow if the analysis allows for the interdependence of the different economies, corresponds in theory to the premises of an open economy, and, in practice, to the existing situation of Member States. In these conditions, the field of application of the controls and the distribution area of products capable of external trade are no longer identical. The State which controls prices has no means of preventing market participants from diverting their efforts to attack the markets of EEC Member States where such controls do not apply; it can do so, in the case of third country markets, only with some difficulty, owing to the obligation to submit to a common trade policy. Supply and demand may shift with perfect legality from one country to another, foreign markets acting as a safety valve against the possible creation of illegal markets.

Even assuming the strictest application of the corresponding controls, it would be a mistake to think that the conclusions of Part II mean that the effects in question must inevitably occur in each EEC Member State or in the whole of the Community territory. In practice, market disturbances as a result of controls, inferred theoretically, become important only if the ruling economic order in fact assigns the corresponding task of regulation to the price and market mechanism. It is therefore only in Part III of this document that the degree of plausibility in the appearance of the effects can be judged, by considering price controls in the light of their consistency with the economic order actually existing or aimed at by the EEC.

In order to assess consistency with the economic order, the first thing, in Part III, is to ascertain the ruling conception of the economic organization of Member States and of the EEC. In practice, when the economies of all EEC Member States are commonly called "market economies" because economic decisions are taken there by a great number of economic transactors, [4] all that is really meant is that, fundamentally, these economies are not administered by a central authority. In order to achieve its aims, a modern State does not rely solely on issuing orders; it may use with equal success indirect means such as financial incentives or disincentives, and while the concept of market economy mentioned above no doubt gives some indication of the decision-making centre, it does not tell us who finally controls the economic process. If this role is played by the wishes and behaviour of consumers as reflected in their price offers, we can talk of regulation by the market mechanism. But if, on the other hand, the stress is laid on the action of State authorities, we shall speak of regulation by the autonomous action of economic policy, even if the aims are set in the light of consumers' wishes and if the measures merely influence the free formation of market prices.

A rapid survey of economic policy indicates that the concept of market economy has a varied content in each country, from the point of view of regulating the economy. In addition to the possible diversity of aims, the essential cause of variations in the mix between automatic regulation by the market and autonomous regulation by economic policy is to be found in divergent conceptions of the choice of those of the functions indicated in section 3 of the present introduction which can be satisfactorily discharged by market mechanisms in the context of given or conceivable market conditions.

We shall therefore inquire into the mode of economic regulation applied, or intended to be applied predominantly, in the EEC Member States and within the EEC, in the light of the different aims of such regulation. The characteristics of these modes of regulation cannot be defined on the basis of any written programme of economic organization, except for the EEC itself. For the Member States, hardly any full basic programmes are available, and, furthermore, official statements of attitude often conflict with the nature of the measures taken. [5] The attempt has therefore

(3) A product may be directly or indirectly capable of external trade. A product is directly capable of external trade if there is no natural or technical obstacle to its import or export. A product is indirectly capable of external trade if, while it cannot itself be the subject of international trade, it enters as an essential input into the production costs of products directly capable of external trade.

(4) Cf. e. g. Groeben, H. von der: Die Entwicklung der EWG und ihre Auswirkungen auf die Wirtschaftsverfassung in den Mitgliedstaaten; *Die öffentliche Unternehmung in der zweiten Stufe des gemeinsamen Marktes*; IIIrd European Conference on Public Economy, Berlin, 1965, p. 21.

(5) In this connection, Wessels makes the following pertinent comment: "To render lip-service to the market economy seems to be part of the stock-in-trade of everyone responsible for economic policy. But this profession of faith is often followed up by the declaration that the special situation of the branch or country in question naturally calls for numerous limitations on competition." Wessels, Th.: Uber wirtschaftspolitische Konzeptionen des Wettbewerbs, *Wirtschaft, Gesellschaft und Kultur* (Miscellany presented to A. Muller-Armack, Ed. F. Greiss and F. W. Meyer) Berlin, 1961, p. 23.

been made to infer the conception of an economic order from the economic policy followed since the war. Naturally, in drawing our conclusions, we have taken account solely of the main lines of action, and not of isolated measures, since policy guidelines do not cover all particular problems and the exceptional cases encountered by day-to-day administration. This inductive method will also show whether the nature and number of price controls considered in the present study are explained solely by exceptional situation, or whether such controls are a normal instrument of the economic policy followed. It must also be ascertained what competence in price matters is in principle assigned to the State under the current legal system.

The study of the possible effects of price controls and the classification of conceptions of economic order have been carried out according to the same criteria. It is therefore relatively easy to assess how far each function of regulation conforms to the economic order. If a control is calculated to interfere with the market mechanisms in discharging a function of regulation which is theoretically assigned to those mechanisms, then that control, from this point of view, is not consistent with the order. If the individual assessments on all the functions of regulation are uniformly favourable or uniformly unfavourable, an overall assessment can then be made of the corresponding controls. Naturally, if both favourable and unfavourable judgments are formed, it is impossible to make a scientific overall assessment. The importance of each function of regulation can be assessed only from the political point of view, and it is generally impossible to quantify the amount of interference or support affecting each function, with the result that, in these cases, overall assessment must be left to those responsible for economic policy.

Any assessment in the light of the conception of the economic order of the EEC must be formulated from two different points of view, corresponding to two different stages of integration. In the first stage, it must be borne in mind that the fundamental aims of the Treaty are to be sought only by the means expressly specified in the Treaty. In this case, enactments cannot be regarded as unfavourable unless they disturb the flow of factors and products between Member States. In another stage, still in the future, it is assumed that the foundations, implicitly contained in the Treaty, have been laid for a common and unified economic order. In this case, enactments must also be rejected as inconsistent with the economic order where their directly deducible effects remain limited to each national sphere.

Having thus outlined the objects of the study and its overall plan, we go on in the next Chapter to introduce the subject of the study and to attempt to classify existing controls by types.

CHAPTER 2

CONCEPT AND TYPES OF PRICE CONTROLS

1. Price controls are obligations imposed by the State to act or to refrain from acting in matters directly connected with prices. Economic science defines "price" as the expression of exchange value. In modern economies, "exchange" is generally effected against money and relates to products (goods and services), factors of production, or another currency. We therefore have: (1)

(a) product prices, i.e. the price of goods and services;

(b) factor prices, i.e. the price for the use of the factors of production, namely, land (= rent), labour (= wages) and capital (= interest);

(c) the exchange rate of money, i.e. the price of foreign currency.

The present study is not concerned with the special problems raised by national exchange control enactments. In our analysis of effects, we assume, in accordance with current practice, that exchange rates are fixed. The present work deals mainly with the control of product prices. Nevertheless, since the EEC Treaty includes provisions designed to improve the mobility of factors of production as well as of products, and since under the theory of external trade these two mobilities can under certain circumstances be substituted for each other, consideration will also be given, so far as available documentation allows, to the control of factor prices.

National economic policy makes use of instructions and prohibitions concerning product prices and/or factor prices in order directly or indirectly to influence the level of prices. Direct action takes the form of fixing a specific figure for the total price or for the mark up and prohibiting the charging of prices other than the prescribed prices. In this case the formation of prices on the market would be ruled out as a matter of principle where the market prices did not satisfy the enactment. When the influence is indirect, the level of prices is, in principle, fixed according to the laws of the market. But price formation is influenced by enactments which compel economic transactors to follow certain behaviour. *We therefore define price controls as obligations to act or to refrain from acting, imposed by the State to influence or control price formation, as well as directly to fix the level of prices.* Economic policy actions which affect the volume of supply or demand and thus bear only indirectly on prices, and action on costs through the medium of taxes and subsidies, therefore fall outside this definition of price controls.

2. The first category of enactments concerns price formation. In a market economy, prices are formed by the confrontation of supply (quantities offered and price asked) with demand (quantities demanded and price offered) on the market. These enactments may therefore operate on the price asked by the sellers or the price offered by the buyers; they must be regarded in part as an element in the law of competition. (2) There are no enactments in the EEC countries governing the prices offered by buyers. (3) In grouping the enactments of this kind binding on the seller, we can be guided by the fact that the process of price formation takes place in three phases; first, ascertaining the necessary and possible level of price demands, secondly, determining prices, and, thirdly, bringing them to the notice of customers. State influence may therefore be exercised by:

(a) enactments governing price formation;

(b) enactments concerning the general limitation of price levels;

(c) enactments governing publicity, supplemented by measures of supervision.

(a) The first group must be taken to include enactments concerned generally with the freedom to establish autonomous price demands. Controls may protect this freedom as well as limit it. A typical

(1) In so far as it defines price as "the consideration normally paid in money under certain contracts of exchange, mainly contracts of sale, lease, farm letting, work or services" (a), (Helm, H. G. Preisrecht, in HdB, Vol. III, 3rd edition, entirely rewritten, Stuttgart, 1960, § 4408) legal language, owing to its inflexibility is not appropriate to the analysis of the complete price system in a given economy.

(2) The frontiers between the law of competition and price controls are fluid: this is particularly clearly seen in the practice of the Scandinavian countries, where the law of competition always takes the form of price control. Cf. on this subject, Stocker, P.: *Wettbewerbspolitische Erfahrung europäischer Staaten*, in: SchwZfVu St, 101st year, 1965, p. 264.

(3) The legal power which generally exists to take measures along these lines has not so far been used.

measure of protection is the prohibition of resale price maintenance (*Verbot der vertikalen Preisbindung*). Resale price maintenance exists whenever an entrepreneur (generally the manufacturer) binds the resellers whom he supplies "to maintain determined resale prices and to impose the same obligations on subsequent acquirers until sale to the final consumer". [4] This practice—also inaccurately called *Preisbindung der zweiten Hand* [5]: second party price maintenance—deprives the commercial stages down the line, by virtue of a contract under private law, protected by the State, of the power freely to determine their price demands. The prohibition of resale price maintenance therefore guarantees the distributors at all stages the right freely to fix their price demands.

Enactments restricting the freedom of price formation may require certain conditions to be satisfied or certain rules to be followed. The first form includes the "stability contracts" (*contrats de stabilité*) and the "programme contracts" (*contrats de programme*) under French law, briefly known as the "system of conditional liberty", considered in greater detail in Part II. The second form includes the prohibition of price discrimination and the control of rebates. The *prohibition of discriminatory price practices* not only limits the level of prices, but requires each price demand to be established on the principle of "equal prices for equal services from the same seller". Differential prices are prohibited unless they correspond to differences in cost. Similarly, *the control of rebates* does not lead to a general limitation of price levels, but merely fixes a maximum figure for the level of rebates. This form of control therefore affects the relationship between gross prices and net prices.

(b) Enactments concerning the general limitation of price levels do not set maximum prices in figures, but merely lay down principles for determining or assessing price levels, which may relate to a minimum price limit as well as to a maximum price limit. Prices are prohibited which do not conform to the minimum and maximum values resulting from these principles. The EEC countries make little use of controls fixing minimum price levels in this form; reference needs only be made to the prohibition in France of *sales below cost price*. Much more widespread are *rules of costing* which lay down principles for taking into account cost components and profits in calculating or assessing upper price limits. It is true that the maximum price is not uniformly fixed in this way, but the enactments, sometimes very detailed, enable it to be calculated easily enough in each particular case. It is infinitely harder to determine the maximum authorized under enactments which merely contain general principles for assessing the price level. This applies to the "normal price rule" and the "prohibition of overcharging", referred to below.

(c) The rules of publicity oblige sellers to inform the public of their prices. Among the enactments applicable in the EEC countries, only *the compulsory display of retail prices* falls within this category.

Among the rules for the verification of sellers' prices may be cited the simple compulsory reporting of prices, the compulsory reporting accompanied by a right of veto, and the compulsory authorization of prices. Their object is to enforce the special controls and to verify the economic expediency or political desirability of generally free prices.

The *simple compulsory reporting of prices* merely requires the price or price changes to be reported to the authorities for information. The *compulsory reporting accompanied by the right of veto* obliges the seller to report his price changes and entitles the authorities to object to the reported prices within a specified time. While the prices reported under this procedure can be charged after the expiry of the time limit, under the system of *direct compulsory reporting*, each new price must be the subject of express authorisation. The difference between these two systems is therefore purely administrative. Skilfully used, they can take the place of price freezes. Compulsory reporting accompanied by the right of veto, and compulsory authorisation may therefore be classified, according to the way in which they are used, among the measures designed to influence price formation, or among those designed directly to control the price level.

3. While the types of control so far considered leave the setting of price levels largely in the hands of private economic transactors, direct price control enactments, on the other hand, impose a much more serious restriction on the freedom of the market to form its own prices. Controls of this kind set price limits in terms of actual figures. They may take the form of setting a maximum price (ceiling price) or a minimum price (floor price) or of fixing maximum and minimum points between which prices or margins may fluctuate (fixed price or price brackets). Such enactments may relate to the total price charged, thus affecting the services rendered at all stages, or to a single stage only, generally by fixing the margin between the buying price and the selling price of a product (the mark up or trading margin), in absolute or relative terms.

According to the manner in which the controlled prices are calculated, a distinction may be drawn between mandatory prices, calculated by the authorities (*staat-*

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(4) Koning, D.: *Vertikale Preis- und Konditionenbindung nach deutschem und EWG-Kartellrecht*, Berlin, Frankfurt/Main, 1965, p. 1.

(5) Cf. in this connection, Roper, B.: *Die vertikale Preisbindung bei Markenartikeln*, Tübingen, 1955, pp. 6 and following.

liche kalkulierte Preise) and frozen prices (*Stoppreise*). The former are calculated on the basis of costs. The latter are the market prices on a reference date, and may be influenced not only by costs and the market situation, but also by restraints on competition.

(a) Maximum prices are the commonest form of direct price controls in the EEC countries. Maximum price controls are introduced when the prices established by market conditions reach levels which are deemed undesirable from the point of view of policy for the distribution of wealth or for other reasons. The aim is, by means of mandatory prices or frozen prices to compel the suppliers to lower their prices or to refrain from raising them, thus favouring the consumers.

A maximum price may be calculated on the basis of the individual costs of each seller, or on the average costs of "a well managed enterprise". If unit costs vary from one seller to another, the first method leads to maximum prices which vary according to the enterprise, but standardizes the maximum unit profit. The equalizing effect of this instrument of maximum price policy from the point of view of the distribution of wealth is therefore substantial. Under the second method a maximum unit price is fixed which allows the continuance of differences of profit if the unit costs differ. If it is desired to avoid a fall in supply, the calculation must be based on the costs of marginal producers. The higher it proves necessary to fix the unit price the higher will be the production revenue of the sellers with relatively favourable costs. The effect on the distribution of wealth is therefore less marked than that of the former method.

If the actual market prices seem acceptable, and it is desired to prevent further rises, this can be done by freezing prices. Here again, it is possible either to freeze all individual prices, or to choose what is regarded as a representative price as the frozen price.

(b) *Minimum price controls* are introduced when it is desired to favour the sellers, generally when free price formation would entail an "exploitation" of the seller by the buyer. In this case, also, the price level may be mandatory or may be adopted from the market price. It is true that market prices are in danger not only of serving to support a branch, but also of preserving menaced forms of monopolistic markets. But since the sellers are generally in a stronger position, this instrument is rarely used in practice. Only minimum wage controls have a certain importance.

(c) The types of control so far discussed all take the form of the legal limitation of price movements in one direction only. The combination of these types in fixed prices or price brackets limits price movements in either direction. Fixed prices and price brackets are designed to protect both buyers and sellers from "exploitation" by the other party.

Fixed prices apply mainly in two fields, namely the price of products of public enterprises, generally sheltered from the competition of private enterprises, and the prices on markets which are in disequilibrium. In the first case the fixed price, from the formal point of view, does not represent any intervention by the authorities on the market, but the fixing within the enterprise of the desired price, in the same way as is done by a private entrepreneur. But there may be differences in substance if, in fixing prices, the State has other objects than those of a private entrepreneur. In the second case, the fixed price is an instrument of market organization.

In normal times, the *price bracket* system allows the free formation of prices between a floor and a ceiling. It is simply designed to prevent major price fluctuations due to temporary disparities between supply and demand. The system thus also favours market organisation in a situation where absolutely free price formation would have undesirable results for the national economy.

This attempt to classify price controls gives an overall view of the obligations to act or to refrain from acting applied by the EEC countries in the matter of price control, and at the same time supplies an outline plan for analysing the effects of these controls. But before going on to this point the different categories of effects and the methods by which they can be inferred must be described.

CHAPTER 3

THE CRITERIA OF THE STUDY

1. *THE STARTING POINT FOR AN ANALYSIS OF THE EFFECTS IN A CLOSED ECONOMY*

The effects can be analysed by inquiring into the possible incidences on competition and on the market mechanisms. The starting points of this study will be established by the inquiry which follows into the results and conditions of the functioning of market mechanisms. Since, according to Mason, there are as many definitions of functional competition, and, therefore of market mechanisms, as there are functional national economies (1) we cannot adopt a general definition; we must therefore first inquire into the tasks which must be performed by market mechanisms if they are to be regarded as functioning properly. We shall then go on to indicate the prior conditions which must be satisfied if the market mechanisms are to fulfil the functions described.

Competition and market mechanisms are not ends in themselves, but merely means of achieving different ends. In the context of the present economic analysis, we are concerned with competition solely as the driving force of market mechanisms, and with market mechanisms solely as instruments for the regulation of the economic process for the achievement of overall long term economic aims. If price controls affect competition and the market mechanisms, they thereby further or retard the achievement of these aims. The analysis of their effects should therefore envisage the adaptation of controls to the aims.

The starting points for the long term aims, in all economies based on the division of labour, are the major problems of production and distribution, the problem of production being in turn subdivided into problems of the level of production and problems of the pattern of production. The *problem of level* relates to the determination of the amount of the national product. *The problem of patterns* covers questions relating to the composition of the national product (*pattern by branch* or *pattern of outputs*), to the combination of factors by means of which a given quantitative or qualitative result of production is to be obtained (*pattern of inputs* or of the utilization of factors) and to the territorial distribution of economic activity (*regional pattern*). Finally, *the problem of distribution* concerns the distribution of the benefits of the national product obtained.

The aims sought by the EEC countries in connection with these fundamental problems are largely the same. With regard to level, the aim is maximum growth, and with regard to distribution, the aim is a more equalitarian distribution. Among the theoretical aims connected with the problem of patterns, those affecting the pattern of inputs and outputs are generally subordinate to the growth target, while the place of regional policy goals is not always clear. Similarly, the short term goals of the "magic triangle" (full employment, price stability, and the equilibrium of external payments), which can be regarded as by-products of the aims of growth and distribution, have the same value in all European countries. (2)

In the context of the guidelines set, autonomous regulation through economic policy is directed towards concrete aims, which are to a large extent freely chosen. Market mechanisms, on the other hand, can only discharge well defined functions of regulation, and can therefore merely, in certain circumstances, make a contribution towards the achievement of certain aims. In our view, market mechanisms are functional when they discharge the following functions (3) in connection with the fundamental problems and aims:

(I) *The development function*, concerned with the question of level, and directed towards the increase and improvement of the factors of production, which, in the last analysis, determine growth; it operates through:

(1) the quantitative adjustment of the economic production mechanism to the aggregate variations in demand (*quantitative development function*), and

(1) Cf. Mason, E. S.: *Economic Concentration and the Monopoly Problem*, Cambridge (Mass.) 1957, p. 381.

(2) Cf. e.g. the classification of price stability under the aim of distribution in Bonbach, G.: *Preisniveaustabilität, wirtschaftliches Wachstum und Einkommensverteilung*, in SchwZfVuSt, 95th year/1959, pp. 19 and foll.

(3) The following functions have been developed on the basis of Kantzenbach's functions of competition. We do not, however, always describe them as such, since competition is merely a necessary condition, and not a sufficient condition, of the operation of market mechanisms. Cf. Kantzenbach, E.: *Die Funktionsfähigkeit des Wettbewerbs*, Göttingen, 1966, p. 16.

(2) the extension and reinforcement of technical knowledge about the factors of production, production methods and products (*qualitative development function*).

(II) *The allocation function* [4] concerned with the question of patterns, which governs the utilization of the disposable factors of production, and which should fulfil the following tasks in the light of the individual problems which arise:

(3) *to regulate the pattern of outputs* in the light of purchasers' preferences as reflected in price relationships;

(4) *to regulate the overall pattern of inputs* [5] in the light of the productivity of the factors of production and of productive enterprises, and

(5) *to regulate the regional pattern* in the light of regional cost advantages.

(III) On the question of distribution, the function of the market mechanisms is to distribute, in the light of the services performed by the market, the benefits of the national product obtained (*distribution function*). In modern economies, where money operates as a title to a share in the results of production, the distribution function has a monetary element and a real element: [6]

(6) to regulate the distribution of incomes in the light of the services rendered by the market (*monetary distribution function*); and

(7) to regulate the personal distribution of goods and services in the light of the assessment of marginal utility and the readiness of buyers to pay the price asked (*real distribution function*).

A market mechanism of this kind is not a universal and infallible force of nature, but "a cultivated product of civilisation" (*ein kulturelles Züchtungsprodukt*) [7] which can function properly only on certain specific conditions. The first is a market system under which, by the free confrontation of supply and demand, relations of exchange between goods and services and their counterpart, or in other words, prices, can be formed in such a way as to establish a quantitative equivalence between supply and demand.

The relations of exchange [8] between products must therefore be flexible, or in other words, they must necessarily increase when

(a) the volume of demand in a given period exceeds the production capacity (*price rises connected with demand*), or

(b) the rise in factor prices is not offset by gains in productivity (*price rises connected with costs*);

Conversely, these relations must necessarily fall when

(c) competition becomes keener (*price reductions connected with competition*).

The second condition is that prices must influence the direction of the economic activity of the economic transactors concerned. [9] Directional impulses with a utility for all the functions of the economy can occur only when there is competition on both sides of the market. The competition necessary to the functioning of the market mechanisms must also manifest itself in:

(a) "the autonomous propensity of sellers or buyers (competitors) reciprocally influencing each other by their economic success to enter into business relations with third parties (customers or suppliers), in the expectation of optimum business conditions" [10] (market competition) (*Marktwettbewerb*) as well as in

(b) the effort to create possibilities for favourable business conditions (preparatory competition) (*Vorbereitungswettbewerb*).

Under existing conditions, market competition operates through the parameters of action of *prices,* [11] qual-

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[4] To avoid any misinterpretation, it should be noted that this function should ensure "allocation as movement" as advocated by Clark and Stegeman. There is therefore no question of aiming at a social and economic optimum, but merely of trends in this direction, which are interrupted by any change in the data and subsequently resume their course. Cf. Clark, J. M.: *Competition as a Dynamic Process*, Washington, D. C., 1961, p. 16 and pp. 70 and foll. Stegemann, K.: *Wettbewerb und Harmonisierung im Gemeinsam Markt*, Cologne, Berlin, Bonn, Münich, 1966, pp. 83 and following.

[5] It should be made clear that the regulation of the pattern of inputs affects the substitution between factors of production as well as the shift of production among productive enterprises.

[6] It should be added that the market mechanisms discharge their distribution function only when consumers are satisfied in descending order of their readiness to pay the price, and that, personal relationships of marginal utility being equal, this readiness is determined by the service rendered on the market.

[7] Cf. Albert, H.: Der Marktmechanismus im sozialen Kräftefeld; *Systeme und Methoden in den Wirtschafts- und Sozialwissenschaften*, Miscellany presented to Beckerath, Tübingen, 1964, p. 100.

[8] In thus closely following the general concept of "price", it must be noted that not every absolute monetary price is bound to be flexible. The exchange relation of a product may theoretically vary, while its absolute monetary price remains constant in value, as a result of variations in the absolute monetary price of all other products, or of variations in quality. In practice, the market mechanisms should no doubt work less well on the occasion of such modifications in exchange relations than in the event of variations in absolute monetary prices.

[9] It is for this reason that the market mechanisms are also known as price mechanisms.

[10] Borchardt, K. and Fikentscher, W.: *Wettbewerb, Wettbewerbsbeschränkung und Marktbeherrschung*, Stuttgart, 1957, p. 15.

[11] I.e. basic price; rebates, discounts, transport costs and terms of payment.

ity [12] and terms of delivery. [13] [14] Preparatory competition, being forward-looking, is actuated by a desire to change the data applicable to the parameters of action of market competition. Its parameters of action are therefore *investments* [15] and management action aimed at increasing production capacity, at rationalization and at the encouragement of research and development.

But these two forms of competition are not mutually independent. In the long run, neither can exist without the other. Without preparatory competition, market competition would soon collapse. In strict theory, the final outcome of a trend determined by market competition alone would be stagnation in an equilibrium of perfect competition. Similarly, preparatory competition is not infinitely conceivable in the absence of market competition. Here again, in strict theory its outcome would be a state of stagnation in which each entrepreneur had a monopoly of his production. Every stage of competition therefore contains the elements of an impetus towards the next stage.

It is now necessary to inquire into the conditions which must be satisfied on the side of supply and of demand, if this two-stage competition is to operate between the parties in line with the functions of the market mechanisms.

The supply side of the market must be made up of a number of sellers, possessing both the objective power to compete and the subjective will to compete. The elements in the *power to compete* are *institutional freedom of action* and the *feasibility of action* along the parameters of action listed above.

The first element demands, in addition to freedom of enterprise and freedom to trade, freedom to reduce prices, already referred to. Action is feasible, if the variation of the quantity or quality of supplies depends mainly on human will (if reproduction is possible), and if the actual or potential suppliers also have certain financial resources to enable them to act (the capacity to finance investments).

The originating cause of *the spirit of competition* is the personal interest [16] which necessarily generates the desire to maximize long term profits by producing marketable products. This desire is manifested by the producer's effort to increase, or at least to preserve, his share of the market. The spirit of competition springs only partly from spontaneous impulse; far more important on the whole is the indirect, and, above all, the direct, compulsion to improve the services rendered. *A spontaneous impulse* can, in general, come into being only when there is some possibility that competitors will be found to react, not directly to the act of competition, but to the resulting shift in demand. In this case, the spontaneous attack on the market position of competitors amounts to *a direct compulsion* on them to react by competition on their own part if they are not resigned to accepting a diminution of their profits and of their share of the market. In developed economies, the major driving force of *indirect compulsion* becomes powerful if the majority of suppliers, ignorant of, and alarmed by the competitive projects and activities of their fellows become apprehensive of shifts in demand and prepare themselves for "preventive warfare". In such a "climate", further competitive drives are always to be expected, which will sustain the desired process of the reduction of prices and costs and the improvement of quality.

The existence of these conditions allows supply to behave in line with the action of the market mechanisms described in listing the functions above. [17] The question whether this behaviour with a view to maximizing profits is rational, and therefore plausible in the long term, depends on the state of demand.

On the demand side there must be a number of consumers who in their personal interest desire to achieve the maximum long term material utility by the acquisition of goods. In addition the freedom of choice of the contracting parties must not be limited by State or individual action. In these conditions we

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(12) Including the quality of the product and the after-sales service desired.

(13) Essentially, delivery dates.

(14) Advertising, which is often added to this list, is merely a medium of information about conditions of sale. If it steps beyond this role and itself becomes a parameter of action, we end up on the macro-economic plane with a waste of productive forces. Cf. also on this subject: Brosse, U.: *Volkswirtschaftliche Verschwendung durch Werbung?* in: WuW 1967, pp. 320 and foll.

(15) Investment is interpreted to include any use of the factors of production to maintain, enlarge or improve the resources of factors of production or technical knowledge, other than in the case of households.

(16) In this connection it should be noted at the outset that the profit motive need not be the direct stimulus to action; it is enough if profit is regarded as a success symbol (e.g. by conferring power, prestige or security). Furthermore we can agree with Seidenfus that it is only the maximizing of long-term profits which can bring about the optimum functioning of the competitive economy, and not the existence of "profit grabbers" whose aim is to "get as much as possible" out of the market, as quickly as possible, without reinvesting their gains. Cf. Seidenfus, H. St.: *Kürzfristige und langfristige Wirkungen des Wettbewerbs*, Systeme und Methoden in den Wirtschafts- und Sozialwissenschaften (Ed. Kloten, N.; Krelle, W.; Müller, H.; Neumark, F.), Tübingen, 1964, p. 684.

(17) These are also the conditions for a positive elasticity of suppliers' prices, an elasticity which is, however, not always necessary to the functioning of the market mechanisms in the case of direct reactions of the volume of supply to variations in the volume of demand.

may expect to find in each market a negative elasticity of the volume of demand in relation to the price variations of each supplier.

But these minimum conditions for the functioning of the market mechanisms do not, however, guarantee that the functions will be satisfactorily discharged, qualitatively and quantitatively, from the point of view of the economy as a whole. The quality of the results, i.e. the line of action of the mechanisms, can correspond to overall economic goals, only if there is at least approximate identity between the costs to the community and to individuals and the results. The quantitative results are reflected in the speed with which the market mechanisms function. If the minimum conditions only are satisfied, we can only expect a very clumsy *ex post* co-ordination. In order to speed up *ex post* co-ordination and to establish anticipatory and evaluative *ex ante* co-ordination, suppliers and consumers must have adequate possibilities of creating *market transparency* as to the situation of their opposite numbers and its development. The *ex ante* co-ordination of enterprises results from action on the basis of expected price impulses. In order to prevent mistakes in forecasting from leading to excessive surplus capacity, it is absolutely essential for the supplier to have *a certain minimum knowledge of the prospective action of his competitors.* But since the transparency of the behaviour and reactions of competitors at the same time reduces uncertainty and insecurity and thus strengthens the tendency of sellers to adopt concerted restrictive behaviour, ([18]) too much knowledge is undesirable owing to the great importance of indirect pressure for the will to compete.

The latent tendency of suppliers towards collusive restraint or competition is also favoured if the freedom of action of consumers is materially or institutionally restricted for certain products. ([19]) Such limitations involve a serious reduction in the price elasticity of aggregate demand. The result is that competition policy has a special task of supervising markets which are highly transparent as between suppliers and their competitors and markets where the price elasticity of aggregate demand is very low.

This outline of the conditions and results of the functioning of market mechanisms leads to the following conclusions for the analysis of the effects of price controls in a closed economy.

In studying the effects on competition we shall start with their influence on the *ability to compete.* This will be affected if the enactments in question influence the *institutional freedom of action* to reduce prices in a system of market competition or *the feasibility of action* to finance investments under a system of preparatory competition. But since the degree of *market transparency* is also important to the exercise of the ability to compete, we shall also study the influence of price controls on market transparency on the side both of supply and of demand.

From the point of view of *the spirit of competition*, we want to know if the controls are calculated to affect the *spontaneous impulse and the direct pressure* as well as the important indirect pressure to engage in competition.

The next stage is to inquire whether the price controls allow *price rises motivated by costs* and *price rises motivated by demand.* On the basis of the results arrived at, it then becomes possible briefly to indicate how these influences operate on the results of the market mechanisms. The conclusion of this part of the analysis of the effects is therefore constituted by the transposition of the results achieved at this stage to *the functions of the market mechanisms*; in this connection, the orientation of the regional structure will be disregarded, since it cannot generally be the subject of any useful deduction.

An analysis of this kind is valueless in cases where, for other reasons, the conditions for the functioning of the market mechanisms are not satisfied and when they cannot or should not be introduced for reasons of economic policy. In such cases, it would be better to inquire whether the introduction of appropriate measures could simulate the functional effects. But since a classification of this kind for each market is not always possible in the present study, this method can be adopted only when the absence of the prior conditions appears manifest.

2. *THE STARTING POINT FOR AN ANALYSIS OF THE EFFECTS IN AN OPEN ECONOMY*

In addition to the effects inferred in a closed economy, additional effects may become apparent in an economy which is open in both directions. In the first place price controls may affect the results of integration expected from the opening of markets, and, secondly, the opening of markets may modify the conditions for the proper implementation of the controls and, in consequence, the effects found in the earlier part of

([18]) On this point, cf. also Mestmäcker, E.-J.: *Probleme des Bestmöglichen in der Wettbewerbspolitik*, Probleme der normativen ökonomik und der wirtschaftspolitischen Beratung, SdVfS, new series, Vol. 29, Berlin, 1963, p. 316.

([19]) Institutional limitations exist, for example, where the State prescribes the purchase of certain products, or forbids it to the detriment of certain substitute products. Material limitations exist where there are no substitute goods and consumers are forced to take the decision to buy (e.g. in order to subsist). In the second case, the price elasticity of aggregate demand may even be positive (Giffen's case).

the analysis. The definition of the starting points for this new phase in our study calls in the first place for an examination of the plausible effects of integration corresponding to fundamental economic aims.

The opening of markets consists of eliminating between previously closed economies obstacles to the mobility of products and factors. If the economic systems of these countries are governed by market mechanisms integration will subject all these economies to common mechanisms. This extension may involve an intensification of competition and may improve the market results for the whole of the integrated territory, if prices can vary as described in the previous section. The tendency towards keener competition also results from the positive effects on the conditions of that competition. The elements in the ability to compete are affected as follows. The integration of the market widens the range of institutional freedom of action. Prices may be reduced for the benefit of a wider circle of consumers, so that a larger flow of demand than before integration becomes possible. This wider range thus gives powerful competitors greater chances of improving their aggregate profits, thus tending to improve their feasibility of action. This feasibility is further strengthened by easier access to the factors of production and by the additional possibilities of making "economies of scale" which often result from increased demand. Specially important is the influence of integration on the will to compete. At the moment of integration the sellers in the different countries have neither concerted modes of behaviour nor the sentiment of solidarity; [20] in other words, there are very few psychological or traditional obstacles to aggressive behaviour on the market. The probability of spontaneous impulses should therefore be heightened, at any rate for a certain time, in consequence of integration. The increase in the number of competitors, moreover, reduces the transparency of the market on the supply side for all sellers. The result is greater indirect pressure. Since the importance of direct pressure depends essentially on the elements in the spirit of competition already cited, it may therefore be expected that they will all be stimulated by integration.

On the basis of this review of individual economies, it is now possible to ascertain the consequences of integration on the overall effects of the market mechanisms. We shall start by setting out the effects to be expected under the classical theory of external trade and we shall then classify those effects according to the functions of the market mechanisms indicated in the preceding section.

On the assumption of constant levels and constant decisive factors of demand, determining structures, constant aggregate availability of factors of production and constant production techniques, the classical theory of external trade infers the trends which lead to the theoretical marginal values of the trade optimum and the maximum relative and absolute production.

The *trade optimum* characterizes the maximum utility to consumers for a given production and a given distribution of income. It is achieved when the marginal rates of substitution for all goods for all consumers of those goods are equal to the reciprocal of their social values (price = marginal social costs). If before integration there is optimum internal trade in each member country and if the relations cited have different values in the different countries, the result is that the introduction of perfect mobility of freely traded products (exclusively determined by prices) involves a new distribution in the integrated territory of the given results of production, increasing the aggregate utility. The relations of marginal rates of substitution and prices are equalized in the countries concerned. [21]

In the following example—in which transport costs are disregarded—the sign of inequality between the relations for Germany (D) and France (F) is changed into an equal sign for goods (x) 1 and 2:

$$\frac{\delta x_{iD}}{\delta x_{2D}} = \frac{P_{2D}}{P_{iD}} \neq \frac{P_{2F}}{P_{iF}} = \frac{\delta x_{iF}}{\delta x_{2F}}$$

The institution in the integrated territory of uniform price relations of products generates differences between the price of products and marginal costs in different member countries. If the factors of production are perfectly mobile within member countries, these differences will induce national variations in the pattern of outputs which, in extreme cases, will lead to the achievement of maximum national production. In the course of this process, the relations of the marginal costs of the countries will be harmonized both among themselves and with the European relations of product prices. From the point of view of the whole of the integrated territory, the result is a division of labour in the light of comparative cost advantages, and, therefore, *the relative maximum of production.*

In the following formula, cited as an example, the inequality sign is again converted into an equal sign:

$$\frac{K^i_{1D}}{K^i_{2D}} = \frac{P_{1E}}{P_{2E}} \neq \frac{K^i_{1F}}{K^i_{2F}}$$

1st index: products 1 and 2
2nd index: countries D and F
E = Europe.

According to Heckscher and Ohlin's law of compensation, the equalization of the price of products already

[20] Cf. on this point Stegemann, K.: *Wettbewerb, op. cit.*, p. 78 and foll.

[21] For the theoretical details, cf. e.g. Giersch, H.: *Das Handelsoptimum*; in WA, Vol. 75/1956 I, pp. 6 and foll.

involves, even in the absence of mobility of factors within the Community, a tendency for factor prices to come into line, and a consequent partial achievement of *the absolute maximum of production* for the integrated territory. Taking very restrictive conditions, Lerner and Samuelson have proved that the mobility of products may be a perfect substitute for the mobility of factors and may therefore lead to an absolute equalization of factor prices and a full realization of the absolute maximum of production. But it is hard to imagine less realistic conditions. ([22])

In comparatively more realistic conditions, we can count on a tendency to the absolute maximum of production if the factors of production are also fully mobile in the integrated territory. Since the equalization of the relation of marginal costs, referred to above, still leaves differences subsisting between one State and another in the productivity of factors and their prices, the countries with high factor productivity and high factor prices will attract the factors from countries where their price is low. The resulting tendency to harmonize factor prices and productivity will involve Member States not only in further changes in the pattern of outputs, but also in a change in the pattern of inputs. The theoretical marginal value of these processes is the division of labour in the light of absolute cost advantages, and the full realization of *the absolute maximum of production* for the whole of the integrated territory.

If we want to represent these phenomena by a formula, we can start from the equality of marginal costs for the production of a given good which can be expressed as the sum of the quotients of factor prices and of their productivity

$$K^i = \sum_{i=1}^{n} \frac{q'_i}{\frac{\delta x_i}{\delta v_i}} \qquad (i = \text{factor } 1, 2, \ldots n)$$

Where product prices and marginal costs for a product are equal, differences peculiar to a State in the remuneration of equal factors are accompanied by differences in the productivity of factors:

if: $q_{iD} \neq q_{iF}$

then: $\frac{\delta x_{iD}}{\delta v_{iD}}{}_{iD} \neq \frac{\delta x_{iF}}{\delta v_{iF}}$

The introduction of the mobility of factors between States makes it possible, in these relations also, to change inequality signs into equal signs.

Viner contrasts with these favourable effects for welfare—which can be regarded as the result of the appearance of trade between the integrated territories—the adverse effects of the diversion of trade of third countries, which are, however, irrelevant for our purpose. ([23]) Furthermore, in the method of presentation which we have selected, these effects cannot appear, since we have started from the principle that national economies, previously entirely closed, are integrated in an economic unit which is also closed to the outside world.

The effects of integration, resulting from the extension of the territorial field of action of the market mechanisms, may be regarded as theoretical marginal values for the free functioning of these mechanisms in the integrated territory, in regard to the trade optimum for the real distribution function and the absolute and relative maximum of production for the three components of the allocation function. But this covers part only of the list of functions. Classical theory treats monetary distribution and quantitative and qualitative development as established exogenous data.

Recent extensions of theory, however, ([24]) regard the favourable effects on the development function as precisely the most important effects of integration, calculated to increase production and welfare. We share this view. But the market mechanisms cannot satisfactorily discharge the development function without the incentives derived from the other functions and it would therefore be a mistake to disregard the allocation and distribution functions.

With regard to the quantitative development function, we can expect, at least temporarily, an increase in growth investments, thus increasing both aggregate demand and production capacity. A direct effect of the operation of the allocation function is that new investments can be made without obstacle and to the extent which may be necessary in the sectors and countries favoured by integration, whereas disinvest-

([22]) For fuller details on the substitution of mobility of products for mobility of factors, cf. Ohlin, B.: *Interregional and International Trade*, Cambridge (Mass.); Samuelson, P. A.: *International Trade and the Equalization of Factor Prices*, in EJ, Vol. 58, 1948, pp. 163 and foll.; id. *International Factor Price Equalization Once Again*, in EJ, Vol. 59, 1949, pp. 181 and foll. (these two articles have been translated into German and reproduced in Rose, K. (ed); *Theorie der internationalen Wirtschaftsbeziehung*, Cologne, Berlin, 1965, pp. 69 and foll.); Haberler, G.: *Aussenhandel* (Theorie) in HdSW, Vol. I, Stuttgart, Tübingen, Göttingen, 1956, pp. 463 and foll.

([23]) Cf. on all these questions: Viner, J.: *The Customs Union Issue*, New York, London, 1950); Meade, J. E.: *The Theory of Customs Unions*, Amsterdam, 1955; Lipsey, R. G.: *The Theory of Customs Unions*: Trade Diversion and Welfare; in *Economica*, Vol. XXIV, 1957, pp. 40 and foll.
([24]) Cf. Scitovsky, T.: *Economic Theory and Western Economic Integration*, London, 1958; Balassa, B.: *The Theory of Economic Integration*, 1st ed. London, 1962; Berg, H.: *Allokations- und Wachstumeffekte der EWG*; in JFS, Vol. 17, 1966, pp. 64 and foll.

ment in the less favoured zones can result only from the renunciation of replacement investments. (25) Another cause is the improved possibilities of tapping foreign financial resources owing to the introduction of freedom of capital movements. Support of a general character is also afforded by the elimination of obstacles to the free movement of workers.

The operating conditions for the qualitative development function should also improve; in the first place, keener competition means in practice that greater use must be made of existing possibilities of qualitative improvement, and, secondly, the enlargement of the market offers additional possibilities of making economies of scale. (26)

Furthermore, the general competitive position may create a tendency towards equalization in the distribution of incomes.

As the above discussion already indicates, the plan of study adopted in the preceding section can equally well be applied to the consideration of the supplementary effects of price controls in an open economy. In this case, however, the focal point of the study is international economic relations.

The question to be asked is therefore what effects price controls may have, in each national economy, on the ability to compete internationally and the determination to face foreign competition. Here, too, the field of study includes institutional freedom of action to reduce prices, the feasibility of action to finance investments and the elements of the will to compete. Following this plan, we shall have to study the effect on the behaviour both of a seller from a country where prices are free, selling on a controlled foreign market, and of a seller from a price-controlled country, selling on a free foreign market.

(25) Cf. on this point the comments on the integration accelerator, going back to MAHR, in Loh, D.: *Die Beeinflussung der Investitionsgüternachfrage durch wirtschaftliche Integration mehrerer Volkswirtschaften*; in ZfN, Vol. XXIV, 1964, pp. 260 and foll.

(26) On the causes of effects of scale, see Balassa, B.: *The Theory... op. cit.*, p. 121, 142 and foll. and 144 and foll.

The consideration of these effects on competition will then make it possible to infer, from the macro-economic point of view, the possible effect of price controls on the international functioning of market mechanisms. Once again, the frame of reference is constituted by the different functions of the market mechanisms. The most definite answers obtainable are those to the questions if, and how far, price controls conflict with the equilibrium of factors and products between one country and another, thus counteracting the tendencies towards the trade optimum and the maximum relative and absolute production. It should be said straight away, for the sake of clarity, that adverse effects may be reflected not only in too little trade, but also in too much trade.

The next question is whether, in the light of the effects of more far-reaching economic policy measures, the price control in question is even possible in the context of continuing integration. This corresponds to the second question put at the outset on the effects of integration on the functional efficiency of price controls.

Having thus laid the practical basis for an analysis of the effects, we must make one comment on its technical execution. As already indicated, the plan of Part II is based on the attempt to classify price controls. Where a control of a given type exists in one country only, we start by describing it (a); we then go on to examine its effects in a closed economy (b), and finally its supplementary effects in an open economy (c).

If, on the other hand, controls of the same type exist in several countries, the first stage is to infer in general terms the possible effects of this type in a closed economy (a). The description of the enactments applicable will be followed by consideration of the question whether the special national character of the type in any country involves any modification in our inference of the effects (b). The analysis of the supplementary effects in an open economy (c) in principle follows the same plan, but the preliminary study conducted under (a) and (b) makes it possible to shorten this analysis and minimizes the distinction between the examination of classes and the examination of actual instances.

PART II

THE EFFECTS OF PRICE CONTROLS

A. THE EFFECTS OF ENACTMENTS GOVERNING PRICE FORMATION

CHAPTER 4

ENACTMENTS ON PRICE FIXING

1. *THE PROHIBITION OF RESALE PRICE MAINTENANCE*

(a) Enactments on resale price maintenance (*vertikale Preisbindung*) are found in nearly all EEC countries. We shall therefore preface the analysis of specific enactments with a general typological study of the prohibition of resale price maintenance. Since this prohibition is designed to counter the effects which would follow if prescribed prices were lawful, we shall start by considering those effects. Prescribed resale prices have simultaneous effects on several stages of the economic process. Competition and market mechanisms may therefore be influenced both at the stage where prices are prescribed (e.g. the distribution stage) and at the stage which prescribes them (e.g. the production stage).

Since those who prescribe the prices fix and control the trading margin *the re-sellers whose prices are prescribed* lose the freedom to fix their prices autonomously. Thus, retail traders cannot increase their share of the market by cutting prices. Similarly the disappearance of the absolute monetary price as a parameter of action in market competition cannot be compensated by increased use of other parameters of action. Terms of payment and delivery play no part in most final consumption markets where prices are prescribed. The quality of the product is determined by the producer. The possibilities of improving sales and after-sales service in such a way as to improve competition are strictly limited. Furthermore, it is often doubtful whether consumers take these considerations into account in their buying decisions, and in any event it is extremely difficult to quantify the differences. On the whole, therefore, resale price maintenance results in the almost complete suppression of institutional freedom of action in market competition in the products whose prices are prescribed. For this reason any improvement in the feasibility of action becomes insignificant for competition in these products, but it may lead to distortions in competition in other products not subject to price maintenance.

What influence is to be expected on the feasibility of action? While prescribed prices prevent the increase of profits by the extension of individual outlets, they do guarantee many sellers relatively high unit profits. In order that resellers may be strongly inclined to acquire their products, the authors of prescribed prices in practice fix them at a level which will ensure a profit even for low productivity traders. The reference to the productivity of marginal distributors leads to relatively high prices and margins. (1) The more productive traders can then earmark their relatively high unit profits for investment in preparatory competition, or even directly in price reductions in market competition in products whose prices are not prescribed. But since the return on rationalization investments cannot be redistributed to the buyers of products whose prices are prescribed, the first policy will often lead on to the second. Prescribed prices favour the calculation of consolidated costs (*Mischkalkulation*) and thus lead to a further loosening, at the retail stage, of the already loose link between price and costs. We shall revert to the effect of this distortion when we come to consider the influence of this practice on the market mechanisms.

Resale price maintenance increases the price transparency of markets both for consumers and for retailers. But since it cannot affect the behaviour of traders in competition in prescribed price products or guide buyers in the choice of a trader, the system is entirely ineffective in this connection. (2)

Having thus established that retail price maintenance deprives retailers of practically all possibilities of competition in the products in question, we shall now consider its possible effects on the spirit of competition.

Although the precise psychological components of the spirit of competition are no doubt not linked to a product, this spirit nevertheless depends on the extent of the possibilities of competition. In view of the fact that, for all price prescribed products, spontaneous impulses are impossible, owing to the lack of possibilities of competition, direct or indirect pressure resulting from the actual or probable behaviour of competitors are equally lacking. If the proportion of the price prescribed product in the whole selling range is

(1) Cf. e.g. the table of empirical price calculations in: Hax, H.: *Vertikale Preisbindung in der Markenartikelindustrie*, Cologne-Upladen, 1961, pp. 16 and foll.

(2) We shall revert below to the importance of price transparency for the choice of consumers between different products of the same nature and the behaviour of suppliers at the production stage.

reduced, the spirit of competition may remain unaffected and may reinforce competition in other products. On the other hand, if a large part of the range is excluded from free price formation, there is reason to fear that this enforced behaviour of the "distributor" may generate an attitude of mind in which the whole of the spirit of competition at this stage is limited, or even lacking.

Furthermore, resale price maintenance expressly deprives retailers of the power to raise their prices in the light of conditions of cost and demand. But this constitutes a serious handicap only in certain isolated cases in the face of some special trend which does not affect the whole of the branch. On the other hand, if the whole of the branch is affected by cost increases or by substantial growth in demand, the authors of the prescribed prices will not fail to adjust them to this turn of events.

At *the stage where the prescribed prices are determined*, the possibilities of price competition no doubt continue to subsist, but the prospects for the effective use of prices as a parameter of action in market competition are less favourable. Even if the spirit of competition really exists, frequent variations in the price to the final consumer come up against certain objective difficulties. The maintenance of a vast network of dealers and the conversion of advertising take time and money. Frequent price rises or reductions also weaken the argument often put forward that prescribed prices have the merit of stability. It can hardly be expected in practice that the spirit of competition of the authors of prescribed prices will remain unaffected by resale price maintenance.

The reduction in the total number of potential participants in price competition for a product and the public announcement of fixed consumer prices enable all producers to take an overall view of the market. The transparency of final consumer prices is perfect. Thus, suppliers need no longer fear that they will learn of their competitors' price reductions only through the falling-off of their own sales. Since the authors of prescribed prices may base themselves either on an oligopolistic structure or on market behaviour of this kind, each supplier must necessarily assume that his competitors will react to price variations before the buyers. But if such a price reduction brings about no appreciable increase in the volume of demand, it is no longer a rational way of maximizing profits.

Resale price maintenance therefore decisively diminishes the spontaneous impulse and indirect pressure towards price competition and strengthens the tendency towards tacit co-operation. It is thus found in practice that price competition largely disappears from final consumption markets where the prices are prescribed. There is no doubt sometimes competition in profit margins at the retail stage. But since such advantages cannot be passed on to the final consumer, this form of price competition cannot lead to any sound impetus for the economy as a whole. The other parameters of action for market competition, such as the quality of products and, to a certain extent also of after-sales service, are in great favour on oligopolistic markets, since imitation by competitors takes longer and there is often less publicity. But, from the point of view of the economy in general, these parameters cannot guarantee the sound orientation of the branches of activity concerned, since they often over-estimate the ability of consumers to take rational buying decisions. This inability is further accentuated by the fact that the authors of prescribed prices, anxious to attract the preference of buyers, often suggest to them, by advertising, that their products have special qualities.

The prevalence of competition through quality already indicates that resale price maintenance is no bar to investment in preparatory competition. Owing to the reduced intensity of market competition, the profits, and therefore the feasibility of action, at the production stage are no doubt often found to be improved. It is true that it cannot be inferred from this that resale price maintenance reinforces the tendency towards preparatory competition. The firmer the tacit agreement among suppliers to confine themselves to peaceful competition, and the harder it is made, by common action, for newcomers to enter the market, the more it is to be expected that preparatory competition will fall off.

To sum up, it may therefore be taken that resale price maintenance generally lessens the intensity of competition both between the authors of the prescribed prices and between the economic transactors who are bound by them. From the point of view of the economy in general, this is reflected in less satisfactory conditions for the functioning of the market mechanisms.

Resale price maintenance leads to relatively high unit profits for traders and producers, these profits not being the consequence of the excess of demand over aggregate production capacity. The distribution of incomes is therefore determined not so much by the services rendered on the market as by the effect of price maintenance in restricting competition. But the real distribution corresponding to the evaluation of marginal utility and the purchasing capacity of consumers remains untouched. In the sphere of the distribution function, therefore, we merely find an interference with the monetary distribution function.

The overall pattern of outputs influenced by prescribed prices does not correspond to the preferences of buyers, since, owing to the relatively high prices, too small a proportion of demand is satisfied in the prescribed price sector. If the high unit profits on price prescribed products are used in competition to reduce the prices in sectors where prices are free, the degree of satisfaction of demand in those sectors is too high.

By blocking the aspiration of the most productive commercial enterprises to enlarge their share of the market, resale price maintenance also interferes with the influence of productivity on the overall pattern of inputs. Resale price maintenance tends to preserve the existing pattern of inputs; cases are even conceivable where the resulting incentive to retain the system of consolidated costing may generate a tendency towards a less efficient pattern of inputs. This may happen when the range of retailers is differentiated and productive commercial enterprises, with no reserve profit fund derived from prescribed price products are driven out of the market by non-productive enterprises which possess such a fund.

In the sphere of the allocation function, resale price maintenance must necessarily be expected to interfere with the pattern both of outputs and of inputs.

For equal quantities marketed, higher unit profits improve the feasibility of action to extend capacities and to improve the quality of products, production methods and factors of production. Owing to the adverse effect on the spirit of competition, it is to be feared that the additional possibilities of qualitative improvement will not be fully used. On the other hand, there is no reason to expect any weakening of the desire for the quantitative adaptation of production capacities. In the sphere of the development function, we can expect, alongside the disturbance of the qualitative development function, a reinforcement of the quantitative development function.

Although, in general, it does not seem to us to be feasible to evaluate the extent of interference with or strengthening of functions, it can be admitted in this case that the favourable effects on the quantitative development function do not compensate overall for the adverse effects on the other functions. Since access to foreign capital is not an insoluble problem, in developed economies, for enterprises whose market position enables them to prescribe resale prices, the possible favourable effect of resale price maintenance can come to fruition only in the event of an extremely large growth of demand per unit of time, which experience proves to be relatively rare. Thus, the overall judgment on permitted resale price maintenance is adverse. The prohibition of this practice is therefore calculated to counter the specific adverse effects of resale price maintenance. Having thus established that the prohibition of resale price maintenance has a favourable effect on the functioning of the market mechanisms, we shall consider in the next following section in what cases and how far this judgment needs modification in the case of the price controls actually in force.

(b) In *Belgium*, resale price maintenance is not prohibited. Resale price maintenance agreements are in principle lawful and entitled to the legal protection of the State. But in the event of misuse, the Government can intervene under the general provisions of the Act of 27 May 1960 on protection against the misuse of economic power. But since such misuse is difficult to prove, the adverse effects of resale price maintenance already described can be countered only if this form of restraint of competition is widespread. The Act, therefore, does not yet seem to have been applied to resale price maintenance. In theory, the prohibition of the State. But in the event of misuse, the Govern- be welcomed, but it has little or no practical value in overcoming the adverse effects of resale price maintenance.

In the *Federal Republic of Germany* resale price maintenance is governed by the Act of 27 July 1957 on restraint of competition (*Gesetz gegen Wettbewerbsbeschränkungen*). Article 15 of the Act no doutb stipulates a general prohibition of resale price maintenance, [3] but under the exceptions specified in Article 16 this does not apply, under certain conditions, to branded goods or printed matter (*Verlagserzeugnisse*). Resale price maintenance is legitimate in such cases if the producer who prescribes the prices is in price competition with other producers and if he makes a written report to the Federal Cartels Office (*Bundeskartellamt*). The report must in particular specify the amount of the prescribed price and of the mark up, which are recorded and are open to inspection by the public. Legitimate prescribed prices are subject to supervision by the Office as a protection against abuse, and may, in certain cases, be prohibited under the provisions of Article 17. [4] The making of a nullity order is most probable in cases where resale price maintenance leads to a rise in the price of the prescribed products which is unjustified from the point of view of the economy in general, or prevent a price reduction. In view of the difficulty of proof, an amendment to the Act in 1965 introduces a presumption of enhanced prices if the prescribed prices are not universally observed or if the suppliers split their selling prices. The first case arises where the "black market" prices are well below the prescribed prices,

[3] So far as this general prohibition applies, *recommended* prices are also illegal under Article 38(2)(ii) if they involve concerted behaviour. According to the Federal Court of Justice such behaviour exists where the recommended consumer prices are communicated not only to traders, but also to consumers. Cf. Judgment of the Federal Court of Justice ("4711") of 8 October 1958 in WuW, 1958, pp. 783 and foll.

[4] While non-binding recommended prices are lawful pursuant to Article 16, they are also subject to supervision against abuse. This extended supervision of misuse, through the interpretation of the Act, gave rise for the first time in December 1966 to the prohibition of recommended prices. Cf. *Kartellamt hebt Preisempfehlung auf; alle grossen Waschmittelmarken betroffen*, Die Welt, 19 December 1966.

and the second where the supplier practises split prices for the same product.

It is a disputed question whether legal proceedings can be taken against excessive price rises as a result of resale price maintenance under Article 2(a) of the Economic Offences Act (*Wirtschaftsstrafgesetz*), which we have not yet considered. [5] Under this provision a manufacturer's prescribed price would be wholly null and void under civil law, [6] pursuant to Article 134 of the Civil Code. The large number of exceptions has virtually deprived the prohibition stipulated in Article 15 of all effect. In recent years, however, the Cartel Office has been led to make more frequent use of its power to annul. The present Federal Government and Parliament include among their members many advocates of the annulment of prescribed prices for branded goods, and it may therefore be hoped that this will contribute in future towards increasing the importance of the general prohibition.

On the question of the general prohibition of resale price maintenance, reference may be made to the favourable effects of this type of control already discussed in general terms above. With regard to the exceptions for branded goods and printed matter it may may be maintained that the adverse effects inferred in the case of legitimate resale price maintenance cannot manifest themselves, since resale price maintenance is legitimate only when it is enforced by a producer who is in price competition with other producers. The distributors could, moreover, rule out the fixing of excessive consumer prices by deliberately introducing the presumption of abuse arising out of the imperfect observation of the prescribed prices. It should be noted in this connection that the conditions of legality do not as a general rule prevent the elimination of the desirable competition at the distribution stage for a specific product of a producer who prescribes prices. In the first place, only a few dynamic and productive commercial enterprises are interested in price reductions, and, secondly, simple dumping by a seller is not yet treated as a derogation from the general observance of the prescribed prices. If there is to be a deliberate introduction of the statutory presumption of abuse, there must always be—and it must be admitted that the case is relatively rare—the simultaneous action of a whole group of dynamic traders.

The need for price competition at the stage of those who fix the prescribed prices may, in any event, obviate the most harmful consequences of resale price maintenance. For it is not only the complete disappearance of price competition, but also the diminution in its intensity which reflects a deterioration in the conditions for the functioning of the market mechanisms. The necessary conditions for legality and the corresponding supervision of abuse may therefore, on the best assumption, obviate the worst adverse effects on distribution, allocation and development. In view of the fact that the special treatment of branded goods and printed matter has no major overall advantage, our essentially adverse judgment on the effects of legitimate resale price maintenance also applies without serious modification to the system of exceptions in force in the Federal Republic of Germany.

In *France*, the Decree of 24 June 1958 on the maintenance and restoration of free competition (incorporated in Price Ordinance No. 45-1483) includes in Article 37(4) a general prohibition of resale price maintenance. It forbids "prescribing, maintaining or imposing a minimum for the prices of products or services or for trading margins, either by means of rates or scales or under agreements ('*ententes*') of any nature or form whatsoever". [7]

A circular issued by the Ministry for Economic Affairs [8] calls for the strict application of the prohibition and states that there should be deemed to be a breach of the law wherever, even in the absence of price lists, there is an attempt to prescribe a minimum resale price by other means (including marks, labels or particulars shown on invoices). According to Krasser, [9] subsequent judicial decisions indicate that the courts have adopted this strict interpretation. The Act makes no exception to the prohibition of prescribed prices. Temporary exemption may, however, be applied for on the following main grounds: [10]

(i) the novelty of the product or service,

(ii) exclusivity resulting from a patent of invention,

(iii) or from a working licence,

(iv) or from the filing of a model or the requirements of specifications stipulating a guarantee of quality and the condition of the product.

In every case of exception, however, guarantees must be given that the products are delivered to the con-

(5) This is, for example, the practice followed by the Landsratamt of Alzenau-Bavaria in taking action against the sale of toothpaste at excessive prescribed prices. Cf. Die Welt, No. 46 of 23 February 1967, p. 20.

(6) Cf. Müller-Henneberg, H. and Schwartz, G. (ed.): *Gesetz gegen Wettbewerbsbeschränkung und Europäisches Kartellrecht, Gemeinschaftskommentar*, 2nd edition, revised, Cologne, Berlin, Bonn, Münich, 1963, p. 514.

(7) Cf. German translation in: Ulmer, E. (Ed.): *Das recht des unlauteren Wettbewerbs in den Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft*, Vol. IV, Krasser, R.: Frankreich, Münich, Cologne, 1966, pp. 467 and foll. (hereinafter cited as Ulmer-Krassner, *op. cit.*).

(8) Fontanet Circular of 31 March 1960, *Official Gazette*, 2 April 1960, p. 3084, cited in Ulmer-Krassner, *op. cit.*, p. 473.

(9) Cf. ibid., p. 507.

(10) Cf. ibid., p. 468.

sumer at the lowest possible price and that they are in competition with other products. Up to 1960 about a hundred exceptions had been allowed, generally limited to one year. (11)

It will thus be seen that the prohibition of resale price maintenance goes much further in France than in Germany. France prohibits not only agreements, but in general all action which in fact leads to a prescribed price. This broad conception is particularly interesting, since the prohibition of contractual resale price maintenance is often circumvented by the practice of "recommended prices" suggested by the makers and voluntarily observed by the resellers. (12) Since this practice is very widespread in France and the resellers comply with it to the extent of about 90%, the French Council of Ministers has partly endorsed the recommendation of the Fontanet circular and has subjected recommended prices to supervision against abuse. (13) Under the Ordinance of 6 September 1967 made under the Act conferring special powers to ensure the recovery of the French economy, recommended prices may be prohibited if the selling prices to the public are manifestly excessive. This measure is also designed to limit the very widespread practice in France of allowing extremely high rebates on sale to the final consumer by the retailer. (14)

Like the general prohibition in force in the Federal Republic of Germany, the French provisions may be expected to have the favourable effects indicated above. But, market conditions being equal, it is highly probable that the effects will be considerably more marked (15) in France than in Germany, owing to the wider scope of the French legislation. This favourable assessment is also influenced by the fact that the margin allowed for possible exceptions is much narrower. Tribute must be paid here to the refusal to make statutory exceptions, which reverses the burden of proof compared with German legislation. In France it is not the State which must prove the abusive character of a legitimate prescribed price; it is the supplier who is interested in maintaining prescribed prices who must establish the necessity and advantages of an exception limited in time.

If one tries, on the basis of the exceptional elements cited above as justifying a derogation, to draw conclusions as to the economic significance of the possibility of authorizing price maintenance, it can be interpreted in all the first three cases as encouraging the qualitative development function. In practice these three cases basically concern new products for which the producers have generally made development investments, paid licence royalties or spent large sums on launching and advertising. But the development or launching of a new product is a sound way of maximizing profits only if the manufacturer can count on a large part of the development and launching costs being recovered in the early years through relatively high unit profits. If market conditions are conceivable in which this prospect seems improbable owing to price competition at the distribution stage, temporary price maintenance may have a wholly favourable effect. This could happen, for example, where large commercial firms start by attracting a great part of the demand by lowering prices to the detriment of their own margin and then use the market power they have acquired to bring pressure on their purchase prices, thus compromising the recovery of launching and development costs. In this case, the temporary price maintenance prevents the concentration of demand and thus temporarily fortifies the maker's high unit profit, justified by his market service.

The request for the authorization of price maintenance under the fourth exception should relate mainly to branded goods which are also specially treated in Federal Germany. In this case the economic objective is not directly apparent. It is, however, interesting to study the conditions for this exception, which differ in France and the Federal Republic of Germany. It is true that the guarantee of the constant quality of the product is an argument often relied upon, in Germany, too, by the makers of branded goods in favour of price maintenance, but there is no scientific control of this guarantee. In France, on the other hand, the State is not inclined to authorize a temporary limitation of competition unless it can supervise the guarantee of quality offered as a counterpart.

On the whole, the effects of any exceptions always depend on administrative action. If it is accepted that exceptions are granted only when price maintenance promises to encourage the market mechanisms, the

(11) Cf. Lassier, Jacques: *L'application aux produits de marque des lois françaises sur la concurrence*, Revue de la propriété industrielle, 1960, p. 170 (cited in Ulmer-Krasser, *op. cit.*, p. 507).

(12) According to an estimate of the Chairman of the Cartel Office, Dr Günther, recommended prices are observed in Germany in a proportion which varies between 75 and 90%. *Unverbindliche Preisempfehlung werden meinstens eingebalten* in Handelsblatt, No. 237, 8-9 December 1967, p. 10.

(13) Cf. *Verschärfung des Wettbewerbsrecht* in Handelsblatt of 12 September 1967.

(14) Cf. *Französische Bankvollmacht zur Bekämpfung unlauteren Wettbewerbs* in Industriekurier, No. 136 of 9 September 1967, p. 4.

(15) A survey by R. Sachot indicates the extent to which the price competition at the distribution stage made possible by the general prohibition has its repercussions on the production stage. In the view of this writer, the "price collapse" at the distribution stage (to which a downward limit will no doubt be imposed by the prohibition of sales below cost, which Sachot does not mention—author's note) compels the French makers of branded goods to call upon the State to fix minimum retail prices by law. Cf. Sachot, Raymond: *Französische Markenartikelindustrie auf dem Weg in den Gemeinsamen Markt*, address given on 25 and 26 June 1966 at the "Wochenendgesprächen auf dem Petersberg" organized by the Deutscher Markenverband; reproduced in Der Markenartikel, 28th year, 1966, No. 7, pp. 441 and foll., especially p. 446.

French regulations on the subject can be unreservedly assessed as favourable.

In *Italy* there is no special legislation on resale price maintenance; in general, agreements on this subject are lawful. A contract of this kind, however, binding the parties to strict observance of the agreed prices, has no direct effect on third parties. ([16]) The producer therefore cannot proceed against a retailer who sells merchandise acquired from a wholesaler below the prescribed price and who has not bound himself to charge the prescribed price. Under Italian judicial decisions, the sale of goods below the prescribed price does not normally amount to unfair competition. Resale price maintenance contracts are very common practice in the food industries, ready-made clothing, perfumery, household electrical appliances, the optical and photographic industry, as well as pharmacy. The extent to which they are observed, however, varies widely between different branches. ([17])

An intermediate form between contractual price maintenance and prices fixed by the authorities is the declaration that a prescribed price is generally binding. Booksellers, for example, are bound by law to respect the prices prescribed by publishers.

In the absence of any control over resale price maintenance the adverse effects of the system have free rein in Italy. The partial refusal of legal protection can hardly have any appreciable favourable effect in a closed economy. In addition, the declaration of the general binding force of prices prescribed by the private sector not under State supervision, seems the complete negation of any overall regulative function of the market mechanisms.

The prohibition of resale price maintenance in *Luxembourg* is very similar to the French system. Under Article 1 of the Grand-Ducal Decree of 9 December 1965 ([18]) resale price maintenance "by any means whatsoever" is forbidden. ([19]) In consequence, suggested prices, recommended prices, maximum prices or the maximum limits of profit margins fixed by the Price Department or the maximum consumer price which must compulsorily be shown on the packing of goods, must not be treated as minimum prices. The law specifies exceptions for books, newspapers and other publications. In addition, exceptions may be allowed on application in the following cases:

(i) novelty of the product or service,

(ii) exclusive manufacture under licence,

(iii) goods and services launched in conjunction with an advertising campaign.

Since these provisions are virtually the same as the French provisions, they need not be separately discussed. The effects of the Luxembourg controls call for an unreservedly favourable assessment on the same grounds as the French system.

It follows from the principle of abuse, which governs the *Netherlands* legislation ([20]) on competition, that resale price maintenance is, in principle, lawful. But this principle lost a great deal of its force in 1964 following two Government Decrees ([21]) declaring that certain prescribed prices were not binding. Under these Decrees the following have no binding force:

(i) arrangements for collective resale price maintenance or the collective enforcement of resale price maintenance, ([22])

(ii) individual resale price maintenance in respect of consumer durables. ([23])

The declaration of invalidity does not apply to contractual stipulations prohibiting sale below the purchase price. The duration of the second Decree cited above is limited in the first place to five years, but it may be extended by a formal Act.

As already pointed out in the case of Belgium, the general prohibition of abuse cannot be regarded as adequate protection against the adverse effects of resale price maintenance, which are in principle lawful. The declaration of the invalidity of certain prescribed prices, on the other hand, is already a measure which restores to sellers their institutional freedom of action on the markets which concern them and which can therefore counteract the possible disturbances of the market mechanisms. Since no functional regulative impulse can be expected from selling prices below the

([16]) Cf. for the legal treatment of price maintenance in Italy: Ulmer, E. (editor): *Das Recht des unlauteren Wettbewerbs in den Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft*, Vol. V, Schricker, G.: Italien, Munich, Cologne, 1965, pp. 267 and foll. (hereinafter cited as Ulmer-Schricker, *op. cit.*).

([17]) Cf. *Mehr Preisbindungen mit mehr Löchern in Italien* in Handelsblatt, 19 December 1966.

([18]) Cf. *Memorial* of 15 December 1965.

([19]) Cited from the text reproduced in Ulmer, E. (editor): *Das recht des unlauteren Wettbewerbs in den Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft*, Vol. II/1; Wunderlich: Luxemburg, Münich, Cologne, 1967, p. 767 (hereinafter cited as Ulmer-Wunderlich, *op. cit.*).

([20]) Cf. Act of 28 June 1956 on economic competition (*Wet economische mededinging* -WEM) in Staatsblad Nos. 401 and 412, 1956.

([21]) Decree of 1 April 1964 in Staatsblad, No. 110, 1964 and Decree of 31 August, 1964 in Staatsblad, No. 353, 1964.

([22]) Cf. Ulmer, E. (editor): *Das Recht des unlauteren Wettbewerbs, op. cit.*, Vol. II/2, Baeumer, L. and Van Manen, W. C.: Netherland, Münich-Cologne, 1967, pp. 334 and foll. (hereinafter cited as Ulmer-Baeumer-Van Manen, *op. cit.*).

([23]) Defined in a schedule to the Decree as follows: wireless sets, television sets, record players and tape recorders, refrigerators, toasters, mixers, vacuum cleaners, washing machines, driers, irons, electric razors and hairdriers, private cars, cameras, flashlight cameras, cinema cameras, photograph and film projectors and records.

purchase price—except in certain special cases—the fact that such stipulations are permitted cannot modify our essentially favourable assessment. It is true that the declaration of invalidity merely involves the withdrawal of legal protection from contractual prescribed prices and does not prevent the maker from in fact fixing the consumer price by other means. Having regard to the importance, which can also be observed in other countries, of suggested prices with no binding force, and other substitutes for prescribed prices, it is questionable whether their practical effect really is to prevent the possible disturbances of the market mechanisms.

(c) It must now be considered whether, and how far, the national resale price maintenance systems, and the restrictions on them affect economic relations among Member States. Since it can be taken that the sales area at the distribution stage is generally limited to the national territory, we can mainly limit ourselves to considering the international competition of sellers at the production stage.

Neither resale price maintenance, nor the controls described can prevent a foreign seller from practising price dumping on a national market. Institutional freedom of action in market competition is therefore unlimited. On the other hand, the differential treatment of resale price maintenance in Member States does not seem to be without effect on the feasibility of action. The analysis made of a closed economy has shown that resale price maintenance, other market conditions being equal, allows higher profits than would otherwise be made. In consequence, since integration does not affect resale price maintenance, the feasibility of action of sellers coming from countries where price maintenance is legal tends to be greater than of sellers from countries where it is prohibited.

The financial superiority resulting in such cases from resale price maintenance could be used in international competition, for example, to cut export prices by the cost of market penetration, or to extend production capacities. (24) It would counteract the expected effects of integration in increasing well-being and encouraging growth, if it allowed the elimination of enterprises which, while producing at lower costs, have been unable to accumulate profits owing to the prohibition of resale price maintenance.

(24) It is obviously this possibility which the French authorities have in mind when they authorize, as we have seen, exceptions from the general prohibition of resale price maintenance in the form of discreetly negotiated special treatment whenever enterprises can establish that internal profits will be used to foster exports. Cf. Ferber, Gustav: *Frankreich, Unterstützung durch Entwicklunghilfe*, in Handelsblatt No. 19 of 26-27 January 1968, p. 13.

But this prospect is improbable—at least in the long term—because integration cannot fail to affect the prescribed prices of products capable of external trade. In countries where resale price maintenance is illegal, the material possibilities of trade created by integration will enable low cost producers to sell below the high prescribed prices on the corresponding national markets. If the will to compete at the distribution stage is atrophied by long familiarity with prescribed prices and replaced by the aim of a minimum margin, foreign makers are obliged to allow margins at least as high as those allowed by the national makers who prescribe the prices. If, on the other hand, there are dynamic commercial enterprises which wish to use the newly offered freedom of action to attack the share of the market held by traditional enterprises, the result may be a reduction of relatively high trading margins. In any event, the high prescribed price to the final consumer and, in consequence, the accumulated profits of the author of the prescribed price will be endangered. (25) If the authors of prescribed prices are obliged to suffer a fall in sales or if they are constrained to cut their home prices, they lose the material basis for a national price discrimination policy which might hamper the international division of labour in the light of costs.

The risk is even greater in the case of high prescribed prices if distributors who want to play the competitive game have the possibility of re-importing. Products exported abroad at relatively low prices can be reimported without falling under the ban of prescribed prices and can therefore be sold below those prices. (26) In this way, the authors of prescribed prices, constrained to adapt their prices, also lose the means of following a price policy in conflict with the international division of labour.

In the case of products directly capable of external trade, the resale price maintenance system, legal in

(25) The motor tyre market in the Federal Republic of Germany is an example of the way in which foreign trade can prejudice price maintenance. The share of imports (without prescribed prices) in the total turnover of dealers rose from 14% in 1965 to 20-22% in 1966 and the leading German manufacturers therefore found themselves obliged, at the beginning of 1967, to cut their prices by 1 to 2% and to exempt many types of tyre from price maintenance. (a) But since the new lower prescribed prices were often accompanied by undisclosed rebates, the whole system should disappear in the near future.

(a) Cf. Gerter, M.: *Aüssenseiter rollten die Reifenpreise auf*, in Die Welt, No. 2 of 3 January 1967, p. 1.

(26) The decision (a) of the EEC Commission and the Court of Justice of the European Communities in the Grundig-Consten case shows, inter alia, that the importance of the possibilities of re-importing for the functioning of the market mechanisms has been recognized by the European authorities.

(a) Cf. the text of the judgement of the Court of Justice of the European Communities in VWK-Europa, No. 134/66 of 14 July 1966, pp. 1/3 and foll.

Summary Table showing the possible effects of the legality (a) or illegality (b) of resale price maintenance on the functions of the market mechanisms.

Functions of market mechanisms	Belgium		Germany (FR)		France		Italy		Luxembourg		Netherlands	
	a	b	a	b	a	b	a	b	a	b	a	b
A. *Effects in the national context in a closed economy*		The supervision of abuse is ineffective						The partial refusal of legal protection has no importance				
I. Development function												
1. quantitative	+		+	.	.	.	+		.	.	+	.
2. qualitative	—		—	+	+	+	—		+	+	—	+
II. Allocation function												
3. pattern of outputs	—		—	+	.	+	—		.	+	—	+
4. pattern of inputs	—		—	+	+	+	—		+	+	—	+
5. regional pattern	.		.	.	.	.	.		.	.	.	.
III. Distribution function												
6. monetary	—		—	+	+	+	—		+	+	—	+
7. real	.		.	.	.	.	.		.	.	.	.
B. *Effects in the context of the EEC in an open economy*												
I. Development function												
1. quantitative	.		.	.	.	.	.		.	.	.	.
2. qualitative	.		.	+	.	+	.		.	+	.	+
II. Allocation function												
3. pattern of outputs	.		.	+	.							
4. pattern of inputs	.		.	+	.	+	.		.	+	.	+
5. regional pattern	.		.	+	.	+	.		.	+	.	+
III. Distribution function												
6. monetary	.		.	+	.	+	.		.	+	.	+
7. real	.		.	.	.	.	.		.	.	.	.

Legend:
. = no major effect inferable or probable.
— = adverse effect.
+ = favourable effect.

Belgium, the Federal Republic of Germany, Italy and the Netherlands, cannot therefore provoke any persistent distortion in the channels of trade. Theoretically it would be different in the case of products indirectly capable of external trade, but the risk is negligible in practice since price maintenance is generally applied only to pure consumer goods.

The conclusions as to the incidence on the efficacy of the spirit of competition between Member States may start from the fact that, under identical conditions, it will tend to be more marked among the sellers in countries where price maintenance is prohibited than among those in countries where it is legitimate. If the disparities are not offset by other influences, or even inverted, they will encourage the tendency to undermine the current prescribed prices. Thus, integration at least leads to a reinforcement of constraints in countries where resale price maintenance is legitimate. This reinforcement of the spirit of competition as a result of integration is, however, plausible only at the production stage. If the same thing is to happen at the distribution stage it will at least be necessary to form dynamic commercial enterprises abroad or subsidiaries. But the process of integration in the EEC so far gives us few examples which would allow such a conclusion.

This examination by countries shows that the national controls over resale price maintenance do not prevent the expected effects of the extension of the field of action of market mechanisms. The integration of countries which leave a relatively large field to price maintenance (Belgium, Federal Republic of Germany, Italy and the Netherlands) with countries which apply strict general prohibitions (France, Luxembourg) gives no reason to fear any lasting major change in automatic regulation by the market.

Even more, in the case of products capable of external trade, it is infinitely more probable that with freedom of trade and re-import possibilities, the controls in force in France and Luxembourg, as well as in the Federal Republic of Germany and the Netherlands, will lead to a weakening of resale price maintenance throughout the territory to be integrated. It is true that controls whose field of application is limited to a single country can in no way prevent the practice of price maintenance in the others; they can, however, help to bring down excessive prescribed prices, thus allowing the equalization of product prices. In this way integration widens the effective field of application of the prohibition of resale price maintenance and warrants the expectation of a favourable effect on market mechanisms, even in countries where this practice is legal.

On the other hand, in the case of home trade products which also include commercial services, it is impossible to infer comparable favourable effects with equal certainty. In general, an intensification of competition as a result of integration is possible if, thanks to greater mobility of factors, the end result is the creation of dynamic foreign enterprises which will revitalize the sluggishness of home markets. In addition, integration may lead to reductions in the margin on commercial services when, in spite of price maintenance, there is a keen spirit of competition which can find its expression in market competition in consequence of the increase in the number of substantial possibilities of buying. It is hardly possible to assess the probabilities of an increase in spontaneous impulses as a result of integration, since this factor cannot be isolated.

In conclusion, it may be noted on the last point in our plan of study, that integration in no way prejudices the retention of the prohibition of resale price maintenance.

2. *STABILITY CONTRACTS*

Stability contracts (*contrats de stabilité*) were introduced in March 1965 with a view to relaxing the general price freeze instituted in 1963 as a first form of the system, peculiar to France, of conditional freedom of prices. Stability contracts are, strictly speaking, not a form of price control under general law, but a sort of contract which may be made for a year between the price control authorities and business groups. The contract is always freely entered into. Individual firms are not bound by it unless they expressly declare to the Directorate of Prices that they wish to subscribe to it. But since the alternative is the continuance of price freezing, stability contracts to some extent form part of price control.

By signing a stability contract, enterprises acquire the freedom to vary certain prices provided that they undertake not to increase the overall price level of their production programme. Certain prices can thus be increased while at the same time others are reduced. Price variations are weighted by the quantities produced at the moment of variation so that aggregate income remains constant. The stability contract is thus an effort to convert the general freeze of 1963 into a freezing of price levels. Weighting is generally based on constant components of production costs. Only increases in the cost of raw materials, electricity, transport and imports can be passed on. Wage increases, on the contrary, cannot be passed on in the price of products.

In principle, each enterprise undertakes to stabilize the price level of the whole of its production programme. In exceptional cases, however, a contract can be made for part of the programme only, and in cases of very advanced specialization the contract may extend to the price levels of the whole branch. [27] Enterprises must produce their price lists to the authorities on request to enable them to verify that the contract is being observed. If the authorities find that enterprises are at fault they can be brought back under the freeze. On the expiry of the contract the revision of certain prices can be negotiated with authorities.

As of 27 June 1966 34 stability contracts had been concluded. According to the list given in Annex, [28] they affected 58 products or groups of products. But the real effect of this type of conditional price freedom scarcely appears from the figures, since it depends on the number of applications for accession and the relative dimensions of the firms which have made such contracts.

(b) The introduction of stability contracts is the first attempt by the French government to achieve the aim of stability of price levels without creating a manifest obstacle to growth. Economic growth is accompanied in practice by structural changes which in turn imply or impel modifications in the terms of trade. As will be seen in greater detail below, the price freeze in force since 1963 necessarily involves a loss of growth whenever the variations in price structure impelled by growth can be reflected only by large differentiated reductions in prices in absolute value. In theory this is no doubt conceivable, but in practice the possibility is negligible. Under more realistic conditions, the stability of price levels is possible in an expanding economy only if the weighted sum of the price increases necessitated by growth is equal to the weighted sum of the price reductions made possible by growth. [29] Experience teaches us that while sellers are very certain to react to increased costs and increased demand by raising their prices, they are rarely so quick to pass on their cost reductions by price reductions. [30] By merging upward and downward price movements into a single whole, the stability contract endeavours to obtain by constraint the price reductions permitted by growth.

This interpretation seems to indicate that this new instrument is better adapted to the conditions for the functioning of the market mechanisms than the general freezing of retail prices. Our analysis of the effects, however, does not relate to improvements of this kind, but to the consequences in a situation where the market mechanisms function in absolute freedom of prices. However, before examining the possible influences on competition and on the market mechanisms, we should like to verify how far the stability contract constitutes a means of ensuring the stability of price levels. Since the phenomena of inflation are merely a sign of more deep-rooted causes, we shall first consider the direct influence on the signs and then the indirect repercussions on their causes.

In considering the signs, it must be asked whether the price variations permitted under the prescribed weighting procedure are in fact without effect on the price levels. Since turnover is deemed to be indifferent to price variations, the requirements of the contract relate to the quantities produced at the time it is signed, regardless of their possible variations. If the demand for the products of an enterprise is absolutely inelastic, no variation in volume should follow. The enterprise would define its price policy exclusively in the light of its costs and price changes would in practice remain neutral in their effect on price levels. But in practice this condition is satisfied only in extremely rare and exceptional cases. Enterprises then decide their price policy in the light not only of the trend of costs but also of the state of demand. In the short term, or if national income is constant, they therefore tend to increase the prices of products for which the price elasticity of demand is less than unity and—if the costs situation allows—to lower the price of products for which it is greater than unity. In the longer term income elasticity also becomes a criterion of decision. Price elasticity should, however, always retain its dominant role in considering the state of demand if the growth rate of the national income is low and if income elasticity is low for all products manufactured. When growth rates are high, and/or when income elasticity is high, price rises may nevertheless be judicious for products with high price elasticity if production capacity is inadequate to absorb the whole of the additional demand.

In other words, the weighting rule is not, in practice, a bar to all increase in turnover; it merely prevents increases resulting solely from higher prices without any quantitative growth. In simple language, the stability contract thus compels the enterprise which desires to increase its turnover to follow a policy of quantity.

But the greater the macro-economic disequilibrium, the more numerous are the sectors in which a greater volume of production can be marketed at higher prices. In these cases, the sum of price reductions weighted by the real volume of production may be less than the sum of weighted price increases. The price level rises. In a situation where demand is too great, the stability contract cannot eradicate the sign. Since no one can

[27] For example, in the case of man-made textiles, where an overall contract was facilitated by the high concentration of the branch.
[28] Cf. Annex, p. 133.
[29] Cf. also on this point: Jürgensen, H.: Ursachen der Geldentwertung und Ansatzpunkte zu ihrer Vermeidung, in *Der Deutsche Volks- und Betriebswirt*, 1964.
[30] In particular, this will not happen when the aggregate demand for the product in question increases sharply, even at the old price.

increase his turnover without increasing the volume of products, the result will be to some extent to halt price rises. The fact remains that, in these conditions, the stability contract is calculated to have a favourable effect on the sign of an inflationary tendency. But if inflation is not to be merely staved off, its underlying causes must be attacked.

The main causes are generally taken to be excess aggregate demand, general pressure on costs and insufficiently keen competition. With regard to the first of these causes, the obligation to adopt a "policy of quantity" referred to above, introduces a certain improvement. In addition an indirect influence may be expected on the general trend of costs and demand.

The prohibition, under stability contracts, of passing on wage increases in product prices must manifestly strengthen the resistance of enterprises to wage claims in excess of productivity gains. Each enterprise is therefore compelled to base its wage policy on its productivity. If this prohibition is applied strictly, wages thus cease to be the decisive factor in the pressure on costs as well as in the general increase of demand. But as it is not absolutely fixed, it can also be used by enterprises with high productivity as a means of attracting new workpeople. The stability contract also limits the profit of the enterprise and thus tends to reduce the demand for private investments. No doubt this effect is favourable only in the short term, since in the long term it entails a reduction in the capacity to supply. On the other hand, the other components of aggregate demand are not affected. Since the question of effects on competition will be considered below, it can be said by way of a partial conclusion that while it cannot be denied that stability contracts have a certain stabilizing effect, they cannot by themselves stabilize the long term price level.

What present effect on competition can be looked for? It is unquestionable that the stability contract does not hamper institutional freedom of action to reduce prices in market competition. But in a state of aggregate excess demand competition is not determined on this plane. Since production capacity is inadequate in vast sectors of the economy, there is hardly any inducement to lower prices and the stability contract makes no great change. Competition operates much more on the plane of preparatory competition and takes the form of efforts to increase production capacity. The feasibility of investment action for the purposes of this competition is, however, reduced by the stability contract owing to the limitation of profits. If all enterprises were equally affected by this state of affairs, this effect would have to be assessed in the same way as a cyclical rise in income tax. But a stability contract can be signed only by enterprises producing a number of products, including some whose costs are falling. Since this condition is generally satisfied only by fairly large enterprises making a range of products, these enterprises are favoured in preparatory competition. The tendency to concentration is also reinforced by the fact that enterprises producing only articles whose costs are rising, or the demand for which is inelastic in relation to price, will seek to extend their production to goods whose unit costs are falling or the demand for which is relatively elastic in relation to prices. The simplest way of extending production programmes is the merger of enterprises which satisfy these conditions and which, in any event, follow a price reduction policy. There is nothing inherently adverse in this, since the extension of production units may improve the overall pattern of inputs for the economy as a whole, and may be the only way of making use of the cost advantages derived from mass production and sale or the co-operation of research and development.

But such cost advantages can emerge only in enterprises whose products are related to each other or at least dependent on each other from the point of view of demand. The concentration processes to be expected, however, are not primarily designed to achieve cost advantages of this kind, but to escape the general price freeze. It is not out of the question, therefore, that many of the concentrations will merely strengthen the market power of those concerned, without any resulting cost advantages to the national economy. The market strength of a combine embracing a wide range of products is also reflected in its ability to meet attacks on the price front by a policy of selling below cost price, making up the losses by profits on unthreatened markets. With the appearance on the market of a combine of this kind, enterprises with a tight production programme can no longer take price action, except at enhanced risk. The stability contract may thus reduce not only the absolute number of sellers, but also the number of those who really inclined to spontaneous competition. In addition to reinforcing the feeling of solidarity as a result of the reduction of possibilities of action likely to affect all sellers, this is an essential reason to fear that the stability contract may lead to a weakening of the spirit of competition, without it being possible to count, in most cases, on a reinforcement of the possibilities of competition due to costs. The consequent slackening, all other things being equal, of the keenness of competition tends in the long run to disturb nearly all the functions of the market mechanisms.

If, in inferring the relatively short term effects, we assume that the spirit of competition is not affected, the main cause of a possible modification in the market mechanisms lies in the fact that legitimate price rises do not necessarily correspond to the possibilities of rises due to demand.

By limiting the possibilities of exploiting excess aggregate demand and monopoly situations through price action, the stability contract counteracts the formation of incomes which do not result from individual services on the market. But it may hamper the monetary distribution function if it limits the making of profits which might be regarded as premiums for the timely detection of favourable market prospects due to changes in the pattern of demand. Since the pattern of demand rarely varies except in the long term, and since growing demand generally also affords great possibilities for cost reductions and therefore bigger chances of profits, it is true that this possibility of disturbance may become important only in the long term. In any event, the stability contract results in a tendency towards the equalisation of the distribution of incomes.

But if other measures are not taken to do away with a persistent excess of demand, the real distribution function may be found to be affected. In practice, if the supply of goods at the prices prescribed by the contract is too modest, the products are distributed, no longer in the light of the buyers' propensity to buy, but at the discretion of the sellers. Even when, in the matter of distribution, the importance of the monetary distribution function is enhanced, this effect may lose all significance as a result of distortions in the real distribution function.

In the context of stability contracts, sectoral increases in demand can lead only to limited price rises. A distortion in the adaptation of the pattern of outputs to the new pattern of demand can therefore not be ruled out. But, as has already been said, such effects are likely only in the longer term.

If the incentive for each enterprise to lower its costs in the face of competition is slight owing to excess demand, the limitation of the freedom to raise prices may reinforce these effects and thus have a favourable influence on the pattern of inputs. Adverse effects, on the other hand, are possible when concentration processes due to stability contracts offer no cost advantage and forestall concentrations aimed at such advantages.

In the case of the allocation function, we may therefore mainly expect, in the short term, an improvement in the conditions for exercising the function of regulating the pattern of inputs. In the long term, adverse influences on the pattern both of inputs and of outputs can no doubt not be ruled out.

There is no fear of a slackening of effort at quantitative adaptation and qualitative improvement as a result of stability contracts. The limitation of profits, however, lessens the capacity to finance the necessary investments. In the case of the development function, a distortion of the quantitative component is therefore probable and it is possible that the qualitative development function may be prejudiced.

It should be recalled, in conclusion, that the long term effects may be accentuated by the tendency already referred to towards a weakening of the will to compete.

(c) The stability contract does not constitute an institutional obstacle to international trade in goods. The prices charged by foreign sellers on French markets are unaffected and French makers can export on the conditions of the foreign markets.

But the maximum price element contained in the stability contract means that the feasibility of action of French entrepreneurs tends to be less than that of enterprises which can exploit excess national demand through prices. Whereas sellers from other countries can use the profits resulting from their position on the home market to subsidise exports, such national price discrimination is largely impossible for French firms which have entered into a stability contract. Obviously, the French government desires to counter this possible disadvantage by also accepting export price reductions as a counterpart to the increase of home prices. ([31]) But, as we have already demonstrated in considering resale price maintenance, national price differentiation cannot have the effect, if the possibilities of trade, imports and re-imports are free in all directions on the territory of the EEC, of producers with a cost advantage being driven out of the market by producers without such advantages. Furthermore, in so far as it does not involve any weakening of the will to compete internationally, the stability contract does not seem to affect the international working of the market mechanisms. It is true that this would be a hasty conclusion, since the maximum price element is calculated, in certain conditions, to prevent the equalization of prices throughout the integrated territory.

If the price of products on foreign markets is higher than the contract price on the home market, the desire to maximise profits encourages an export drive. If production capacity is fully used, this will act to the detriment of supplies on the home market, leading to a (potential) rise in market prices in France. But stability contracts prevent French producers from attaining the home market prices which would otherwise be possible. They therefore divert their supplies to these foreign markets up to the point where the difference between the foreign price and the contractual home price is equal to unit transport costs. If foreign demand is sufficiently strong, the potential home market price may be well above the foreign price without putting an end to the shift of supplies. Since the prices charged by foreign sellers are not subject to the ceiling prices on the French market, these sellers can obtain the high home market price and

([31]) Cf. *Aufhebung der Preisblockade in Frankreich* in Zeitschrift der Deutsch-Französischen Wirtschaft (published by the Official Franco-German Chamber of Commerce, Paris) 3/1967, p. 13.

satisfy the unsatisfied French demand. In the extreme case, the paradoxical result may therefore be reached, at any rate temporarily, whereby French production, with cost and price advantages in the context of the EEC, is sold mainly on the markets of Member States, while supply at free, but relatively unfavourable, prices from France's partners fills the gaps in supply on the French market. An evolution of this kind distorts the tendencies to the optimisation of trade and the maximisation of production. If the legitimate maximum price under the stability contract covers production costs and provides a satisfactory profit, the French producers will tend, in the long term, to extend their production capacities in order to be able once again to satisfy the whole of the internal demand. Similarly, in order to benefit from the price freedom applicable to foreign products, they will contemplate increasing their production capacity through their subsidiaries existing or to be created abroad. As it is possible that in this choice of location, cost considerations may be relegated to the background, the stability contract may lead to a "sub-optimum" regional pattern.

The loss of well-being resulting from the distortion of the real distribution function and the allocation function will no doubt primarily affect France, but its subsequent repercussions will extend to the whole of the integrated territory. Nevertheless, since the loss of well-being in France will be relatively apparent

Summary Table showing the possible effects of the French stability contract on the functions of the market mechanism.

Functions of market mechanisms	Effects on market mechanisms:	
	In France in a closed economy	In the EEC in an open economy
I. Development function		
1. quantitative	—	.
2. qualitative	—	.
II. Allocation function		
3. pattern of outputs	—	.
4. pattern of inputs	+	—
5. regional pattern	.	—
III. Distribution function		
6. monetary	+	.
7. real	—	—

Legend:
. = no major effect inferable or probable,
— = adverse effect,
\+ = favourable effect.

in the broad light of day, it is to be expected that the economic policy-makers of that country will then react by modifying or abolishing stability contracts. It thus appears, here too, that, in the case of goods capable of foreign trade, integration makes it impossible to follow a price policy in conflict with the laws of the market.

3. *PROGRAMME CONTRACTS*

(a) This most recent form of conditional price freedom was introduced in France by an Order of 10 March 1966. As its name (programme contract - *contrat de programme*) implies, this is also a contract, but in this case it should be treated, by analogy, as a price control, since enterprises which accept it thus legally escape the general freeze. Like the stability contract, a programme contract, made between the Ministry of Finance and Economic Affairs and trade associations, gives rise to a Ministerial Order; freedom of price formation, granted on certain conditions by the Order, may be exercised by member firms if they expressly adhere to the contract. This contract may also be entered into by manufacturers making a single product only, or by enterprises making special capital goods for which there is no current price list.

Accession to a contract gives enterprises the freedom to increase their prices within the limits of the growth rates specified in the Vth Plan. [32] But the authorities retain the right to object to prices which they regard as too high. Although specially fixed for each branch of the economy, the conditions to be observed are inspired in each case by the targets of the Vth Plan and relate to the volume of production, the amount of investments, wage levels, productivity increase and exports. The observance or performance of the conditions is regularly checked. These checks determine whether conditional price freedom should be maintained or limited. Programme contracts are valid until the end of the period of the current Plan (end of 1970). The annexed list of major programme contracts shows 15 items. [33] According to van Meerhaege, the number has since risen to 66. [34]

(b) This unconventional instrument of government price policy is not only a form of price control (maximum price element), but at the same time an instrument for achieving the Plan. As in the case of stability contracts, the aim is "stable price levels without loss

(32) For industrial products, for example, the Vth Plan provides for a maximum annual price increase of 1 to 2%.
(33) Cf. Annex p. 135.
(34) Cf. Meerhaege, M. A. G. van: *Prior Notification of Price Increases as an Instrument of Price-Stabilization Policy*, in Kyklos, Vol. XXI/1968, p. 32.

of growth". We shall therefore consider, first, how far the contract is calculated to do away with the symptoms and causes of an inflationist trend and, secondly, its probable influence on competition and the market mechanism.

The setting of maximum price limits enables the desired action to be taken to deal with the symptoms. In addition, the programme contract acts directly and deliberately on the causes of inflation in so far as the policy of the enterprise is linked with the Plan. The calculated rate of price variation is bound to correspond with market conditions, if the Plan correctly forecasts the variations in the level and pattern of demand and the possible trend of supply and if adequate accounting techniques are applied which allow for real interdependences. If the calculations are accurate, the only causes of price rises are errors in assessing the trend of supply and demand.

Since the rate of price rises adopted in the Plan can be used by enterprises only if their policy is in line with the Plan, the programme contract also helps in realising the assumptions of the Plan as to the volume of supply, investments, wages, productivity growth and exports. This positive action on the causes of inflation is naturally not enough on its own to do away with them entirely. In the first place, the programme contract does not affect all the elements of demand; secondly, the number of contracts so far signed is relatively low. It must nevertheless be recognised that the simultaneous application of the contract to the symptoms and the causes reflects a finer understanding of the economic process than the stability contract. If corresponding action is taken simultaneously with the unaffected branches, the programme contract affords favourable and lasting prospects for the stabilisation of the price level. But we are mainly concerned with the "side-effects", that is to say, the effects of these contracts on competition and the market mechanisms.

The programme contract is no obstacle to institutional freedom of action to lower prices in market competition. The attempt, by lower prices, to conquer a larger share of the market and bigger profits, is, however, not very sound if the terms of the contract set absolute ceilings for the volume of production, investments and wages. Such ceilings limit institutional freedom of action in preparatory competition and may thus prevent the extension of individual capacity to supply. But lower prices cannot contribute towards the target of maximum profits unless the possible growth in demand can also be satisfied by the enterprises whose prices are lowered. By fixing ceilings in this way, the programme contract therefore prejudices competition. (35) But according to Fikentscher, the authorities are so pleased to see enterprises disposed to invest, that they have no desire to limit the share of the market, for example, by government loans or quasi-contracts. (36) It may therefore be assumed that the contracts specify minimum values for the volume of production, investments, productivity growth and exports. To all appearances, this is not true of wages. If this assumption is correct, the restriction of market competition referred to can no longer emerge, in a state of full employment, unless enterprises are prevented from using their productivity gains to engage personnel. Minimum conditions for the other magnitudes may, however, contribute, in a state of brisk expansion, to reinforce the causes of inflation, thus adversely affecting the aim of stability.

If the figures adopted in the Plan for demand and costs remain below the true figures, the maximum price element is effective. Since, in these circumstances, higher profits would be possible if price formation were free, the programme contract results in a potential limitation in the feasibility of action. In addition, the spirit of competition is gravely threatened. The programme contract calls for a review of enterprise policy. The action of enterprises must be based no longer on their own assessment of the market trend, but on that of the Office of the Commissioner-General for the Plan. So long as it is only a question of forecasting the trend of aggregates of demand, the spirit of competition cannot be affected. But if, in addition, it is possible in one way or another, to infer indexes for the production capacity of each enterprise (37) the result would be action counter to the need of oligopolistic producers for security. If the enterprises participating in a market are broadly satisfied with their respective shares, the conditions of the programme contract may provide a pointer towards the orientation of economic behaviour in the direction of peace. Thus, the programme contract largely relieves enterprises which enter into it from the fear that their share of the market will be threatened by the attacks of competition. In practice, such a threat can then come only from newcomers on the market. But in a closed economy of the size of France, this potential danger must be regarded as negligible in many branches of industry. The manufacturers' interest in oligopolistic collusion often embraces the whole of the national market and the appearance of new production of competitive importance generally involves considerable

(35) The conditions of each contract are individually agreed, but as we have been unable to inspect any individual contracts, we can unfortunately only assert this as an assumption.

(36) Cf. Fikentscher, W.: Rechtstechnische Aspekte der französischen planification in wettbewerblicher Sicht, in Fikentscher-Hoffmann-Kugler: *Rechtsfragen der Planifikation*, Stuttgart, 1967, p. 75 and foll.

(37) Dis-aggregation down to enterprise level should not be done by the Office of the Commissioner-General for the Plan. The trade associations, which officially take part both in the work on the Plan and in the conclusion of programme contracts, could do this job unofficially.

difficulties and loss of time. As shown in the annexed Table, the programme contract is mainly used in branches where the market form is oligopolistic. It may therefore be feared that one consequence of the programme contract on the elements in the tendency to competition will be at least a lessening of direct pressure. But, as the contract system becomes more familiarly known, an adverse influence is not impossible on spontaneous impulse, and therefore on direct pressure. The overall effect will to all appearances be a lessening in the intensity of competition which will prejudice the operating conditions of the market mechanisms.

The effect of programme contracts on the different functions of the market mechanisms may be regarded as similar to that of the stability contract. The maximum price element and the reference to the Plan have a favourable effect on the distribution of money. But unless monetary demand is successfully limited to the real supply, adverse effects on the real distribution function cannot be ruled out.

With regard to the allocation function, the maximum price element prevents the pattern of outputs from adapting itself to demand increases not corresponding to the Plan, and, in the event of unforeseen cost rises, allows a reduction in supply which does not correspond to the preferences of buyers. The possible weakening of the spirit of competition may also lead, in the longer term, to a sub-optimum pattern of inputs. If competition is relatively slight at the moment when the programme contract is introduced, favourable effects are, on the contrary, very likely in the short and medium term. In so far as costs increase in excess of the permitted rates of price increases, all producers are compelled to improve their productivity.

The same factors which may have a favourable influence on monetary distribution, hinder quantitative adaptation in connection with the development function, and make it possible that qualitative improvement will tend to fall off.

(c) The programme contract does not prevent French enterprises from charging on external markets, or foreign manufacturers from charging on the French market, prices commensurate with their respective costs. Institutional freedom of action in international competition is therefore not restricted. But since, unlike French entrepreneurs, foreign manufacturers are not, so far as we know, prevented from taking advantage in their price policy of any excess in French demand, the maximum price element in the programme contract may lead to a one-sided strengthening of the feasibility of action of the manufacturers of other Member countries. Such a possibility is certainly not negligible for the long term development of the competitiveness of French enterprises. But if one looks merely at comparative costs, without taking account of the reasons why they differ, programme contracts cannot provoke the replacement of supply at relatively favourable costs by a supply at unfavourable costs. No adverse effects can therefore be inferred on the tendency towards a competition valuable to inter-Community trade. Furthermore, the growth in the number of potential competitors, connected with integration, is calculated to stimulate French competition which may be weakened by programme contracts.

Nevertheless, from an overall economic point of view, the favourable effects on growth and well-being of an extension of the field of influence of the market mechanism may be disturbed. Like the stability contract, the programme contract makes it impossible to bring product prices in the integrated territory into line in the event of prices on external markets rising above the permitted contract price on the French market. The desire of the French enterprises to take advantage of their prospects of enhanced profits on external markets may, in this case too, but much faster, lead to a limitation of domestic supply unjustified by the market.

This happens when the link between wages and the Plan prevents profits from being used to attract extra labour by higher wages. Furthermore, if real wages are higher abroad than in France, an emigration of French workers may theoretically be expected. If the wage conditions in programme contracts preclude the equalization of factor prices in the integrated territory, the emigration of factors may go well beyond the limits possible in a free market. As a result of this absolute limitation of production possibilities, a more favourable cost position of French enterprises in the integrated territory may become relatively immaterial to their share of the market, since they can satisfy only a limited portion of the demand. In such a situation, it is highly probable that the desire to shake off the restrictions of programme contracts will take precedence, among French producers, over pure considerations of costs. A strong incentive may therefore be expected for production to shift abroad, without any cost motive.

It is therefore conceivable that programme contracts may constitute a check on the tendency towards optimum trade and the relative and absolute maximum production. The following are the consequences on the functions of the market mechanisms in the integrated territory.

With regard to the distribution function, no supplementary effects are observed on the functional monetary distribution.

But the check on the tendency towards optimum trade reflects a distortion of the real distribution function.

Since French consumers can, if they wish, acquire the quantities of products they lack from abroad, at market prices corresponding to their buying preferences, the regulation of the pattern of outputs is not affected by the components of the allocation function. But if programme contracts prevent the concentration of production in the enterprises with the most favourable costs, the overall pattern of inputs in the integrated territory is not optimum. The same applies to the regional pattern, which may also be still further deteriorated by a shift of factors not motivated by overall cost advantages. No effect on the development function can be inferred.

In conclusion, it must no doubt again be assumed that the French Government would counteract any appearance of the effects described above, since the French economy would be the first to be hit by the loss of well-being and growth. It may nevertheless be asked whether the appearance of these trends would be detected from the outset and whether it would lead, even at that stage to the reform or abolition of programme contracts.

Summary Table showing the possible effects of the French programme contract on the functions of the market mechanisms.

Functions of market mechanisms	Effects on market mechanisms	
	In France in a closed economy	In the EEC in an open economy
I. Development function		
1. quantitative	—	.
2. qualitative	—	.
II. Allocation function		
3. pattern of outputs	—	.
4. pattern of inputs	+	—
5. regional pattern	.	—
III. Distribution function		
6. monetary	+	.
7. real	—	—

Legend:
. = no major effect inferable or probable,
— = adverse effect,
+ = favourable effect.

4. *THE PROHIBITION OF PRICE DISCRIMINATION*

(a) Price discrimination (sometimes called price differentiation) is said to exist ([38]) when a seller asks, or a buyer offers, different prices for the same ([39]) service. Since the prohibitions in force in Federal Germany, France and Luxembourg mainly affect price discrimination by the seller, we shall confine ourselves to that type.

There may be two different motives for prohibiting it; from the legal point of view, prohibition is based on the principle of equality enshrined in the Constitution. Even if this principle is not always expressly invoked as the foundation of the prohibition, ([40]) it can often be divined underlying the reasoning. The connection with the principle of equality seems to raise the prohibition of discriminatory practices to the level of a manifest requirement of justice, which makes it harder in any way to discuss its merits. ([41]) But, according to Mestmäcker, this appearance is deceptive and the principle of equality applies to spheres of life other than relations under private law. ([42])

From the point of view of the national economy, this prohibition is based on the old static theory of competition, under which the equilibrium of perfect competition is the ideal to be attained. If this equilibrium is reached, the prices of all sellers correspond to unit costs, augmented by minimum profit. Any difference between the selling prices of producers which is not justified by costs reflects monopolistic power. Prohibition, therefore, merely aggravates monopolistic behaviour.

([38]) Cf. Ellinghaus, U. W.: *Die Grundlagen der Theorie der Preisdifferenzierung*, Tübingen, 1964, p. 7.
([39]) Machlup ([a]) rightly points out that the reference to the "same" service (which includes, of course, similar goods) is too narrow, and gradually disappears when certain differentiations of the product are taken into consideration. Price discrimination essentially raises the question of variable proportions between the prices and costs of the seller (or the income of the buyer) where it is immaterial whether the products are identical, similar or entirely different. Machlup therefore defines price discrimination as "The practice of a firm or group of firms of selling (leasing) at prices disproportionate to the marginal costs of the products sold (leased) or of buying (hiring) at prices disproportionate to the marginal productivities of the factor bought (hired)". If we have nevertheless adopted the vaguer definition cited above, this is because it corresponds more closely to the legal prohibitions of price discrimination.
([a]) Cf. Machlup, F.: Characterization and Types of Price Discrimination in: *Business Concentration and Price Policy (issued by NBER)*, Princeton, 1955, pp. 398 and foll.
([b]) Cf. e.g. Gutenberg, E.: Grundlagen der Betriebswirtschaftslehre. Vol. 2, 4th ed. revised, Berlin-Göttingen-Heidelberg, 1962, p. 316.
([40]) The rule is invoked, for example, by Summerer, L.: *Rechtsform und wirtschaftliche Bedeutung des Verboten der Preisdiskriminierung*; in: WuW, 5th year/1955, p. 365.
([41]) Cf. Mestmäcker, E.-J.: *Diskriminierung, Dirigismus und Wettbewerb*, Part I; in: WuW, 7th year/1957, p. 22.
([42]) Cf. ibid.

But the present study is primarily concerned with competition and the market mechanisms neither as instruments for ensuring equality, nor as a means of reaching an equilibrium of perfect competition, but as a means of regulating an evolutionary economic system. Before analysing its effects, therefore, we must inquire whether price discrimination in any way interferes with the regulation of the economic system by the market.

A seller cannot impose different prices for the same product unless there are, on the demand side, groups of buyers for whom the product ranks differently in the scale of utilities, and/or who assess this utility differently. It must be possible for these groups of buyers to be supplied separately, without any chance of option. In addition, the seller must either be the only one on the entire market, or must enter partial markets, where the intensity of competition is variable. To ascertain whether the market mechanisms can function, we shall concentrate on the market situations requisite, on the supply side, for price discrimination.

If the seller is the only one on an entire market, the conditions are not satisfied for the proper functioning of the market mechanisms when this monopoly situation is attributable to factors which do not flow from the merits of the seller, such as the natural data of supply, or a legal privilege. On the other hand, if the seller's monopoly position is based on better performance than that of his potential competitors, his temporary appearance may indeed be the expression of the proper functioning of the market mechanisms, or, more accurately, it represents the temporary result of the qualitative development function. This reasoning also applies by analogy to the case of variable intensity of competition on partial markets. For example, if a seller pioneers a previously neglected potential market, the relatively high price and unit profit which are possible are at the same time the reward of his success and an incentive to the inflow of new sellers. It is only when price differences unjustified by costs last for a long time that it can be assumed that the market mechanisms are no longer functioning. Thus, monopolistic situations may appear temporarily even when the market mechanisms are functioning well. Price discrimination is therefore a sign of disturbance only when it is practised over a long period.

It follows from this at least that general prohibition of price discrimination is pointless. It could, however be maintained that prohibition prevents the exploitation of the consumer if the market mechanisms are faulty, and merely speeds up their functioning in the contrary case, by shortening the time for the application of the lowest price on all the partial markets. If this were so, the effect of prohibition would have to be regarded as absolutely favourable. This proposition can be checked by analysing the effects of a general prohibition of price discrimination. We shall confine ourselves to two cases: perfect monopoly of supply, where we assume that the market mechanisms are faulty, since certain prior conditions are not satisfied, and variable intensity of competition on partial markets, where we assume that the market mechanism is functioning properly.

The situation of perfect monopoly on an aggregate market enables the seller to maximize his profits by imposing on all the partial markets prices corresponding to Cournot's points. The prohibition of price disparities unjustified by costs no doubt obliges him to fix a unit price, but does not determine its amount. The monopolist can therefore no longer realize his maximum profit on each partial market, but, on the contrary, the prohibition does not stop him from maximizing his profit on the aggregate market. Cournot's single price for the aggregate market should therefore not in general be the lowest price previously charged. But the result of this is to moderate the exploitation of all the consumers who previously had to pay a higher price, while, in contrast, the consumers who were previously supplied at lower prices are more exploited, or must withdraw from the market.

The aggregate volume of supply would remain unchanged if the increase in demand from the former high-price markets equalled the fall in demand from the former low-price markets. But this cannot happen—geometrically speaking—unless all the curves of demand on the partial markets to be aggregated are straight lines or follow the same conformation. (43) But since it is more likely, according to Robinson's analysis (44) that the elastic curves of demand will be more concave than the inelastic curves, the total volume of outputs will generally be smaller with a single price than with differential prices for the partial markets. (45) The prohibition of price discrimination therefore makes it harder for the monopoly to supply the market quantitatively. If, as a result of this quantitative reduction, marginal costs increase, the unit price will be higher and the quantity of outputs will be smaller than if marginal costs are stable or falling.

To sum up, it can be said that the prohibition of discriminatory price practices does not stop the exploitation of the consumer by the monopoly, but spreads it differently. At the Cournot price fixed for the aggregate market, the profit of the monopoly is certainly smaller and real distribution is effected on the

(43) For the theoretical details, see Robinson, Joan: *The Economics of Imperfect Competition.* Vol. V: *Price Discrimination*, London, 1965, pp. 179-208, and Ellinghaus, U. W.: *Die Grundlagen der Theorie der Preisdifferenzierung*, op. cit., pp. 192 and foll.

(44) Cf. Robinson, Joan: *The Economics..., op. cit.,* p. 192 and foll. especially p. 201 and foll.

(45) This effect can also be illustrated relatively simply by comparing the quantity of outputs in the case of perfectly de-

(cont. on p. 44.)

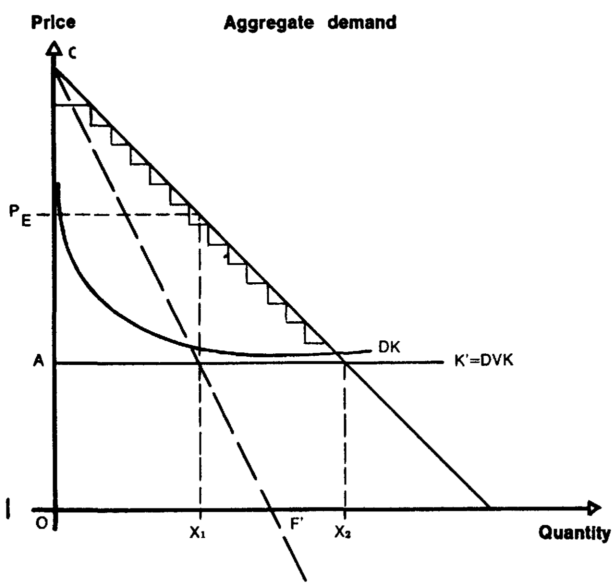
aggregate market in accordance with the real distribution function of the market mechanisms. But it is not certain that this is enough to warrant a favourable judgment on the prohibition of discrimination. In practice, if the consumers' scale of utilities is about the same, price reductions essentially increase the consumers' rents and the satisfaction of the needs of high income earners. On the other hand, price rises and the limitation of supply, diminish the consumers' rents and the satisfaction of the needs of low income earners. Even allowing for the difficulties of comparing utilities between one person and another, it can be said in this case that the prohibition of price discrimination would diminish well-being rather than increase it.

We now turn to the second case, where the question is whether prohibition can speed up the general diffusion of low prices in a market which is no doubt functioning properly, but where variations in the intensity of competition allow temporary price discriminations. On partial markets the speed-up effect might make itself felt at the moment of the introduction of the prohibition, by a once and for all alignment of all prices for each partial market on the lowest previous price, and later, by the persistence of keener competition. Normally, the prohibition of discriminatory price practices, here again, merely compels the determination of a single price, without fixing it at a given level. But since he is no longer alone on the aggregate market, the seller, in fixing his single price, must take account, not only of the reactions of demand and of his own cost function, but, also and above all, of the price policy of his competitors. If they do not themselves practice discrimination, their price behaviour will not be directly affected by the introduction of the prohibition. The seller at discriminatory prices must therefore necessarily say to himself that any increase in his prices on the low price markets will considerably restrict his outlets there. His decision as to the amount of the single price will therefore depend on the relative importance of his profits on each partial market in comparison with his aggregate profit and the variation of his costs in relation to the quantities marketed. According to the situation on the partial markets, it may be sound to choose as the single price the price previously obtained on the low price market, an optimum mean price or even the price previously charged on the high price market.

In order to clarify this problem of decision, let us consider the example of the graph below where an enterprise occupies a position of perfect monopoly on a partial market (I), while on another (imperfect) partial market (II) ([46]) it is in competition with a number of other sellers. We further assume that the production conditions of the seller at discriminatory prices are represented graphically by a rectilinear evolution of the cost function and that the seller's search for profit is reflected in the maximisation of the extent to which costs are covered (surplus over variable costs). We shall consider two cases distinguished by a different level of marginal costs [$K'_1(x)$ = mean variable costs].

If marginal costs are at the level $K'_1(x)$ and if price discrimination is legitimate, the enterprise will sell the quantity x_1^M at price p_1^M on partial market I and the quantity x_1 at price p_1 on partial market II. In this case the profit is greater on the monopolistic market (ABCD) than on the competitive market (abcd). If price discrimination is forbidden, we get for the aggregated demand curve for the aggregate market (N_{III}) three points of intersection between the curve of marginal income [$E'(x)$] and the curve of marginal

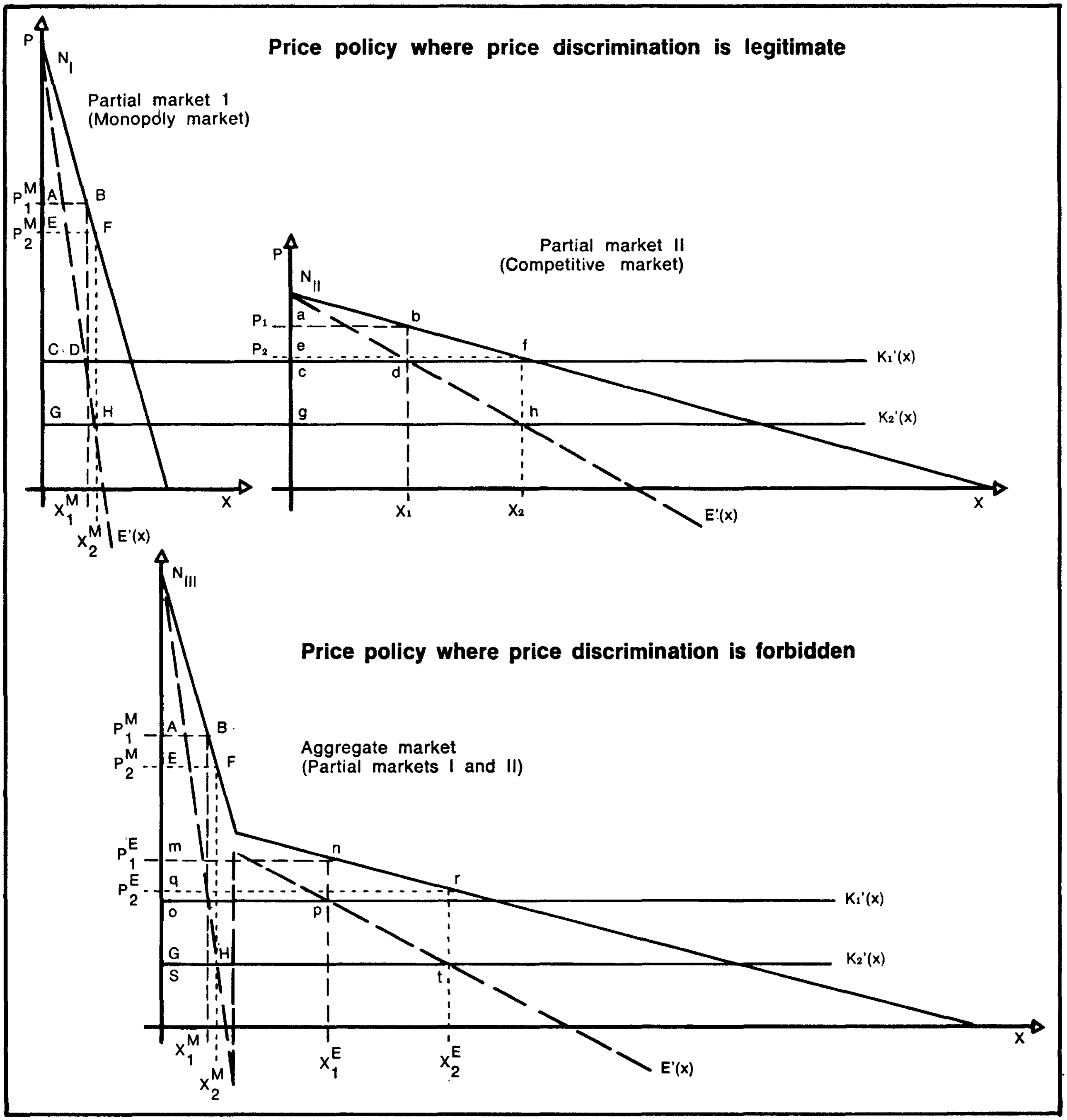
glomerative discrimination ([a]) and of the fixing of monopolistic unit prices: If the monopolist is in a position to lower the



price corresponding to each consumer's assessment of utility, he may make a profit equivalent to the whole of the consumer's rent (area of triangle ABC). Thanks to the quantitative return ox 2 and the prices shown by way of example, he will maximise his profit. If the prohibition of discrimination compels him to impose a unit price, he is precluded from completely exhausting the consumer's rent. The maximum profit here is the price P_E which corresponds to the point of intersection of marginal income (F') and the curve of marginal cost (K'). But in order to impose this price, he must cut back his quantitative output to xi.

([a]) Cf. for the distinction between "aglomerative" and "deglomerative" price differentiation: Weber, K.: Zur Frage der Preisdifferenzierung bei Einproduktunternehmen; in SchwZfVuSt, 92nd year/1956, pp. 17 and foll.

([46]) The selected evolution of the demand curve may be expected, according to Jacob, when the goods in competition are differentiated mainly by quality. Cf. Jacob, H.: *Preispolitik.* Wiesbaden, 1963, pp. 138 and foll.



cost [D′(x)], the central one, moreover, not having to be taken into consideration. ([47]) It is therefore important to decide whether the unit price taken will be the former monopoly price (p_1^M) or the mean optimum price (p_1^M). Since the surplus (mnop) which can be realised with a price p_1^E and a quantity x_1^E is smaller than the profit which can be realised on the monopolistic market alone (ABCD) the seller will have to give up the competitive market. In this case, the prohibition of price discrimination therefore does not result in a relatively low unit price for all markets. Differential prices continue to exist; they are simply realised by a number of sellers instead of by one only. Furthermore, since the seller at discriminatory prices gives up partial market II, a slight price increase cannot be ruled out.

([47]) For the significance of this point of intersection, cf. Jacob, H.: *Preispolitik, op. cit.*, p. 146.

In a system of legitimate discrimination, if marginal costs are at the level $[K'2(x)]$, the quantity x_2^M will be sold at price p_2^M on partial market I and quantity x_2 at price p_2 on partial market II. In this case, the profit on the monopolistic market (EFGH) is smaller than on the competitive market (efgh). After the prohibition of price discrimination, three points of intersection are again found on the aggregate market, the first and the last of which influence the decision. Here the option as to the unit price will lie between the monopoly price (p_2^M) and the competitive price ($P_2 = P_2^E$). In this case, the competitive price will be taken as unit price, since the surplus (qrst) which can be realised with p_2^E and x_2^M is more than that on the monopolistic market (EFGH). In these circumstances, it may be taken as confirmed that the process of price reduction is speeded up by the introduction of the prohibition of price discrimination.

Even if the latter case were more frequent overall than the former, this would not warrant a favourable judgment on prohibition, since we have merely inferred here an effect which happens once only. Considerably more important is the effect on the speed of functioning of the market mechanisms. The prohibition of discriminatory price practices affects neither the institutional freedom of action to make general price reductions nor the freedom to increase prices uniformly in the light of costs and demand. Sellers are merely deprived of the liberty to make limited price variations. As we have seen, the prohibition entails, at the moment it is introduced, a diminution in the profit of enterprises which practice discrimination, or in other words, it provokes, at least once, a restriction of the feasibility of action. An increase in the intensity of competition and, in consequence, of the speed of functioning of market mechanisms can therefore no longer come about except by a considerable increase in the spirit of competition.

The spirit of competition is generally not indifferent to the form of the market. We shall therefore adopt below the assumption of oligopoly for the whole market, since this is the most important form in practice. In competition on an oligopolistic market, sellers must take account, as well as their production costs and the reactions of demand, of the prospective actions of their competitors, who often react to price reductions faster than the buyers, (48) thus checking the hoped-for afflux of demand, so that the tendency to price competition is relatively slight on such markets. (49) But price competition is not generally completely abandoned. Price reductions as a means of increasing the share of the market are no longer practised unless there is no fear of immediate retaliation by competitors. On oligopolistic markets price competition mainly takes the form of limited and/or concealed price reductions which, as experience has proved, often lead to general price pressure. (50) By prohibiting limited price reductions, a general prohibition of discriminatory practices does not encourage the tendency to price competition, but accentuates the previous inflexibility of prices. Prohibition therefore does not speed up the general process of price reduction, but actually helps to check it. Finally, this prohibition has the effect, among others, of leading to relatively high unit costs and profits. It may, however, be doubted whether this will lead to an intensification of preparatory competition, since the diminution in the intensity of market competition is accompanied by a lessening of the constraint to practise preparatory competition.

In relation to the functions of the market mechanisms, therefore, the effects of a general prohibition of discriminatory price practices may be summed up as follows; with regard to the distribution function, the real distribution does not vary. By the increase of oligopolistic collusion, the monetary distribution may, however, be modified to the benefit of enterprises and generally to the benefit of high income earners.

The pattern of outputs is distorted if the inflexibility of high prices for products resulting from the diminution of price competition does not affect all sectors equally. A disturbance in the regulation function can therefore not be ruled out. The regulation of the overall pattern of inputs is essentially dominated by the productivity of factors and enterprises. Impediments to market competition may, however, from two points of view, lead to a renunciation of the advantages of mass production. In the first place, the smaller aggregate volume of production owing to the higher market price, may be an argument against it. Secondly, the diminished chances of an increase without risk to the individual share of the market, may have the same effect. Furthermore, owing to the diminished

(48) Thus, the German electrical appliance industry, on the announcement of a substantial reduction in the price of colour television sets by the Neckermann mail order house, immediately reacted by reducing the prescribed price it had already announced, even before Neckermann had delivered a single set. Cf. on this subject, "Elektro-Industrie will Preise für Farbfernsehgeräte senken" in: *Die Welt* No. 146 of 27 June 1967.

(49) The reluctance to lower prices has, for example, induced the Isenbeck Brewery to announce that its efforts to conquer the North German market for high fermentation beer would be made in a climate of "fair competition" and that "there was no question of conquering the market by price action". Cf. on this subject: "Altbier- Welle schwappt nach Hamburg" in: Die Welt, 11 March 1967.

(50) A seller, for example, who has succeeded by clandestine competition, in increasing demand to such a point that he can adopt cheaper production methods, will also be inclined, on the basis of such a lead in preparatory competition, openly to practise general price reductions if he thinks that his competitors, because of their costs, will not now be able to match his own lower costs.

threat from competitors, the pressure for a current adaptation of the combination of factors to the development of their productivity is lessened. A disturbance in the pattern of inputs therefore seems possible.

The effort towards the quantitative adaptation of production capacities is not prejudiced by the prohibition of discriminatory practices. Owing to the improved feasibility of action, it may even be envisaged that the corresponding function will operate faster. The possible effect on the qualitative development function should, on the contrary, be more than counterbalanced by the adverse influence of the lesser intensity of market competition. In practice, investment in research and development calls for a certain willingness to accept risk, which is generally in positive correlation with the intensity of the threat to the market share of the enterprise concerned. With regard to the development function, quantitative adaptation will, to all appearances, be favoured and a disturbance of the qualitative development function is possible.

On the completion of our general analysis of its effects, the image of a general prohibition of discriminatory practices is therefore fairly unfavourable. It is precisely for this reason that we must not fail to point out that there are many partisans of prohibition. The gist of their arguments [51] may be summed up by saying that in their eyes prohibition is necessary to prevent the use of discrimination in "dissuasive competition".

According to this school of thought, price discrimination is a very special instrument of dissuasive competition where:

(i) a seller charges a buyer (distributor) a higher price than his competitors in order to enforce on him a given behaviour prejudicial to competition (e.g. observance of recommended selling prices):

(ii) a seller deliberately undercuts his competitors' prices to drive them out of the market:

(iii) a buyer, owing to the volume of his demand, imposes on his supplier a lower purchase price than that charged to his competitors so as to force them out of the market owing to higher selling prices. [52]

In the first case there is, indeed, a use of discrimination which distorts the market mechanisms. In order to counter such practices it is not necessary to prohibit price discrimination in general. Since the differential prices in this case are linked with a collateral agreement in restraint of competition, it is enough to prohibit the combination of price discrimination with obligations in restraint of competition.

In the second case, it may be noted that the competition essentially consists in taking customers away from competitors by more advantageous offers and ultimately driving them out of the market. Any price undercutting based on service therefore has a favourable effect on the market mechanisms. [53] Price undercutting is therefore open to criticism only if relatively unproductive but financially strong enterprises, by temporary offers below cost, drive relatively productive but financially weak enterprises out of the market. But this will not happen, in this case either, unless the unit costs of the first type of enterprise are higher, even after the additional gain in demand, than those of the second type. [54] It is immaterial for the appearance of the adverse effect on the market mechanisms in this case whether such prices are charged on a few partial markets or generally. In order to prevent such effects, a prohibition of sale below cost, subject to certain exceptions, [55] and limited to practices which are open to criticism, is more appropriate—even if perhaps less practicable—than the prohibition of discriminatory practices.

Even in the last case, the need for a prohibition of discriminatory practices is not apparent. In principle, the desire for the most favourable possible input prices is an essential element in preparatory competition. It is therefore legitimate, in the light of a market economy for a buyer to obtain from a seller lower prices than his competitor. If the seller, for his part, lowers his selling price and threatens the market share of his competitors, they are also obliged to envisage favourable purchasing conditions. The buyer's initiative thus involves general price reductions due to competition.

Thus, it is maintained that sellers will be constrained by their very big customers to make price reductions from which less powerful buyers will not benefit. As a result of this price discrimination, provoked by demand, productive, but small, enterprises may be forced out of the market by relatively unproductive, but big enterprises. The answer to this argument is that such behaviour on the part of sellers would be shortsighted and therefore unlikely. If a seller were to charge his small customers much higher prices than

[51] A selection will be found in Mestmäcker, E. J.: *Diskriminierung, Dirigismus und Wettbewerb*, Part I; in: WuW, 7th year/1957, p. 21.

[52] Schultes therefore recommends a provision prohibiting buyers from "requiring, obtaining or granting discriminatory advantages in the form of rebates or special terms". Schultes, W.: *Preisdifferenzierung unter wettbewerbspolitischen Aspekt*: FIW-Schriftenreihe, Cahier 14, Cologne-Berlin-Münich, 1963, pp. 159 and foll.

[53] If a more productive seller drives a less productive seller out of the market, an improvement is obtained in the overall pattern of inputs which will often be more appreciable than the possible deterioration in primary monetary distribution.

[54] Cf. in this connection our comments on lower price limits in the section on costing rules.

[55] Cf., e.g. in the study on costing rules, the exceptions to the prohibition in France of selling below cost.

those he charged to their biggest competitors, he must very soon expect to find those customers allowed lower prices by his own competitors. If this danger is slight, the seller in question obliges the small buyers either to quit the market—thus increasing the power of the big buyers—or to form a purchasing group, which again strengthens the contractual position of demand. If the seller's unit profit is in negative correlation with the market power of demand, it is in his long term interest to treat big and little buyers on relatively equal terms. ([56]) The prohibition of discriminatory practices is therefore not essential.

Powerful buyers could also oblige sellers to charge their smaller competitors higher prices than those which they themselves have to pay. But, here again, the prohibition of discriminatory practices is not essential to eliminate practices of this kind: it is sufficient, as already advocated, to prohibit practices in restraint of competition.

To sum up, the arguments of the partisans of the prohibition of discriminatory practices are not sufficiently persuasive to make us revise our essentially adverse judgment. They may, however, to some extent help towards an understanding of the national regulations which now remain to be considered.

(b) While in *the Federal Republic of Germany*, price discrimination is not expressly regulated, § 26(2) of the Act on Restraint of Competition nevertheless lays down a general rule from which the prohibition of discriminatory practices can be inferred. This rule prohibits groups of enterprises and market dominating enterprises which impose prices from unfairly interfering with other enterprises or discriminating against them without justifiable reason. The ruling legal opinion is that price discrimination may constitute unfair interference.

The only thing which is prohibited, therefore, is price discrimination by dominating enterprises whenever it unfairly interferes with the business relations of other enterprises. As interpreted by the lawyers ([57]) such interference exists when an enterprise is prevented, by excessive price variations, from obtaining value for its services on the market, the reasonableness of the action being assessed in the light of the interests of both parties. This interpretation therefore lays stress not on the proper functioning of the market mechanisms, but on protecting the freedom of competition. Owing to the imprecision of the objective limitation, the prohibition operates in the first place to protect competitors as well as the competitive system. But if, pursuant to this interpretation, the prohibition merely concerns the "price war of a big competitor against a small one by locally limited undercutting, ([58]) there is no fear of adverse effects on oligopolistic price competition. If big enterprises, producing at low costs, want to drive out of the market smaller enterprises with lower productivity, selling only in one or a few partial markets, the prohibition of discriminatory practices compels them to lower their prices for the whole market. They will not take this line if their additional sales are not enough to make up for the fall in their gross profit. In this case, any improvement in the aggregate pattern of inputs is forgone. But owing to the relative smallness of such partial markets, this adverse effect can be disregarded. An overall price reduction policy is sound if the volume of partial markets is relatively large. Compared with a situation in which price discrimination is legitimate, we find here a favourable effect on monetary distribution. The other functions are no doubt unaffected.

In *France* the Decree on Competition of 24 June 1958 (Ordinance No. 45-1483 on Prices, Art. 37, no. 1 a) prohibits, *inter alia*, "the habitual practice... of discriminatory price increases unjustified by corresponding increases in costs". ([59]) The question whether there is a price increase above the price habitually charged is determined by comparison with "net prices". The net prices are obtained by deducting all discounts in cash or kind, including the annual discount and other rebates. The wording of the enactment seems to indicate that only *absolute* discriminatory price increases are prohibited, but according to the interpretation given by the Fontanet Circular referred to above, *relative* price increases resulting from price reductions in favour of certain buyers also manifestly come under the prohibition. ([60]) There is so far no record of any conviction for discriminatory practices.

Since the limitation to "the habitual practice" of enhanced prices is merely designed to simplify administrative action, the French enactment may be regarded as a general prohibition of price discrimination, the effectiveness of which is further strengthened by the prohibition of refusal to sell. The effects inferred

([56]) Factual surveys have established that this reasoning is in line with practical reality. Thus Geisbüsch reports, in connection with rebates allowed to powerful purchasing groups, that "Even powerful and isolated retailers and wholesalers not belonging to any group often benefit from special advantages equal to the special rebates habitually accorded to purchasing groups in the branch, since manufacturers are anxious not to force traders to join groups of this kind". Geisbüsch, H. G.: *Die organisierte Nachfrage*, FIW-Schriftenreihe, Cahier 18, Cologne-Berlin-Münich, 1964, p. 48.

([57]) Cf. Müller-Henneberg-Schwartz: *Gesetz gegen Wettbewerbsbeschränkung*, Kommentar, Cologne-Berlin, 1958, pp. 576 and foll.

([58]) Ibid., p. 577.

([59]) German translation in Ulmer-Krasser, *op. cit.*, p. 487.

([60]) In the words of the circular, "it would be manifestly contrary to the spirit of the text if equality was respected in appearance by the application of uniform prices but infringed by the grant of substantial advantages which unfairly favoured certain customers". Cited in Ulmer-Krasser, *op. cit.*, p. 488.

in the general part of this section on competition and the market mechanisms are therefore fully applicable to the French enactment.

In *Luxembourg* price discrimination is prohibited only in two special cases. The Grand-Ducal Order of 16 July 1938, prohibits the offer, announcement or grant, on the purchase of merchandise, of rebates to customers in their capacity as members of associations or societies. ([61]) The second prohibition relates to price discriminations designed to circumvent the prohibition of resale price maintenance.

Owing to its limited scope, the first rule has little effect. The prohibition of discriminatory practices designed to circumvent the prohibition of resale price maintenance has the same favourable effects as the prohibition of resale price maintenance itself. The prohibition of the grant of rebates to members of societies seems to be based on non-economic considerations, connected with policy for the middle classes. The possibility of restraint on competition or disturbance of the market mechanisms should be negligible.

(c) Turning now to the EEC as a whole, we find that the national prohibitions of price discrimination do not compel enterprises to charge the same price throughout the EEC territory. Since sellers are not prevented from offering their products abroad at prices below or above the home price, there is no restriction on freedom of action in competition beyond the national frontiers.

If the general prohibition of discriminatory practices encourages oligopolistic collusion in the national context, the competitiveness of the enterprises concerned will be affected as a result. The effect is favourable if the price rise leads to an increase in financing capacity: it is unfavourable if the reduced intensity of competition leads to higher production costs. It is therefore impossible to infer any relatively clear-cut influence on material possibilities of action. There is no reason to think that the tendency to competition beyond the national frontiers will be affected in the case of sellers who are not entitled to charge discriminatory prices in their own country. It is, however, different in the case of foreign sales on a market where discrimination is prohibited. So long as the sellers are not really established on the market in question, the prohibition cannot weaken their spirit of competition. If they are unwilling or unable to introduce their products immediately on the whole of the market, but only on a partial market, they feel no need for the faculty to charge discriminatory prices. They will be all the more inclined to storm the corresponding market, the better seem their prospects of success. But these prospects improve when national sellers, owing to the prohibition of discrimination, are not entitled to defend their threatened share of the market by price reductions limited to the menaced partial markets. If the shrinkage in profits consequent on an overall price reduction is substantially greater than that resulting from the loss of outlets on the partial market, the national sellers will probably not react by way of prices unless foreign competition has already captured a substantial part of demand on the partial market. In the first phase of integration, a general prohibition at national level of discriminatory practices may therefore have a favourable effect on the competitive spirit of foreign sellers.

Summary Table showing the possible effects of national prohibitions of price discrimination on the functions of the market mechanisms.

Functions of market mechanisms	Germany (FR)	France	Luxembourg
A. *Effects in the national context in a closed economy*			
I. Development function			
1. quantitative	.	+	.
2. qualitative	.	—	.
II. Allocation function			
3. pattern of outputs	.	—	.
4. pattern of inputs	.	—	.
5. regional pattern	.	.	.
III. Distribution function			
6. monetary	+	—	.
7. real	.	.	.
B. *Effects in the context of the EEC in an open economy*			
I. Development function			
1. quantitative	.	.	.
2. qualitative	.	.	.
II. Allocation function			
3. pattern of outputs	.	+	.
4. pattern of inputs	.	+	.
5. regional pattern	.	+	.
III. Distribution function			
6. monetary	.	.	.
7. real	.	+	.

Legend:
. = no major effect inferable or probable,
— = adverse effect,
\+ = favourable effect.

([61]) Cf. Ulmer-Wunderlich, *op. cit.*, pp. 763 and foll.

If, on the other hand, the foreign sellers have already conquered a certain fraction of the market, a weakening in their competitive spirit is probable, for the reasons given above. They have a better chance of extending their share of the market on a market where discriminatory practices are legitimate.

The very limited scope of the prohibition in force in Luxembourg deprives it of all practical effect on competition among Member States. It is true that the German legislation might theoretically have a favourable short term influence on the competitiveness of foreign sellers. But since legal interpretation regards limited price reductions as a justified defensive measure, [62] the German system, too, may be said to have no influence on competition beyond the national frontiers.

The case of France is different. It may be taken that the French regulations make it easier for the French market to be penetrated by sellers who make their first appearance there as a result of the suppression, in their branch, of relatively high Customs duties or restricted quotas, thus strengthening their competitive spirit.

All other things being equal, therefore, there may be a speeding up of the tendency to harmonise the prices of factors and products for goods manufactured at lower cost by France's partners. The result is favourable short term effects for the real distribution function and the allocation function.

That completes our plan of study. It merely remains to note that the existence of national prohibitions of price discrimination is in no way prejudiced by the process of integration.

5. *CONTROL OF REBATES*

Rules controlling the amount of rebates are found, within the EEC in the Federal Republic of Germany and Luxembourg. They do not prohibit uniform changes in the gross price, or the fixing of differential prices, but they do limit the possibilities of adaptation to particular market situations by granting rebates on a uniformly fixed gross price. If the sellers want to reduce their net prices to a larger extent, the limitation on the legitimate amount of rebates compels them to reduce their gross prices. In certain cases, therefore, the control of rebates may have effects partly comparable to those of the prohibition of discriminatory price practices.

In principle institutional freedom to reduce prices is not affected. The sellers simply cease to be masters of their own action on the nature of their price reductions and the procedure for applying them.

No direct effect can be inferred on the feasibility of action. It is nevertheless necessary to check whether possible pressure to reduce gross prices may influence the sellers' spirit of competition. The degree of probability of such effects depends, in particular, on the form of market which exists in each case.

On oligopolistic markets, it is important to note that gross prices are, as experience shows, the subject of wider publicity than the rebates and the net prices which have to be calculated. Rebates are also often used as parameters of action in differentiated "clandestine competition" which, over a long period represents practically the only form of price competition applicable on oligopolistic markets. If rebate control limits the possibilities of this non-public competition, the seller's uncertainty as to his competitors' price policy is diminished, as it is under the influence of prohibition of price discrimination. But the effect of indirect pressure on the competitive spirit is also thus reduced, a pressure which is particularly important in oligopolistic markets. Since there is no reason to believe that this tendency towards a weakening of the competitive spirit is offset by any strengthening of the components of spontaneous impulse and direct pressure, the intensity of market competition should diminish on oligopolistic markets at the same time as the competitive spirit, following the control of rebates.

It must, of course, not be overlooked that the limitation of rebates also helps to make the market more transparent for buyers. In theory, the result could be a speeding up of the functioning of the market mechanisms. But this potential favourable effect cannot generally make itself felt on oligopolistic markets. In practice, if price competition becomes frozen because of the greater transparency of the behaviour of market partners, the buyers' fuller knowledge of the market becomes inoperative, as it does in the case of prescribed prices. Rebate control will therefore, in oligopolistic markets, have the same effects on the functioning of the market mechanisms as the prohibition of price discrimination.

On atomistic markets ("*polypolistichen Märkten*"), on the other hand, indirect pressure is only of relatively secondary importance for the competitive spirit. In such circumstances, sellers are fully able, by public reduction of their net prices, to attract demand, without this policy being immediately defeated by the counter-measures of their competitors. The limitation of the possibilities of competition by rebates can and will lead, on atomistic markets, to an intensification of public competition through gross prices. In such a market situation, therefore, the adverse effect on the competitive spirit indicated above is therefore negligible.

[62] Cf. Müller-Henneberg-Schwartz: Gesetz gegen..., *op. cit.*, 1958, p. 577.

But in this case the greater market transparency enjoyed by the buyers may lead to greater mobility of demand which will depend on the comparative performance of the sellers. On atomistic markets, therefore, rebate control is very likely to speed up the functioning of the market mechanisms. With regard to the different functions of these mechanisms, such control may bring about a monetary distribution which owes less to chance and more to personal success, a real distribution determined less by individual commercial skill than by the disposable purchasing power, a more efficient overall pattern of inputs and a stimulus to the qualitative development function.

(b) In *the Federal Republic of Germany*, the Act of 25 November 1933 on Rebates, limits the amount of cash discount at the last stage of distribution, retail trade, to 3% of the price of the goods or services. Until § 6 of this Act was invalidated by the Federal Constitutional Court in June 1967, any form of cash discount was prohibited to department stores, one-price stores and chain stores. Quantity rebates and special rebates for certain groups of people are legitimate so far as they conform to trade custom.

The motive for this enactment may be sought in the desire to protect the consumer against enhanced artificial prices, but although this idea is expressed in the official Explanatory Memorandum, ([63]) the main object of the Legislature was to combat consumer co-operatives and wholesalers. ([64]) This original, non-economic aim no doubt ran counter to the line of action of the market mechanisms and rebate control was naturally found to be unsuitable for the purpose. The economic policy authorities today no longer seek to justify the law against rebates by arguments based on a policy in favour of the middle classes.

In assessing the effects of this control, it is important to distinguish between retail markets which are essentially oligopolistic, and those which are atomistic. If one takes account only of sellers on the aggregate market, retail markets should no doubt be classified as atomistic. But this would be to overlook the fact that the aggregate market is made up of a great many partial markets, the extent of which is a consequence of location, range of goods offered and preferences of various kinds. ([65]) On the other hand, in each partial market, the number of sellers, ([66]) which is important for price competition, should mainly represent an oligopolistic pattern. But an analysis of effects based solely on the number of sellers would be misleading owing to the peculiarity of these markets. Retail traders are not specialised in a product and carry a large range of merchandise. The mobility of demand is, at least in part, greatly checked by relations of preference. Owing to the extent of these preferences, an appreciable growth in demand can result only from relatively large price reductions. Furthermore, since the aggregate turnover of an enterprise results from the sale of a great many products, each seller can expect an appreciable fall in his sales and profits only if his competitors offer a relatively high number of products at considerably lower prices. That is why these retail markets should rarely be characterised in practice by "total oligopolistic interdependence" but usually by simple "partial interdependence". ([67]) This means that sellers can vary their prices within a certain bracket without fear of a counter-offensive by their competitors. In this matter, therefore, they can behave either as though there were a number of sellers or as though there were a monopoly. As experience shows, open price competition can be found on retail markets in spite of the presence of a number of large sellers corresponding to an oligopolistic market form. ([68]) The German law on rebates therefore exercises the influences inferred in the general part above for the form of market with a large number of sellers.

In *Luxembourg* the Grand-Ducal Orders of 23 February 1963 ([69]) and 23 December 1963, ([70]) include, in addition to a reform of the control of premiums, provisions on the grant of rebates. Pursuant to Art. 21 III § 2, progressive and functional price reductions are legitimate only "if they are granted according to the usual custom of the trade among manufacturers and distributors or among distributors". ([71]) It is important to verify in each case whether this condition is satisfied.

In retail trade the lawful amount of rebates and discounts, pursuant to Art. 21 IV, is limited to 3%.

In the case of the limitation of rebates in retail trade, our reasoning on the German law on rebates is equally applicable here; the same favourable effects may therefore be expected.

([63]) Cf. Explanatory Memorandum to the Rebates Act in: *Reichsanzeiger*, No. 284 of 5 December 1933.
([64]) Cf. also Woll, A.: Der Wettbewerb im Einzelhandel (*Quaestiones Oeconomicae*, ed. Besters, H., Vol. 2) Berlin, 1964, p. 114.
([65]) Cf. on this point, Marzen, W.: *Preiswettbewerb und Verbraucherpolitik*, Saarbrücken, 1964, p. 21.
([66]) Cf. in this connection, the essay on the typology of retail markets in Oppmann, E.: *Binnenhandel und Binnenhandelspolitik*, Berlin-Frankfurt, 1959, p. 122 and foll.
([67]) Cf. the theoretical consideration of this distinction in Gutenberg, E.: *Grundlagen der Betriebswirtschaftslehre*, Vol. 2; Der Absatz. 4th revised edition, Berlin-Göttingen-Heidelberg, 1962, pp. 251 and foll., pp. 263 and foll.
([68]) In France, too, where the practice of large rebates (25% and more) is not only legitimate, but very widespread in retail trade, this competition by rebates is generally practised in a manner which is far from being secretive. Cf. *Französische Blankvollmacht zur Bekämpfung unlauteren Wettbewerbs* in Industriekurier No. 136 of 9 September 1967, p. 4.
([69]) Cf. Memorial A N. 11 of 1 March 1963.
([70]) Cf. Memorial A No. 72 of 30 December 1963.
([71]) Reproduced in Ulmer-Wunderlich, *op. cit.*, p. 773.

With regard to the general limitation to the amount customary in the trade, it may be noted that on oligopolistic markets, sellers practice clandestine price competition with a view to increasing their share of the market, and that, to all appearances they apply price reductions which are definitely above the trade custom. In other words, so far as oligopolistic markets are hit by this prohibition, market competition will no doubt be impeded. With regard to the effect on the functioning of the market mechanisms, we refer the reader to the considerations set out in connection with the prohibition of discriminatory practices.

(c) The present rebate controls should not affect competition among Member States. The special rules applicable to retail markets are, moreover, of little importance for intra-EEC trade. Similarly, no effect can be inferred from the wider general limitation applicable in Luxembourg, since foreign sellers penetrating the Luxembourg market, as well as Luxembourg enterprises defending their share of the market, will prefer, in the first stage of integration, to lower their gross prices rather than grant higher rebates.

Furthermore, integration does not prejudice the maintenance of rebate controls.

Summary Table showing the possible effects of national rebate controls on the functions of the market mechanisms.

(Effects in the national context only)

Functions of market mechanisms	Germany (FR)	Luxembourg	
		Retail trade	General
I. Development function			
1. quantitative	.	.	+
2. qualitative	+	+	—
II. Allocation function			
3. pattern of outputs	.	.	—
4. pattern of inputs	+	+	—
5. regional pattern	.	.	.
III. Distribution function			
6. monetary	+	+	—
7. real	+	+	.

Legend:
. = no major effect inferable or probable,
— = adverse effect,
+ = favourable effect.

CHAPTER 5

GENERAL PRICE CONTROLS

1. *RULES FOR COSTING*

(a) In Belgium, Germany, France and Luxembourg, there are rules relating prices to costs. No doubt these rules do not set any quantified limit on prices, but they do define the costs or profit components which can or must be taken into account by each enterprise in determining its own prices. In this general form, the rules for costing may impose either a maximum or a minimum limit on prices. The effects of such rules depend partly on the limit set, and partly on the costs which they allow or compel to be included in prices.

We shall first consider in general the effects of costing rules on the overall determination of minimum prices, and we shall start with some considerations of principle relating to this concept. (1) The minimum price at which it is more economic to continue than to stop production depends on costs. In the long run it is impossible to produce unless the price of the product covers at least the average costs (= long term minimum price). For existing enterprises, however, it may be more advantageous to resort in the short term to prices which, without covering the whole of average costs, exceed the costs which vary with the volume of production, thus contributing to cover fixed costs or indirect costs. In the short term, the minimum price is therefore determined by average variable costs.

The fixing of a lower price limit in every case restrains the institutional freedom to reduce prices. But market mechanisms are not thereby necessarily distorted. If average variable costs are fixed as the minimum price for current production, a costing rule of this kind merely limits the possibilities of a price war founded not on production costs but on financial potential. If the theoretical possibility of falling average variable costs can be regarded as insignificant, prices below variable costs are not rational at micro-economic level unless they give the seller concerned the chance, in the long term, through the disappearance of his competitors, of offsetting or more than offsetting his losses thanks to considerably higher monopoly prices.

(1) Cf. also the detailed discussion of this question by Deppe, H.-D.: "Selbstkosten" — eine betriebswirtschaftlich gerechtfertige Preisunterbietung?; in: Fikentscher, W.: *Die Preisunterbietung im Wettbewerbsrecht*, 2nd enlarged edition. Heidelberg, 1962, p. 87 and foll.

Since this process may prejudice the sound operation of the market mechanisms, a costing rule which prevents such a situation from arising is bound to be favourable to these mechanisms.

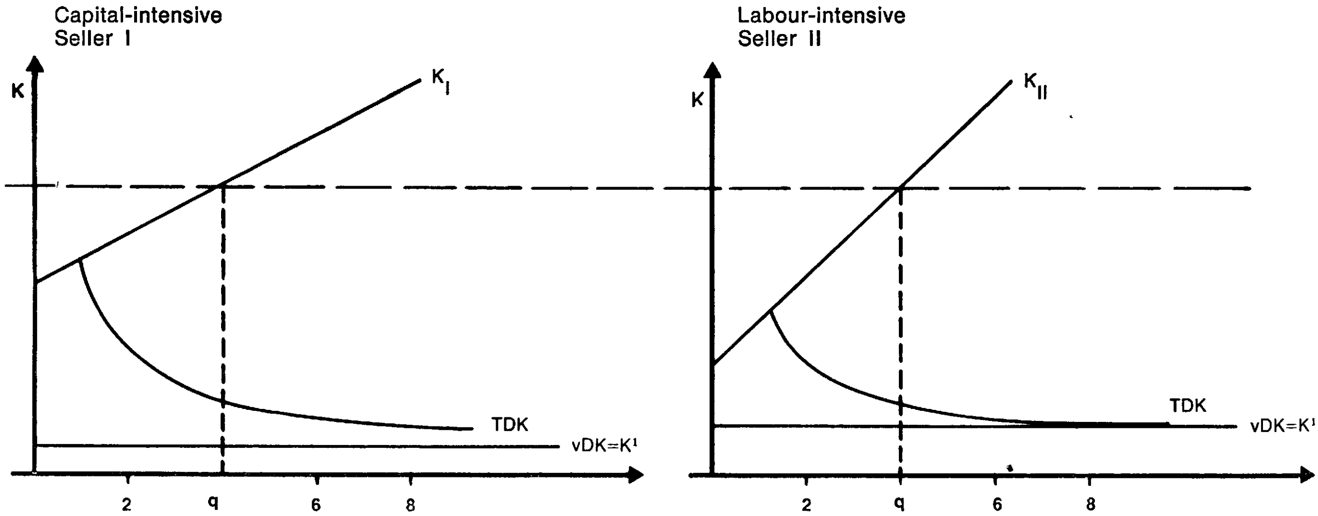
A costing rule which compels lower price limits to be calculated on total average costs may, on the contrary, distort the action of the market mechanisms. If capital-intensive enterprises, for example, operate with high fixed costs but relatively low variable costs, their average total costs may, up to a certain level of the utilisation of capacity, be higher than those of labour-intensive enterprises whose fixed costs are low, but whose variable costs are relatively high. (2)

If the aggregate market is not narrow enough for the large capacity of enterprises with low variable costs to be deemed without long term economic interest, the overall pattern of inputs will improve when capital-intensive enterprises drive labour-intensive enterprises out of the market by prices provisionally founded on average variable costs and then sell at prices covering their overall unit costs, which are lower owing to the full use of capacity. If costing rules prohibit prices below average total costs they compel precisely the most productive sellers to quit the market. The effect on the pattern of inputs is adverse.

Costing rules designed to determine, in the long term and in a general manner, the upper limit of prices are bound to select the criterion of average total costs supplemented by the profit margin. (3) Since they generally allow the adjustment of prices to cost variations, they essentially serve merely to place a ceiling on profits. It may be taken that the profit margin corresponds to the level "customary in the branch" at the time the rule comes into force, so that there is no fear of a diminution of supply at that moment. This kind of costing rule does not limit the institutional freedom to lower prices any more

(2) In the graph given below by way of example, the average variable costs (vDk)—which are equal to the marginal costs (K′) on the assumption of linear cost functions—of seller I are always below those of seller II. But if the capacity of I is more fully used than that of seller II, the average total costs of seller II may be less than those of seller I.

(3) Cf. also on this subject, Diederich, H.: *Der Kostenpreis bei öffentlichen Aufträgen*, (publication of the Forschungsinstitut für Wirtschaftspolitik, University of Mainz, edited by Welter, E., Vol. 12) Heidelberg, 1961, p. 84.



than it prevents price rises due to costs. On the other hand price increases connected with demand are not authorised. In the event of a rapid increase in demand, there is a consequent tendency to limit the feasibility of action in preparatory competition.

With regard to the will to compete, there is reason to fear that the ceiling on the profit margin resulting from the regulations may, in the course of time, change the nature of profit by replacing a chance based on personal success by a right sanctioned by the State. A weakening of the propensity to market competition cannot therefore be ruled out. But even the propensity to preparatory competition may be affected by this form of profit limitation. If the profit margin has to be calculated as a percentage of costs any fall in costs reduces the unit profit in absolute value. In this case, the spontaneous drive to reduce prices is at least diminished if not completely eliminated. These micro-economic effects may have the following consequences on the functioning of the market mechanisms.

With regard to the distribution function, the real distribution remains unchanged. In contrast, the limitation of the level of unit profit may have an equalising tendency on monetary distribution. Such limitation may, indeed prejudice the justifiable remuneration of a market service. If it is accepted that, in this event, a better market service may disappear, the effect on the monetary distribution function can be called favourable. In the case of the allocation function, a slower adaptation of the pattern of outputs and a disturbance in the orientation of the pattern of inputs must be envisaged owing to the tendency towards less feasibility of action and the weakening of the propensity to competition.

The same reasons also point to an adverse effect on the quantitative and qualitative development function.

These arguments against the general fixing of price ceilings by costing rules may be unimportant if there is no appreciable competition on the market and if it cannot or should not be created. In this situation, "it is better to gear prices to costs, rather than allow them to be fixed unilaterally by the customer or the seller". ([4]) It is for this reason that the application of prices based on costs should, in Diederich's view, ([5]) be limited to the following cases:

(i) where a product in demand can be produced only by one seller, or by a very few sellers who are not competitive with each other;

(ii) where the product demanded, e.g. by the public authorities, from a larger number ofpo tential sellers either cannot be described (it may not yet have been made or developed), or cannot conveniently be disclosed (e.g. for the sake of secrecy);

(iii) where an inelastic demand corresponds to a perfectly inelastic supply (situation of scarcity).

Even if, in such conditions, directed prices are to be recommended, they should nevertheless be adopted only in a form which, at least for the pattern of inputs and the qualitative development function, allows an adequate incentive to competition. The exercise of these overall functions is reflected, at micro-economic level, by price reductions. There is no doubt no incentive to reduce costs, except as a means of increasing profit. Prices which are made up of true costs calculated by post-costing, and a profit margin, can hardly afford an incentive to cut costs. If the legal profit is fixed as an absolute figure, it is not affected by cost variations. If it is fixed as a percentage of unit costs, increased costs become a means of maximising profits.

([4]) Diederich, H.: *Der Kostenpreis,... op. cit.*, p. 54 and foll.
([5]) Cf. ibid., p. 45.

In contrast, the amount of unit profit becomes independent of true costs if the prices result from a forecast cost estimate and are quoted firm (*Kostenfestpreise*; firm prices based on estimated costs). (6) If the sellers succeed in keeping their costs below the estimate, their profit increases. The incentive to reduce costs is further strengthened if the profit margin is calculated in such a way that it is not related to costs. (7) The cost estimate made with a view to determining a firm production price should be based solely on the costs of an enterprise deemed to be efficiently managed. For orders of the same kind from different suppliers, a uniform price should be agreed. (8)

While, in accordance with these comments, preference should always be given to firm prices based on estimated costs, where the market mechanisms cannot or should not function, owing to the better market results afforded by these prices, it is impossible in practice completely to renounce prices based on true costs. In effect, these firm prices cannot be applied unless the service desired can be clearly described and the expected costs can be assessed. (9)

(b) In *Belgium*, the Ministerial Order of 1 July 1967 governing the price of pharmaceutical specialties, includes rules for costing. (10) Article 4 specifies, for specialties made and packed in Belgium, with no equivalent abroad, the costs to be taken into account in calculating the producer's price to the wholesaler. This enactment specifies the following ceilings for profit margins, each of which may be increased by 20% for five years in the case of new products resulting from research conducted in Belgium:

Production cost	Maximum profit margin
Less than 3 BFr	120 %
3 BFr but less than 10 BFr	90 %
10 BFr or more	60 %

Ceilings are also fixed for the mark-up of wholesalers (12.5% of their selling price to pharmacists) and pharmacists (30% of their selling price). If the final price to the consumer, thus calculated exceeds BFr 400, the producer, importer or packer must obtain the prior approval of the Minister of Commerce for the maximum price.

For pharmaceutical specialties with a foreign equivalent, the consumer price is the same as the consumer price abroad, converted at the official exchange rate (Art. 6). This provision also applies to imported products. This permitted maximum price can be exceeded by certain percentages up to 30 June 1968 (Art. 7), the percentages diminishing in proportion as the imports increase.

Under this price control of pharmaceutical specialties at all stages, the costing rules apply only to products manufactured or packed in Belgium for which there is no foreign equivalent. From this limitation to certain products, it may be assumed that possible competition among Belgian sellers is not deemed sufficient in itself. The need for official price control is explained, in particular, in this case by the fact that aggregate demand for these products must be relatively inelastic in relation to price. We can therefore refrain from inquiring into the effects of this control on competition, and devote ourselves solely to the question whether the fact that profit margins are taken into consideration may be deemed to have favourable effects on competition. If we take it that the level of profit margins is established in the light of the average profits earned by other products, we can limit our inquiries to the effects on the pattern of inputs and on qualitative development.

Since the percentage of profit falls as costs rise, an incentive to reduce costs is not ruled out. The question whether, and how far, such effects are plausible is certainly not unconnected with the special way in which the sellers' profits are ascertained and the way in which the rates are applied. The available documentation does not indicate whether the percentages apply solely to the cost brackets indicated or at the single appropriate level for the aggregate production cost, either alternative being possible. The tables and figures given below illustrate our comments.

If the percentages apply to each cost bracket indicated, the absolute unit profit increases, in spite of the lower margins, as costs increase (cf. graph I a). The fall in relative unit profit cannot provide any incentive to reduce costs if the aim of the maximisation of profits is reflected in the search for a maximum unit profit for an almost inelastic demand. If we look at the return on capital, and if we can assume that the capital (11) committed in an enterprise for the production of a medicament is in positive correlation with

(6) Cf. Diederich, H.: *Der Kostenpreis..., op. cit.*, p. 85 and 102 and foll.
(7) Cf. on this point, Welter, E.: *Der Staat als Kunde*, Heidelberg, 1960, p. 250 and foll.
(8) Cf. Welter, E.: *op. cit.*, p. 249 and foll.
(9) Cf. Diederich, H.: *Der Kostenpreis..., op. cit.*, p. 105.
(10) Cf. *Moniteur Belge*, 9 June 1967.

(11) This concept of capital includes not only the fixed corporeal assets used, but also all the financial resources needed to achieve the trading objective.

the level of costs, ([12]) increased costs would mean a lower return on the working capital (cf. graph I b). In other words, if the sellers are aiming at the highest possible return on capital, in these circumstances cost reductions are a rational means of achieving their aim. In the case of all production costs exceeding BFr 3, there is an incentive to reduce costs.

Profit margin specified in Belgian costing rules for pharmaceutical specialties manufactured or packed in Belgium, with no foreign equivalent.

Maximum profit on production cost under regulations	Production cost in Bfr	Unit profit, applying percentage rate to	
		Each cost bracket BFr	Aggregate cost BFr
Below BFr 3 = 120 %	1	1.20	1.20
	2	2.40	2.40
	2.99	3.59	3.59
BFr 3 and above, but less than 10 BFr = 90 %	3	3.60	2.70
	3.98	4.48	3.58
	4	4.50	3.60
	6	6.30	5.40
	8	8.10	7.20
	9.99	9.89	8.99
BFr 10 and above = 60 %	10	9.90	6.00
	12	11.10	7.20
	14.97	12.89	8.98
	15	12.90	9.00
	20	15.90	12
	.	.	.
	.	.	.

If the statutory rates always apply to the aggregate production costs, cost reductions may, on either formulation of the objective, be a rational means of maximising profit. Under this system, cost increases do not consistently mean an increase of unit profit, which will fall whenever the upper limit of the bracket is exceeded (cf. graph II a). If the production cost lies within the bracket between BFr 3.00 and 3.98 or 10.00 and 14.97, the unit profit can be increased by reducing costs below BFr 3 or 10 respectively.

([12]) On the subject of the relation between capital and costs, cf. Böhm, H.-J.: *Die Maximierung der Kapitalrentabilität*; in: ZfB, 32nd year, 1962, pp. 489 and foll.

In this case, the return on capital does not fall progressively; it drops to a lower level when one moves into a costing bracket representing higher costs (cf. graph II b). On moving from one bracket to another, return therefore increases by a reduction of costs.

It can therefore be said that the method of calculating profit, in cases I b, II a and II b, may create, at any rate in partial fields, an incentive to improve the macro-economic pattern of inputs. By the 20% increase in the profit margin for new products resulting from research conducted in Belgium, the regulation also provides for the encouragement of qualitative development. The nature of this costing rule applicable at the production stage therefore allows the stimulation of adequate effects of competition.

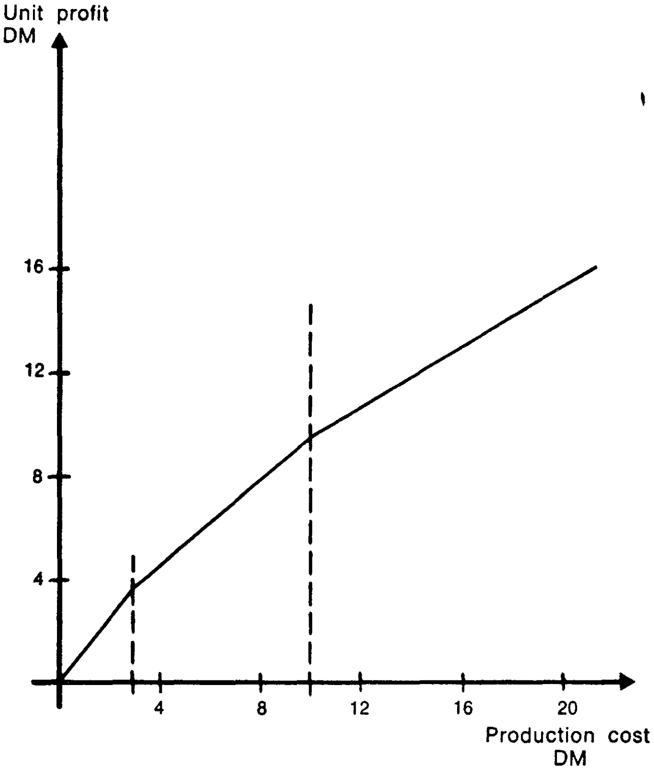
The rate of unitary limitation of the mark-up of wholesalers and pharmacists no doubt relates to the selling price at their respective stages, but the absolute value of the maximum mark-up is, in the last analysis, determined by the ex-factory price. Since the mark-ups are not linked to marketing costs, any reduction in those costs therefore means a higher profit. The regulations therefore afford an incentive to improve the pattern of inputs at the wholesale and retail stages.

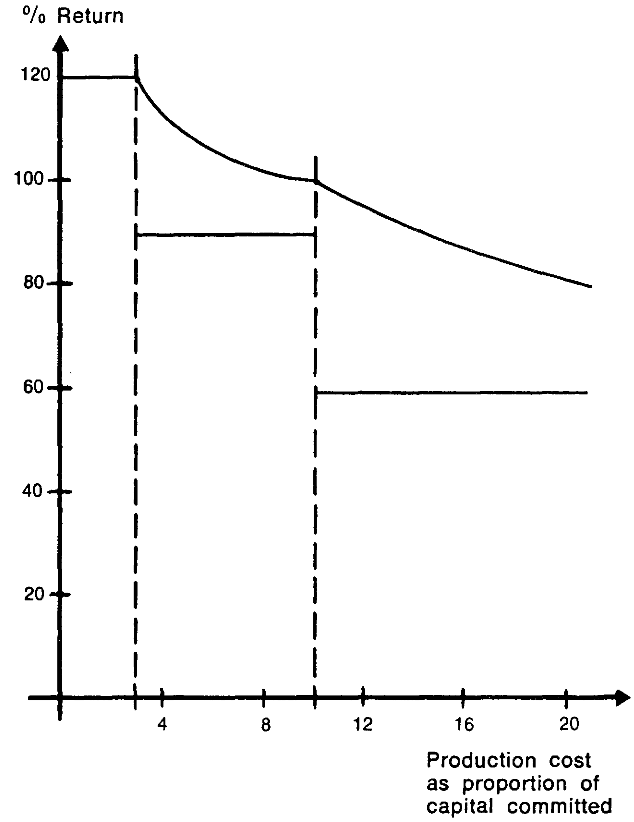
It nevertheless follows from the coupling of the percentage rates with the amount of the purchase price that entrepreneurs who desire to maximise their profits may have no interest in buying more cheaply, unless this interest is imposed upon them by competition. The higher the ex-factory price, the higher the absolute value of the mark-up. If the level of marketing costs is independent of the value of the product, the marketing stages can increase their profit by selling at relatively high prices products whose production cost is relatively unfavourable. The control of mark-up may therefore have an adverse effect on the pattern of inputs at the production stage, which runs counter to the favourable effects inferred above. But the need for approval when the selling price to the public exceeds BFr 400 points to a certain lessening of the interest of charging high prices.

The general price control of pharmaceutical specialties with a foreign equivalent is no doubt not a costing rule; it will nevertheless be considered, in so far as it affects the same group of products. By prohibiting selling prices above those charged on foreign markets, the Belgian Government is anticipating the harmonisation of prices expected among Member States as a result of integration. This manifestly assumes that prices on foreign markets have already been harmonised. Since industrially produced medicaments are generally sold at a uniform price for a given region, and transport costs therefore only enter arbitrarily into the price calculation, this price control provides no margin for transport costs. If foreign enterprises already offer their products on the Belgian market at

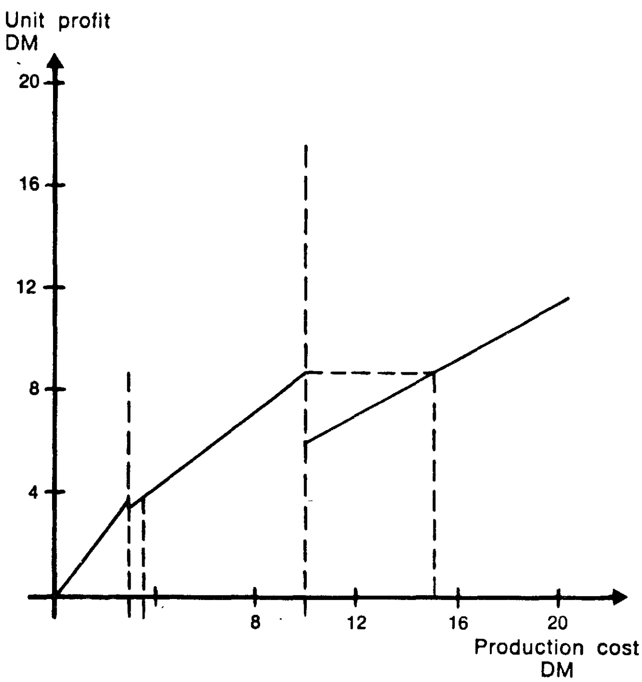
Profit Margin
as specified by Belgian costing rules

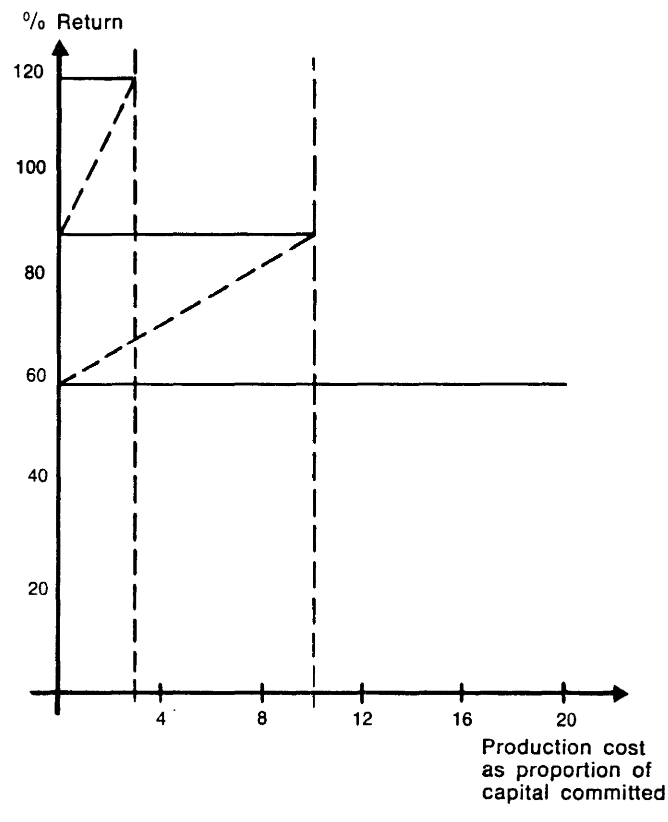
I. Application to each cost bracket





II. Application to aggregate production cost





their national prices, this rule has only a limited effect for Belgian producers. But it is different where the foreign makers either are not represented on the Belgian market or are unwilling to sell there at their national prices. The foreign price converted into Belgian Francs at the official exchange rate does not affect the production costs of the Belgian sellers. These costs may therefore equally well be considerably above or considerably below the maximum limit applicable.

If the production costs of Belgian enterprises, including certain minimum margins for the marketing stages, are higher than the maximum prices on foreign markets, Belgian demand will be met by an insufficient, or even nil, Belgian supply.

Since price control, in these circumstances, prevents the appearance of high profits, monetary distribution is favourably influenced. But the real distribution function, at the same time, becomes inoperative, since higher assessments of utility or propensity to buy can no longer be reflected in price offers above the upper limit set in general fashion. The pattern of outputs does not correspond to the pattern of demand, since, in the light of buyer preferences, the supply should be greater. But cost pressure may have a favourable effect on the pattern of inputs. It is true that quantitative and qualitative development should be greatly hampered, if not totally halted, following the considerable reduction in the feasibility of action.

If, on the other hand, Belgian production costs are below the statutory price limits, price control scarcely affects the possibilities of competition. A diminution of the competitive spirit is no doubt possible on oligopolistic markets, if the maximum legal price operates as a guiding price, thus ensuring peace among the oligopolists.

The tendency to reduce prices as a result of competition may thus be checked, disturbing the monetary distribution function. In this event, real distribution is not affected. While it is legitimate to assume that the demand for pharmaceutical products is virtually inelastic in relation to price, there is no reason to fear a distortion of the pattern of outputs. The diminution of the competitive spirit, on the other hand, points to an adverse influence on the pattern of inputs.

With regard to the development function, quantitative development will probably be favoured by the greater feasibility of action, but the adverse influence of the diminution of the competitive spirit is likely to be dominant in the matter of qualitative development.

In the *Federal Republic of Germany* costing rules are applied only to the determination of the cost price (*Kostenpreis*) of public contracts. The Decree controlling the price of public contracts (13) applies to the price of contracts placed by the Federal Government, the Länder, Communes and Syndicates of Communes and other public corporations. The price limits are as follows:

(i) market goods and services; the market price;

(ii) comparable goods and services: the maximum prices based on the market price;

(iii) and in default: the cost price, pursuant to the provisions for calculating production costs.

The price control regulations for public contracts give absolute priority to the market price over the cost price. The concept of market goods or services must therefore be interpreted very widely. (14) If goods or services are to be deemed non-market, it is not enough that the only buyers are public authorities. The application of cost prices is legitimate only in the following cases:

(i) where there is no market price, or if it is impossible to calculate maximum prices from the statutory price controls (Decree on Price Controls for Public Contracts, Art. 5 (1) (i) 3 and 4), or

(ii) in the case of scarce products or where the market price is subject to material distortion owing to restraint of competition. (15) (Decree cited above, Art. 5 (1) (ii)).

Similarly, the special regulations, (16) for the price of public works contracts or publicly-financed works contracts, in principle give priority to the competitive price. But they allow wider scope to cost prices than the Decrees cited above:

(i) competitive prices are accepted only so far as they are not flagrantly disproportionate to the services rendered, i.e when they are not appreciably higher than the cost price (Decree PR No. 8/55, Art. 5 (1)). Otherwise a firm price must be applied,

(13) Decree PR No. 30/53 of 21 November 1953 of the Federal Minister for Economic Affairs (Bundesanzeiger, No. 244).

(14) Cf. Diederich, H.: *Der Kostenpreis..., op. cit.*, pp. 58 and foll.

(15) Pursuant to the directives for the application of the Decree on price controls for public contracts, addressed to the sponsoring authorities, restraint of competition must be deemed to exist wherever a price agreement, monopoly or a market-dominating enterprise is found. Directives of 1 July 1955 by the Federal Minister for Economic Affairs and the Federal Minister of Finance (Bundesanzeiger No. 196, p. 1).

(16) Decree PR No. 8/55 of 9 December 1955 by the Federal Minister for Economic Affairs on the price of public works contracts (Bundesanzeiger No. 249) amended by Decree PR No. 8/61 of 9 November 1961 (Bundesanzeiger No. 223/18 November 1961) and Directives of 25 May 1940 on the determination of cost prices for public works contracts (RGBl I, p. 851) and amendments of 12 February 1942 (RGBl I, p. 89).

based on estimated costs, agreed before the contract is placed;

(ii) a firm cost price, based on estimated costs, also takes the place of a maximum price where the formation of market prices is influenced, on the side of the seller, by a restraint on competition (Decree PR No. 8/55, Art. 5. (2)).

Where these provisions authorise a price based on estimated costs, a firm cost price must be agreed where possible. A price based on true costs can be applied only if the price cannot be determined in any other way. But even in this case, the level of determinable costs must, if possible, be limited by contract.

The Directives for calculating the cost price specify that profit components shall be taken into account as follows:

(i)	Entrepreneur's remuneration:	absolute value equal to the average salary of a comparable salary-earner
(ii)	Interest on capital:	maximum rate for permanent capital equal to the Federal Bank discount rate plus a percentage fixed by the Federal Minister for Economic Affairs and the Federal Minister of Finance [17]
(iii)	Personal risk:	absolute value equal to the true amount of losses shown over a long period [18]
(iv)	General risk of the entrepreneur:	maximum rates. [19] These rates are related to the permanent capital, to sales at production cost, or to both magnitudes, provided that they shall not exceed 5.5% of the former.
(v)	Profit on services rendered:	may be agreed for certain economic, technical or organisational services.

Since the cost price is applicable only in the absence of a competitive price, there is no point in inquiring into its effects on competition. We shall confine ourselves to considering whether the nature of this rule suceeds in simulating the effect of market mechanisms on the pattern of inputs and the qualitative development function.

It may be noted at the outset that the prority given to firm cost price over true cost price considerably limits the possibility of "manipulating costs" and the tendency to do so. But is this favourable effect on the pattern of inputs reinforced by the way in which profit is accounted for?

Among the profit components figuring in the Directives for the calculation of cost prices, two are fixed in maximum relative and absolute value, while the profit resulting from the performance of the service proper requires a special agreement. The absolute maximum values to be fixed for the remuneration of the entrepreneur and for his personal risk have no influence on the incentive to reduce costs. Since it can be accepted that there are sufficient investment possibilities guaranteeing an interest in excess of the 6.5% fixed for the permanent capital, these rules in themselves scarcely constitute an incentive to employ capital in an excessive and anti-economic proportion. But if we look at this percentage in relation to the rule on the general remuneration of risk, our assertion becomes more questionable. The maximum risk margin of 5.5% gives, with the theoretical interest, a remuneration on capital of 12%, which is quite considerable in normal times. If this maximum rate is reached in particular cases, the tendency to employ capital in conditions contrary to the general economic interest cannot entirely be ruled out. If, within the general maximum limit of the risk, a percentage is fixed for sales at production costs, the absolute profit increases as costs rise. It is impossible to give a general answer to the question whether this control may result in considerable incentive to cost increases—at least apparent. In the specific case the effect depends, in particular, on the amount of the rate linked to turnover and the extent to which the general risk effectively increases with turnover. But it cannot be ruled out *a priori* that cost increases may be regarded as a means of maximising profit when the rate is relatively high and when the entrepreneurs assess the real risks relatively low. The method of accounting for theoretical interest and the premium on risk may in general very well induce adverse effects on the pattern of inputs and the qualitative development function. In the most favourable case, it may certainly be expected in consequence that the profit components, with a ceiling in relative value, may lead to cost inflation through the process of estimation, but also that the firm cost price as agreed on the basis of costs, may stimulate efforts to reduce costs. This control would therefore result in a more effective pattern of inputs and qualitative improvements without these advantages benefiting the buyer in the form of lower prices.

Of the three costing rules applicable in *France*, one is designed for the general fixing of minimum prices

[17] A Decree No. 15/54 of 23 December 1954 by the Federal Minister for Economic Affairs, on the determination of theoretical interest rates specifies a maximum rate of 6.5% (BA No. 250, p. 1).

[18] Cf. on this subject: Schnettler, A.: Wagnisprämie; in: HdB, Vol. 4, col. 6141 and foll.

[19] According to Diederich, the power to remunerate risk arbitrarily is not used in practice; cf. Diederich, H.: *Der Kostenpreis*, *op. cit.*, p. 162.

and the other two for the general fixing of maximum prices.

The minimum price results from *the prohibition of sales below cost.* Pursuant to Article 1 of the Finance Act, No. 63-628 of 2 July 1963:

> "The resale of any product in its existing condition at a price below its true purchase price plus the relevant turnover taxes on such resale, shall be forbidden. The true purchase price shall be calculated after deduction of all rebates or discounts of any kind allowed by the supplier on invoicing." ([20])

Since it does not apply to products which are the subject of further processing, the prohibition is limited to trade. Rebates on the annual volume of business, very common in France, are not taken into account in calculating the true purchase price, since they are granted only on the final settlement of accounts. Similarly, increases in indirect costs are not taken into account. The prohibition does not apply to: ([21])

(i) perishable goods;

(ii) seasonal goods;

(iii) old-fashioned or technically outdated products;

(iv) products which can be replaced at lower prices;

(v) products whose selling price is aligned on the price lawfully charged for the same products by another trader in the same zone of activity;

(vi) clearance sales on the cessation of trading or change in the nature of the business.

Under this rule, which applies to trade only, the concept of "cost price" covers direct costs only, which can be considered in relation to a product as virtually identical with variable costs. As already said above in general terms, the fixing of lower price limits in this way cannot disturb the market mechanisms. It serves much more to protect consumers against possible rises consequent on unbridled competition not justified by costs and the constitution, not justified by the services rendered, of preferences founded on specious offers.

The exceptions are designed to permit lower prices if they can be deemed to be in the national economic interest. In particular, they do not prevent the formation of a uniform competitive price based on the lowest costs.

With regard to the different functions of the market mechanisms, this provision may have favourable effects on monetary distribution, the pattern of outputs and the development function.

The costing rules designed for the general fixing of maximum prices are the "estimated price system" (*régime des prix sur devis*) and the "price range" (*cadre de prix*).

The *estimated price system* consists in fixing a price based on pre-costing at the time of placing a contract. The pre-costing must be carried out in accordance with sometimes very meticulous administrative directives ([22]) the detail of which cannot be considered here. These prescriptions also fix the profit margin and generally include a revision clause. The fixing of the profit margin follows no general rule. Both absolute values and proportions are used. The revision clause specifies the conditions in which the price originally fixed can be adjusted to variations in cost components occurring between the contract date and the delivery date. A price revision formula is used for this adjustment, based on the indexes of wages and raw material costs published by the National Institute of Statistics and Economic Studies (INSEE).

This price system applies mainly to capital goods produced by the mechanical and electrical engineering industries. The summary list, reproduced in Annex ([23]) includes 26 items. The products concerned are often the subject of public contracts, covering a long period and involving substantial sums. In the light of their object, these rules can be compared, at least partly, to the price controls for public contracts existing in other countries.

The *price range* also includes pre-costing rules. This system, which applies to the production stage only, is also designed to limit profits. The only difference from the estimated price system lies in the nature of the production concerned. Whereas the former relates to production under contract, ([24]) the price range relates to market production. ([25])

The prices charged for products subject to the price range may be fixed by the producer himself, in the light of certain costing rules. The prices thus calculated are maximum prices; no prior authorisation is needed. Neither does this system in general fix a ceiling for profit margins. The margin is fixed for each product in absolute value, uniform rate or varia-

([20]) Cf. text of the Act (with German translation) in: Ulmer-Krasser, op. cit., pp. 497 and foll., and pp. 614 and foll.
([21]) Cf. text of the Act (and German translation) in: Ulmer-Krasser, *op. cit.*, pp. 497 and foll.

([22]) Cf. e.g. Comité de Coordination des Télécommunications: *Instruction for determining the price of design and supply of telecommunications and electronic equipment*, July, 1964.
([23]) Cf. Annex, p. XIV and foll.
([24]) This system therefore applies essentially to goods produced in single units or in relatively small runs or ranges.
([25]) This system therefore applies essentially to mass-produced goods or goods produced in relatively large runs or ranges.

ble multiplier. The maximum margins for pharmaceutical products are given below as an example of the last case.

Industrial cost in Fr.Fr.	Maximum margin	
	Absolute value in Fr.Fr.	Multiplier applicable to each cost bracket
up to 0.30	0.35	—
0.31-0.60	—	0.6
0 61-1.00	—	0.5
1.01-2.50	—	0.4

and so on, with a diminishing multiplier.

A price fixed at any time can be increased only in the event of an increase, established to the satisfaction of the authorities, in the cost components. The list given in Annex, ([26]) which includes 9 items, will give some idea of the scope of this control.

Both types of control are identical in that prices are calculated by pre-costing and represent firm production prices. In neither case is there a single rule for determining profit margin. Not knowing the products for which the profit margins are fixed in absolute values or in relative values decreasing with the rise of costs, we must be content to refer the reader to the general considerations set out above. If profit is limited, as in the case of pharmaceutical products, by a degressive multiplier, we cannot expect any reinforcement of the incentive to reduce costs unless the aim set is to maximise return. ([27])

These considerations already imply that the functioning of market mechanisms is distorted, since the conditions for this functioning are not satisfied, economic policy being powerless to satisfy them. A glance at the list of products whose prices are controlled in this way nevertheless shows that this cannot be accepted *a priori*, at any rate for products subject to a price range. But if regulation by the market is in principle possible by means of prices determined by competition, the possible effects of the French costing rules on competition and the market mechanisms are substantial.

([26]) Cf. Annex, p. 137.
([27]) If the press is to be believed, this does not often happen in practice. Many manufacturers increase their absolute margins by using the dearest possible raw materials: Cf. "In der französischen Arzneimittelindustrie ist der Staat Preiskommissar" in Frankfurter Zeitung, Blick durch die Wirtschaft, 11th year/o. 72, 25 March 1968, p. 2.

The possibilities of competition are adversely affected if increased demand makes it possible to obtain prices higher than those based on costs. In this case, the costing rules have the same effect as absolute ceilings. In addition, the competitive spirit is bound to be influenced by the fact of being accustomed to profit margins authorised by the State. Such margins fixed by the State are no doubt not enough to ensure oligopolistic peace.

With regard to the different functions of the market mechanisms, a favourable effect may therefore be expected on monetary distribution, although this may sometimes become immaterial when demand is excessively inflated owing to the distortion of the real distribution function.

In the event of a considerable increase in demand, the reduction in the feasibility of action may lead to distortions in the pattern of outputs and the quantitative development function. On the other hand, no effect can be inferred on the pattern of inputs and the qualitative development function.

In *Luxembourg* public contracts are subject to the provisions of the Order of 29 December 1956, laying down the clauses and general conditions for the award of publicly-financed contracts for works or supplies. ([28]) Under Article 2 public contracts for works and supplies must generally be awarded by advertised competition. Among the modes of tendering specified in the enactment (Art. 12 and foll.) only the "award on production costs" (*adjudication sur prix de revient*) (Art. 13) refers to costing. Contracts will exceptionally be awarded at production costs "where it is impossible to delimit with sufficient precision the nature and extent of the services to be rendered.". In such cases firm production costs are calculated on the basis of direct labour and material costs, ([29]) with a reasonable addition for overheads and profit. The Order does not specify how profit is to be calculated. In the event of substantial cost variations occurring after the award, the agreed price may be varied upwards or downwards (Art. 21).

There is similarly no need to study the effects on competition of this rule. The preference given to firm production cost is a favourable factor in the incentive to reduce prices. In the absence of any information about the method of assessing profit margins, we can only once again refer the reader to our general considerations.

([28]) Clauses et Conditions générales d'adjudication des travaux et fournitures pour la réalisation desquels il est fait appel à des fonds ou à des crédits publics. Luxembourg, 1957.
([29]) Art. 19 (2) on this subject introduces a national discrimination by specifying that, in principle, products of foreign origin shall not be used if the producers of the Benelux Customs Union can provide the same quality at appreciably the same price.

(c) It now remains to consider whether the national costing rules are calculated to affect economic relations among Member States. It will be found in this connection that, in general, these rules do not prevent any seller on any market from asking for prices in line with his individual cost position. The institutional freedom of action to reduce prices in market competition is therefore not limited at international level. The rules in question, however, forbid the exploitation through prices of a monopoly position or an increase in demand. If this limitation is important, the feasibility of action for sellers subject to price control may be less than that of enterprises whose prices are not subject to ceilings in the same way. For products directly capable of external trade, it naturally follows that enterprises will, where appropriate, make use of markets where these price ceilings do not apply. Furthermore, the placing of ceilings on profits on products indirectly capable of external trade may involve cost advantages in favour of those products into which price-controlled products enter as inputs. These possible micro-economic effects may be important for the market regulation of the economic system in the integrated territory.

The analysis of the effects of positive costing rules can disregard the German and Luxembourg rules, both of which apply solely to public contracts and solely when the products demanded by the State are not subject to competition. There is therefore no effect either on competition or on the market mechanisms.

Under the *Belgian legislation* the costing rule applicable to pharmaceutical products for which there is no equivalent foreign offer may also be without influence on competition among Member States, since by definition the Belgian supply has a monopoly position on all the markets of the integrated territory.

For the sake of simplicity, let us take the case of a single Belgian seller; if prices were entirely free in the integrated territory, this seller would try to get the Cournot price on each national market, or—if arbitrage cannot be eliminated—he will try to impose the Cournot price for the whole European market. It is true that this price policy is forbidden to him on the Belgian market by the costing rule. If his capacity is sufficient, the monopolist will therefore try to maintain the monopoly price or prices on foreign markets and to satisfy the Belgian demand at the prices resulting from the costing rules. (30) If the price difference is large and if the market mechanisms can come into play, the manœuvre will fail. Following the arbitrage which will intervene, prices will fall on the external markets and will align themselves on the Belgian price, allowing for transport costs and mark-up. A national costing rule therefore has the effect of reducing prices throughout the integrated territory. If the monopolist is not prepared to extend his production, or if he is not immediately in a position to do so, the satisfaction of the surplus foreign demand due to the lower price will in practice fall upon the Belgian internal supply. A shortage of supply may therefore make its appearance, at least temporarily, on the Belgian market; the commercial optimum will not be achieved and real distribution will be distorted. Since the demand for pharmaceutical products is generally very inelastic in relation to prices, this effect is no doubt not very important; but it will always appear if the demand for the medicaments in question increases for any other reason (e.g. because they are allowed on social security prescriptions) in any foreign country where prices are free.

Furthermore, in considering the Belgian system of price control for all pharmaceutical products, the eventuality cannot be ruled out of the Belgian monopolist being induced to transfer at least part of his production capacity to subsidiaries set up in countries where prices are free. Such a shift of factors is not necessarily motivated by the cost advantages of the new location, since the constitution of a foreign supply enables the product to escape the field of application *ratione materiae* of this costing rule. In practice, if the foreign subsidiary sells at the uniform Cournot price for the integrated territory, the Belgian market price can be increased to the corresponding level in Belgian Francs. In this event, the monetary distribution no doubt becomes more uneven, but real distribution takes place in the light of the assessment of utility and propensity to buy of the consumers. In the integrated markets, the Belgian costing rule is therefore not calculated to constrain the monopolist to adopt a behaviour in conformity with competition.

If there is an equivalent foreign supply, the Belgian controls compel both national sellers and foreign sellers on the Belgian market to charge prices which are no higher than the corresponding prices on foreign markets. This stipulation is a sort of prohibition of discriminatory prices at international level, which has manifestly been introduced by analogy with the normal price rule considered below. If price freedom prevails on the foreign markets, the maximum price on the Belgian market depends on the intensity of competition on the external markets. Under the influence of this rule, a sale on the Belgian market remains exactly as remunerative as a sale on an external market, and shifts in trade channels or transfers of factors are therefore improbable. The obligation to equalise the price of products accelerates the tendency to the com-

(30) If marginal costs increase, the seller, as in the case studied by Bronfenbrenner, where supply is divided between a normal market and a black market, will extend his production to the point where marginal costs reach the same level as the price calculated on a cost basis. He will supply external markets at monopoly prices and will sell the rest of his production on the controlled Belgian market at prices calculated on the basis of costs. Cf. Bronfenbrenner, M.: *Price Control Under Imperfect Competition*, in AER, Vol. XXXVII, 1947, pp. 111 and foll.

mercial optimum and maximum production. The effects on the real distribution function and the allocation function in relations among Member States are therefore favourable.

Among the *French price controls*, the prohibition of sales below cost does not affect the market mechanisms. It cannot have an adverse effect, since it does not prevent either price increases or price reductions to the general benefit of the economy. But neither can it be assigned a favourable effect, since it does not rule out an undercutting price war between French manufacturers or foreign producers.

In so far as controls of the "price estimate" or "price range" type do not apply solely to production which is entirely purchased by the French State, an influence on economic relations among Member States cannot be ruled out. Since these controls do not prevent either French or foreign sellers from reflecting in their prices their individual costs and the intensity of competition, they cannot—at least in the long term—change the direction of trade channels. But if the state of demand in the integrated territory allows, in the case of products directly capable of external trade, price increases prohibited by the French control, the volume of French exports may become "super-optimum". The maximum price based on costs then prevents the harmonisation of the price of products in the integrated territory and therefore distorts at least the real distribution function.

If the foreign manufacturers' price on the French market is not subject to this control, the appearance of the paradoxical situation already indicated in the case of stability contracts is not impossible. Relatively low-cost French producers may market their products at higher prices, mainly on foreign markets where prices are free, and relatively high-cost foreign producers may satisfy the shortage of supply on the French market at prices well above their national prices. The pattern of inputs and the regional pattern resulting from the market mechanisms would be changed by a development of this kind. But since the loss of well-being would primarily affect France, it may be thought that French economic policy would react by amending or abolishing the system of prices based on costs.

If costing rules limit profits for products indirectly capable of external trade, the result may be a competitive advantage for products directly capable of external trade into which these products enter as inputs when the prices of the corresponding input products are higher abroad. If effective demand is fully satisfied at prices based on costs, control cannot have any adverse effect either on the direction or volume of trade flows between Member States. But if a vigorously growing demand makes the production capacity for supply at controlled prices insufficient, the limitation of profits may retard the necessary extension of capacities. The extension of the supply of products directly capable of external trade will thus be handicapped if the input product cannot be replaced by another. As market prospects improve for enterprises in foreign countries where prices are free, it is not impossible that the capacity for the corresponding input products directly capable of external trade may

Summary Table showing the possible effects of national costing rules on the functions of the market mechanisms.

<table>
<tr><th rowspan="3">Functions of market mechanisms</th><th colspan="2">Belgium</th><th colspan="2">France</th></tr>
<tr><th colspan="2">A</th><th rowspan="2">B</th><th rowspan="2">C</th></tr>
<tr><th>a</th><th>b</th></tr>
<tr><td>A. Effects in the national context in a closed economy</td><td></td><td></td><td></td><td></td></tr>
<tr><td>I. Development function</td><td></td><td></td><td></td><td></td></tr>
<tr><td>1. quantitative</td><td>—</td><td>+</td><td>.</td><td>—</td></tr>
<tr><td>2. qualitative</td><td>—</td><td>—</td><td>+</td><td>.</td></tr>
<tr><td>II. Allocation function</td><td></td><td></td><td></td><td></td></tr>
<tr><td>3. pattern of outputs</td><td>—</td><td>.</td><td>+</td><td>—</td></tr>
<tr><td>4. pattern of inputs</td><td>+</td><td>—</td><td>.</td><td>.</td></tr>
<tr><td>5. regional pattern</td><td>.</td><td>.</td><td>.</td><td>.</td></tr>
<tr><td>III. Distribution function</td><td></td><td></td><td></td><td></td></tr>
<tr><td>6. monetary</td><td>+</td><td>—</td><td>+</td><td>+</td></tr>
<tr><td>7. real</td><td>—</td><td>.</td><td>.</td><td>.</td></tr>
<tr><td>B. Effects in the context of the EEC in an open economy</td><td colspan="2"></td><td></td><td></td></tr>
<tr><td>I. Development function</td><td colspan="2"></td><td></td><td></td></tr>
<tr><td>1. quantitative</td><td colspan="2">.</td><td>.</td><td>.</td></tr>
<tr><td>2. qualitative</td><td colspan="2">.</td><td>.</td><td>.</td></tr>
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<tr><td>5. regional pattern</td><td colspan="2">+</td><td>.</td><td>—</td></tr>
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<tr><td>7. real</td><td colspan="2">+</td><td>.</td><td>—</td></tr>
</table>

Legend:

. = no major effect inferable or probable,
— = adverse effect,
+ = favourable effect.
A = price control of pharmaceutical specialties for which there is no equivalent foreign supply:
 a = production costs of Belgian makers above foreign prices,
 b = production costs of Belgian makers well below foreign prices,
B = prohibition of sale below cost,
C = price range and price estimates.

be extended, even though their productivity is less than that of the French production. Here again the costing rules distort the regulation by market mechanisms of the pattern of inputs and the regional pattern.

2. THE NORMAL PRICE RULE

(a) This rule, valid in Belgium and Luxembourg, sets an upper limit for prices in general terms. It lays down that the maximum price is constituted by the "normal price". "Normal price" is interpreted, broadly speaking, as the price charged for a product by the majority of sellers operating under comparable conditions, i.e. the price most frequently charged. Like the prohibition of discriminatory practices, this provision manifestly flows from the theory of static equilibrium. From this angle, it can be explained as follows.

When the market mechanisms function properly, there is only one price on a market. If there are price disparities, it may be concluded that the market mechanisms are not functioning, particularly because of insufficient transparency and/or of consumer preferences. The normal price rule is therefore designed to prevent the exploitation of the imperfections of the market in the sphere of prices and thus to stimulate the equalising effects of the market mechanisms.

This interpretation of the rule brings out its kinship with the prohibition of discriminatory prices. While the object of the latter is to unify the prices of *a single seller* at a relatively low level, the normal price rule aims at a similar unification for *all sellers* operating in the same conditions. If "comparable conditions" are taken to mean solely equality of costs regardless of the conditions of demand on each partial market, the rule necessarily involves the unification of unit profits on the aggregate market, which automatically involves a prohibition of discrimination. But a single market price can be expected only if the costs of all sellers are identical. In contrast, price discrimination is not implicitly prohibited in general if comparability is interpreted in the sense of "the same market". If costs are disregarded, the rule implies a single price on each partial market, while allowing different prices on different partial markets.

Since, under the basic theory of our study, the market mechanisms also exercise an equalising effect on prices, it could be said that the normal price rule—whatever the definition of comparable operating conditions—is bound to speed up the functioning of the mechanisms. The rule is limited to prescribing a behaviour which the correct functioning of those mechanisms would sooner or later impose. But a closer consideration of the possible effects on competition shows that this conclusion is highly questionable.

It is true that the normal price rule does not interfere with institutional freedom to reduce prices: similarly, in the case of sellers who ask high prices and are compelled to reduce their prices, the feasibility of action cannot be regarded, at macro-economic level, as greatly diminished. It is a different matter with the possible influence on the competitive spirit. A spontaneous price reduction, as we have already said, is rational only if the seller hopes to attract enough additional demand to ensure that his aggregate profit increases in spite of a possible reduction in his unit profit. Prices are all the more rigid where the sellers have reason to fear that their competitors will react to price reductions faster than the buyers, and thus forestall the desired increase in demand. Now, if the State compels competitors to adjust their prices immediately, an increase in demand is possible only if it corresponds to the price elasticity of aggregate demand and if it results from the withdrawal of marginal sellers. Such a strict rule should therefore result in a decisive lessening of the tendency to price competition. The result will be prices which are no doubt relatively uniform, but also relatively high.

The normal price rule nevertheless requires the alignment of all prices not on the lowest price but only on the most current price. It may therefore be taken that the increased demand expected by a seller who spontaneously reduces his price is not precluded by this rule. No competitor will be constrained to align his price demands on each reduction. This argument is no doubt sound in theory, but it does not allow for the fact that, in reality, competitors react, at least partly, by price adjustments even if there is no regulation which compels them to do so.

In a situation of oligopoly, in the narrow sense, nearly all sellers will immediately adjust themselves to a price reduction by one of their number. Prices are therefore relatively uniform. But the close interdependence of sellers generally rules out any price competition. The normal price rule is therefore pointless here. No doubt it has no adverse effects, but it has no favourable effects either. It affords no incentive either for market competition or for preparatory competition.

Price competition nevertheless exists in an oligopolistic situation in the widest sense, where, in Kantzenbach's terms [31] "the optimum intensity of competition" is found. If, adopting Heuss's terminology, [32] we assume that in these markets there are "dynamic entrepreneurs" (*initiative Unternehmer*) (the pioneer spirits and their spontaneous imitators), and "conservative entrepreneurs" (*konservative Unternehmer*) (reacting

(31) Cf. Kantzenbach, E.: *Die Funktionsfähigkeit..., op. cit.*, p. 138.
(32) Cf. Heuss, E.: *Allgemeine Markttheorie,* Tübingen-Zürich, 1965; for definitions, see pp. 9 and foll., for the state of the market, see pp. 109 and foll.

only under pressure, if at all), the former can expect the latter to react to price reductions only after the buyers, if at all. The existence of conservative entrepreneurs is therefore an essential condition for the existence of price competition. If at least half the supply comes from dynamic entrepreneurs, aligning themselves spontaneously on a price reduction, the price is usually determined by the demands of these entrepreneurs. If the normal price rule obliges the conservative entrepreneurs also to align their prices, it simulates the conditions of an oligopolistic market in the narrow sense. The dynamic entrepreneurs will therefore largely refrain from price reductions if the cost differences between sellers and/or the price elasticity of aggregate demand are not very substantial.

It is only in oligopolies in the wide sense (where the majority of entrepreneurs are of the conservative type) and in an atomistic market structure that the tendency towards a weakening of the competitive spirit which is possible there, may be insignificant.

Since oligopolistic market situations are very widespread, the normal price rule should therefore, on the whole, result in a diminution of the competitive spirit which slows down the functioning of the market mechanisms.

Even when the market mechanisms function badly, the normal price rule cannot be expected to yield decisive advantages. Since it hardly seems possible in practice to regard the normal price as a single price—it always appears merely as a price range—the rule can enforce reductions only on a few high price sellers. It can therefore have a favourable effect only so far as it prevents the bare-faced exploitation of completely ignorant buyers.

(b) The *Belgian* normal price rule results from Article 1 of the Statutory Decree of 22 January 1945, on the punishment of offences against the regulations for the supply of the country. [33] It is linked with the prohibition in force since 1939 (Order of 9 September 1939) against selling foodstuffs or merchandise on the internal market at prices above the "normal price". Although the rule is manifestly general in its effect, [34] its application in practice seems to be essentially limited to the distribution stage. According to the Courts, the normal price at the distribution stage is "the price at which the products are sold to consumers by the majority of traders trading in comparable conditions". [35] Pursuant to the third sentence of Article 1 (2) the decision whether a price is normal is a matter for the Courts to decide in the light of the profits made, the state of the market and costs. The list of these criteria indicates that the aim is to unify the unit profit on each potential market, so that price differentiation remains legitimate if the conditions of demand differ. The decision is always based on the price of specific merchandise and never on the price level of the whole of the merchandise of the enterprise. Excessive prices on one article cannot be offset by prices below the normal on other articles. Furthermore, only the prices actually charged are taken into consideration. Thus, when the majority of retailers trading under comparable conditions offer merchandise at a price below an earlier list price or below the maximum prices fixed by the State, the charging of the list price or the maximum price is equally unlawful.

The application of the normal price rule was explained to us as follows, on 19 June 1967, by the Belgian Ministry for Economic Affairs (Trade Administration, Prices Branch):

> "The normal price is left, in each specific case, to the discretion of the Courts and Tribunals, but it is little applied, and there is little case law. The authorities, in any event, do not admit that a price is normal merely because it is charged by enterprises in the branch concerned, without referring to the cost price of the enterprise accused."

Since the rule merely serves as a basis for a control which is left to the Courts, and is rarely applied, it should have little practical influence on the price policy of enterprises. It is therefore impossible to infer from it, in general, any diminution of the competitive spirit, unless its application were to become considerably more frequent. But in that event there would also be some fear of a weakening of the competitive spirit on the retail markets. If we assume for these markets—as we did in considering the control of rebates [36]—a partial oligopolistic interdependence, the sellers will no doubt not need to contemplate spontaneous adjustment to the prices of their dynamic competitors within a certain price range; nevertheless, a very substantial increase in demand can be achieved only within the sphere of effective oligopolistic interdependence. If, thanks to his price policy, a seller gains ground in this sphere, his dynamic competitors will reduce their prices. The

[33] Cf. in this connection: Ulmer, E. (editor): *Das Recht des unlauteren Wettbewerbs in den Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft*, Vol. II, 1: Schricker, G. and Wunderlich, D.: *Belgien, Luxemburg*. Münich-Cologne, 1967, p. 534.

[34] Van Meerhaeghe affirms quite categorically: "As a general rule, prices may not be higher than the normal prices". Van Meerhaeghe, M. A. G.: *Prior Notification of Price Increases as an Instrument of Price Stabilisation Policy*; in: Kyklos, Vol. XXI, 1968, p. 33.

[35] Judgement of the Court of Brussels of 26 April 1961, in Journal des Tribunaux, 1961, 502, note Von Bunnen, cited from Champaud, C., Part I, *op. cit.*, p. 23.

[36] Cf. pp. 98 and foll. above.

"normal price" being thus reduced, the conservative competitors will also be constrained to come into line. If the normal price rule is strictly applied, the tendency to penetrate into this sphere should be weaker. This rule may therefore have an adverse effect on the intensity of market competition, without thereby involving a favourable effect on preparatory competition. Since the appearance of this effect depends solely on the action of the Belgian Courts or the Belgian Government, the market mechanisms may be affected.

The real distribution function would remain unchanged, whereas monetary distribution would be deteriorated as a result of the weakening of price competition. In the sphere of the allocation function, the normal price rule involves a distortion of the pattern of inputs and, if the effects of competition vary from branch to branch, of the pattern of outputs. Higher profits would no doubt offer better possibilities of development, but a favourable influence would be probable only for the quantitative development function. With regard to the qualitative elements no very marked influence can be inferred.

In *Luxembourg*, the normal price rule was introduced by Grand-Ducal Order of 8 November 1944 and continued in the Outline Law of 30 June 1961 currently in force. ([37]) Under this regulation, products for which the price formation or price level is not subject to particular control must not be sold above the "normal price".

The "normal" character of a price is assessed by the Minister for Economic Affairs or his Delegate, or by the Courts. According to the answer given us on 23 May 1967, by the Luxembourg Price Department, the normal price for Luxembourg products "may be deemed to be the purchase price of the merchandise plus the profit margin usual in the branch". Since the normal price is thus manifestly determined purely in the light of the cost position, this rule at the same time limits price discrimination. On the assumption that comparable sellers obtain their supplies at approximately the same prices, the normal price should be—as in Belgium—the price most commonly charged.

The Grand-Ducal Order of 15 February 1964, provides special treatment for imported products and branded goods. The normal price for these products is the retail price charged in the country of origin, converted into Luxembourg Francs at the official exchange rate, with the addition, where appropriate, of customs duties and ancillary charges, transport costs, import duties, etc. ([38])

The Luxembourg rules, like the Belgian, do not limit the institutional freedom to reduce prices. But, since they entirely disregard the demand position, the determination of the normal price may mean, for the enterprises which it affects, a diminution of the feasibility of action in the event of a substantial increase in demand. It seems, however, that once again, this rule essentially applies only to the distribution stage. In this case, price rises due to demand would not be prohibited to producer enterprises, so that the resulting supplementary profits could be used for quantitative development. The limitation of mark-up at the marketing stage can only have an essentially favourable effect on the distribution function, since capacity at this stage does not generally need to be extended. The Luxembourg rules seem unlikely to have any effect on the competitive spirit. In practice, if "the profit margin usual in the branch" is fixed at rates based on the experience of several years, the reduction in the margins of a number of sellers will not constrain any of their competitors to follow their price reductions. The Luxembourg rule therefore does not lessen the chances of conquering additional demand. An adverse effect on the competitive spirit can appear only if the statutory reference to "the profit margin usual in the branch" consolidates that margin. But since this effect directly attributable to price control cannot be very important, we can disregard it. In short, with regard to the market mechanisms, a favourable effect can be inferred only on monetary distribution.

(c) The nature and present frequency of application of the normal price rule in the two countries has no effect on relations among Member States.

If the Belgian rule allows—as we have assumed—price rises due to demand, its general and frequent application would not arouse any fear of adverse effect on the functioning of the market mechanisms among Member States. The institutional freedom to reduce export prices is not limited, either for national or foreign sellers. The possible diminution in certain cases of the feasibility of action of Belgian high-price sellers can only be judged favourably, and the diminution of the competitive spirit, inferred for a closed economy, should not manifest itself in competition among Member States, at any rate in the first phases of integration. Belgian sellers will react to the lower prices of foreign sellers by price reductions only when they have acquired some experience of the degree of interdependence between their supply and foreign supply.

In so far as no account is taken of the state of demand for internal products, the general and frequent application of the Luxembourg rule would certainly not exclude a distortion of trade channels. In practice, if the state of demand abroad made it possible to obtain considerably higher selling prices and profits than in Luxembourg, external markets would be supplied in preference to, and to the detriment of, supply to the Luxembourg market. In extreme cases, it

([37]) Cf. Champaud, C. Part I, *op. cit.*, pp. 40 and foll.
([38]) Cf. ibid., p. 42.

Summary Table showing the possible effects of national normal price rules on the functioning of the market mechanisms.

(valid only in the case of strict and frequent application)

<table>
<tr><th rowspan="2">Functions of the market mechanisms</th><th rowspan="2">Belgium</th><th colspan="2">Luxembourg</th></tr>
<tr><th>A</th><th>B</th></tr>
<tr><td>A. Effects in the national context in a closed economy</td><td></td><td colspan="2"></td></tr>
<tr><td>I. Development function</td><td></td><td colspan="2"></td></tr>
<tr><td>1. quantitative</td><td>+</td><td colspan="2">.</td></tr>
<tr><td>2. qualitative</td><td>.</td><td colspan="2">.</td></tr>
<tr><td>II. Allocation function</td><td></td><td colspan="2"></td></tr>
<tr><td>3. pattern of outputs</td><td>.</td><td colspan="2">.</td></tr>
<tr><td>4. pattern of inputs</td><td>—</td><td colspan="2">.</td></tr>
<tr><td>5. regional pattern</td><td>.</td><td colspan="2">.</td></tr>
<tr><td>III. Distribution function</td><td></td><td colspan="2"></td></tr>
<tr><td>6. monetary</td><td>—</td><td colspan="2">+</td></tr>
<tr><td>7. real</td><td>.</td><td colspan="2">.</td></tr>
<tr><td>B. Effects in the context of the EEC in an open economy</td><td></td><td></td><td></td></tr>
<tr><td>I. Development function</td><td></td><td></td><td></td></tr>
<tr><td>1. quantitative</td><td>.</td><td>.</td><td>.</td></tr>
<tr><td>2. qualitative</td><td>.</td><td>.</td><td>.</td></tr>
<tr><td>II. Allocation function</td><td></td><td></td><td></td></tr>
<tr><td>3. pattern of outputs</td><td>.</td><td>.</td><td>.</td></tr>
<tr><td>4. pattern of inputs</td><td>.</td><td>—</td><td>+</td></tr>
<tr><td>5. regional pattern</td><td>.</td><td>—</td><td>+</td></tr>
<tr><td>III. Distribution function</td><td></td><td></td><td></td></tr>
<tr><td>6. monetary</td><td>.</td><td>.</td><td>.</td></tr>
<tr><td>6. real</td><td>.</td><td>—</td><td>+</td></tr>
</table>

Legend:
A = normal price rule for Luxembourg products;
B = normal price rule for foreign products;
. = no major effect inferable or probable;
— = adverse effect;
+ = favourable effect.

is possible, here too, that the shortage of supply on the Luxembourg market would be covered by somewhat unproductive foreign manufacturers, since they are not forbidden to charge higher prices. We should then find, as was shown in the case of stability contracts, ([39]) adverse effects on the real distribution function, the regional pattern and the pattern of inputs.

([39]) Cf. pp. 38 and foll. above.

But in such a situation the Luxembourg Government would no doubt react by amending or repealing the rule in question. Integration might therefore threaten the maintenance of the existing system.

The special rules for foreign products—like the Belgian regulations for pharmaceutical products ([40]) should have only favourable effects on the market mechanisms. The pressure to harmonise the price of products might have favourable effects on intra-EEC relations, on the real distribution function and on the components of the allocation function.

3. *PROHIBITION OF OVERCHARGING*

(a) To the best of our knowledge, only the Federal Republic of Germany prohibits overcharging in general terms. Article 2 of the Act for the repression of economic offences, of 9 July 1954 ([41]) penalises, in the case of goods and services of basic necessity, the wilful charging, promise, contracting, acceptance or grant of unfairly high remuneration ([42]) as a result of

(i) restraint of competition,

(ii) exploiting a dominant position,

(iii) exploiting a state of shortage.

In assessing the fairness (*Angemessenheit*) of a price, the main criterion is not the relationship between costs and price, but the comparison with a national price unaffected by the special market situations listed. ([43])

(b) In practice, the prohibition of overcharging amounts to the prohibition of excessive unit profits. Since it is impossible to judge in the absolute whether a price is "too high" and since a notional competitive price is virtually incalculable, ([44]) prices must in practice be assessed in the light of costs. If this calculation shows a high unit profit, it falls under the prohibition only if it is attributable to one of the three types of market distortion listed. In a situation in which demand plays its normal role, a high unit profit is always a sign of inadequate supply. Where short supply in relation to demand results in prices deemed to be unfair, the causes may be either objective or subjective. The obstacle to the adjustment of supply

([40]) Cf. pp. 62 and foll. above.
([41]) Cf. BGB1 I, 1954, pp. 175 and foll. and BGB1 I, 1958, p. 949.
([42]) For the sake of completeness, it may be noted that excessive prices may also be penalised as usury under the Criminal Code (Art. 302 a to e).
([43]) Cf. Helm, J.-G.: *Preisrecht*; in: HdB, *op. cit.*, col. 4412.
([44]) The application of this rule to the price of land has clearly demonstrated these difficulties.

to increasing demand is objective when the extension of capacity requires time and capital. If the market mechanisms are functioning well, higher profits act both as an incentive and as a source of finance, and themselves ensure the disappearance of this obstacle. The cause is also objective when, temporarily or permanently, goods cannot be reproduced for extra-economic reasons. In these circumstances, the market mechanisms do not function, and a higher profit merely has an adverse effect on distribution. Examples of subjective causes are the failure to adjust production capacities, or deliberate delay in adjustment or the deliberate limitation of supply. Here again, the profit merely has an adverse effect on distribution.

Among the circumstances which give rise to the prohibition of overcharging, the first two relate to the subjective causes and the third to the objective causes of short supply. If the "state of shortage" is deemed to exist only when the market mechanisms cannot overcome it within a reasonable time, the application of the prohibition of overcharging is confined to cases in which the market mechanisms cannot in any event function. This rule therefore cannot distort these mechanism. Although it certainly cannot either support them or replace them, it may nevertheless counteract a deterioration in monetary distribution. Its application to prices which are excessive as a result of restraint of competition or a dominant position may also bring about an extension of supply since it eliminates the higher price as a motive to restrict supply. In this case, it also helps to improve the pattern of outputs.

In practice, the prohibition of overcharging is difficult to administer without a cumbersome machinery of control and without a more precise definition of what is a fair price, so that it can only be expected to repress particularly gross and flagrant abuses. Ebisch ([45]) is nevertheless of opinion that "the mere existence of such a stipulation is enough to impose an attitude of moderation and restraint in determining prices".

(c) The prohibition of overcharging cannot affect competition among Member States or international market mechanisms, since the measure is applied only if these mechanisms have in any event ceased to function.

([45]) Ebisch, H.: *Wirtschaftsstrafgesetz*, Berlin-Frankfurt 1959, p. 58 (the statement is given typographical emphasis in the original).

CHAPTER 6

PUBLICITY AND SUPERVISION

1. *THE DUTY TO PUBLISH PRICES*

(a) The publicity rule obliges sellers to publish their prices. In general, this rule is based partly on the fact that price publicity helps the State in exercising supervision and in enforcing other price requirements and partly on its value to consumers and in ensuring the transparency of the market. Both arguments are pertinent. The first, which is a matter of administrative technique, does not concern us here. Underlying the second argument is the idea of supporting the market mechanisms. As we have already noted, increased market transparency in favour of buyers unquestionably speeds up the functioning of the market mechanisms. It would, however, be premature to conclude from this that the duty to publish price is unreservedly favourable, since it is both parties who get a better overall view of the market.

As already pointed out in various forms, competition on oligopolistic markets is favoured precisely by the lack of transparency as to the actions and reactions of competitors. A favourable influence is exercised on the competitive spirit if a particular seller hopes that his competitors will learn too late of the price reductions he has applied in order to set off the shift of demand for which he hopes, and if that seller fears that he may not detect in time the price offensive of his competitors. The competitive spirit would therefore diminish if, as a result of compulsory price publication, each seller can be informed relatively fastly and simply of his competitors' price policy. The consequence therefore is the possibility of concerted behaviour and a tendency towards the collective monopolistic maximisation of profits. (1) As competition died away, the improved transparency of the market would become valueless to consumers. If the compulsory publication of prices applies to markets where oligopolistic interdependence is total, the functioning of the market mechanisms must be expected to slow down.

On atomistic markets, on the other hand, compulsory price publication calls for a favourable judgment. Since, by definition, the sellers do not react directly to the actions of their competitors, the improved overall view which the consumers have of the conditions of supply may speed up the functioning of the market mechanisms.

(b) If our information is correct, price publication is compulsory in all EEC countries, except the Netherlands, in the form of compulsory price ticketing at the retail stage.

In *Belgium* a Ministerial Order of 30 April 1948 (2) obliges retail traders to state their prices, indicating the unit of quantity chosen. The same applies to those rendering services. This obligation was introduced for the better supervision of price controls, with a view to the direct regulation of price levels by consumers and by the State. (3)

In the *Federal Republic of Germany*, the Decree of 6 April 1944 (4) on price ticketing requires retail traders to ticket merchandise displayed in windows or in any other manner. For restaurants, hotels and craftsmen, it is enough to display tariffs. The avowed aim of price ticketing was to encourage price discipline and to facilitate supervision by clearly informing buyers of the prices. (5)

In *France*, too, price ticketing is compulsory for retail trade. (6) In some cases, the mark-up must be shown as well as the price. (7) This requirement is based on the desire for the better information of consumers and the hope of consequent increased price competition.

In conjunction with the obligation, essentially based on considerations of taxation, of invoicing at stages up the line, price ticketing helps the State to supervise prices from manufacture to consumption.

(1) Chamberlin had already concluded that a collective monopolistic maximisation of profits would appear on oligopolistic markets in the narrow sense, if rational action could be based on an overall and full view of market conditions. Cf. Chamberlin, E.-H.: *The Theory of Monopolistic Competition*, Cambridge, Mass., 1933, pp. 46 and foll.

(2) Cf. *Moniteur Belge*, 12 May 1948.
(3) Cf. Champaud, C. Part I, *op. cit.*, p. 25.
(4) Cf. the text and explanations of the Decree of 16 November, 1940 (RCBl I, 1535) on price ticketing, in the wording of the Notice of 6 April 1944 (RGBl I 98) in: Stiegler, H.: *Preisauchzeichnung in der Marktwirtschaft*, Berlin-Frankfort 1962.
(5) Cf. Vormbaum, H.: *Preisauszeichnung*; in: HdB, Vol. III, 3rd edition, entirely revised, Stuttgart, 1960, col. 4380.
(6) Cf. Champaud, C. Part I, *op. cit.*, p. 32.
(7) Cf. ibid., p. 37.

In *Italy*, the compulsory publication of prices manifestly extends only to products subject to the regulations for the direct control of price levels, for which the official tariffs and retail prices must be displayed. ([8])

In *Luxembourg*, the Order of 6 December 1957 ([9]) has made the ticketing of retail prices compulsory. This enactment also applies to merchandise sold in public markets, hotels and cafés, to services rendered and to commercial hiring.

As already indicated in connection with rebate control ([10]) most retail markets are characterised by simple partial oligopolistic interdependence. Direct reaction by competitors to a seller's price policy are probable only if a relatively large number of articles in the selling range are reduced in price by a relatively large amount. The dangers of compulsory price publication for market competition may therefore be regarded as relatively slight compared with the favourable effects of improved market transparency enjoyed by consumers. The speeding up the functioning of the market mechanisms is reflected in particular by favourable effects on the monetary distribution function and on the pattern of outputs and inputs.

Summary Table showing the possible effect of national price ticketing rules on the functioning of the market mechanisms.

(effects in the national context only).

Functions of market mechanisms	Rules existing in the following countries: Belgium, Federal Republic of Germany, France, Italy, Luxembourg
I. Development function	
1. quantitative	.
2. qualitative	.
II. Allocation function	
3. pattern of outputs	+
4. pattern of inputs	+
5. regional pattern	.
III. Distribution function	
6. monetary	+
7. real	.

Legend:
. = no major effect inferable or probable,
\+ = favourable effect.

([8]) Cf. Champaud, C. Part I, *op. cit.*, p. 57.
([9]) Cf. ibid., p. 43.
([10]) Cf. pp. 51 foll. above.

(c) Compulsory price publication limited solely to retail markets has no effect on economic relations among Member States in the integrated territory. The possibility of any effect on the functioning of market mechanisms among Member States can therefore be ruled out.

2. *THE DUTY TO REPORT PRICES: PRICE AUTHORIZATION*

(a) In the EEC countries there are three different kinds of rules for the supervision of prices: the simple duty to report prices, the duty to report, accompanied by a right of veto, and price authorisation. In general, reporting or authorisation is required for increases only, and not for reductions.

Although *the simple duty to report prices* does not directly affect autonomy to determine prices, it may well be thought that it is not without influence on price formation. In practice, compulsory reporting was certainly not introduced purely for the sake of augmenting the mass of administrative papers, but because the government was determined to react by economic policy measures against prices which seemed for any reason unfair. If sellers are obliged to report, they must take account, in their decisions to vary prices, not only of the reactions of demand and of their competitors, but also of the possible intervention of the authorities. It may be taken in general that enterprises liable to report will treat price increases with greater caution than those which do not feel themselves under the eye of the State. The extent of influence on the prices charged by an enterprise will depend in particular on the experience which that enterprise has acquired of prices which lead to intervention by the authorities directly affecting the reporting enterprise. If the government intervenes only when the price increase reflects the faulty functioning of the market mechanisms, the effect of compulsory reporting is wholly favourable. In the first place, it may dissuade sellers from exploiting their dominant market position, and, secondly, it may provide economic policy makers with valuable information about the functioning of the market mechanisms.

But compulsory reporting may prejudice price competition on oligopolistic markets if all price variations have to be reported and if the prices reported are accessible to competitors in one way or another. ([11]) In this case the arguments advanced against compulsory price publication are equally valid against compulsory price reporting.

([11]) On this point, see also: Hoppmann, E.: *Preismeldestellen und Wettbewerb*; in: WuW, 1966, pp. 97 and foll.

There is no practical difference, but purely a technical administrative difference between *compulsory reporting with a right of veto* and *compulsory price authorisation*. Whereas, under the first system a price is deemed to be authorised if no objection is raised within a fixed time limit, under the second system, the price cannot be applied until expressly approved by the authorities.

The effect of these rules depends essentially on the practical use made of them. If the authorities decline to approve any price increase, the rule amounts to an individual price freeze. Since the effects of this system are analysed in detail in the section on maximum prices, we shall not go into them at length here. If the authorities approve "fair" prices or price increases from the macro-economic point of view, the effects will vary according to the definition of the concept of "fairness". Leaving aside specific extra-economic objectives, fairness should be assessed in the light of the fundamental economic principles outlined at the beginning of this study. Combining questions of structure and level we can distinguish in general an assessment primarily based on the distribution function and one based on the production function. The former treats the price as a medium of profit and a decisive factor in the income of the enterprise. As in the case of the old requirement of *justum pretium*, the definition of fairness depends essentially on considerations of equity. The criterion is generally "the customary profit of the branch". Compulsory authorisation then amounts to freezing profit margins. If the relevant rules are applied, compulsory authorisation certainly does not prejudice institutional freedom to reduce prices, but the prohibition of price increases or profits, motivated by demand, tends to reduce the feasibility of action to adjust capacities. If compulsory authorisation allows the constant adjustment of the maximum level of unit profit to the customary level of the branch, it further substantially reduces the incentive to reduce prices and the competitive spirit in general. The application of compulsory authorisation in the light of the distribution function is therefore likely to prejudice the development and allocation functions of the market mechanisms.

Since the modern State is constantly modifying, or constantly has the power to modify the primary distribution of incomes in the light of its concepts of justice, assessment in the light of production regards prices primarily as an instrument for influencing the allocation and development functions of the market mechanisms. Fairness is assessed much more in terms of "rightness" than of "equity". The fairness of the costs of a given firm is therefore only *one* standard of reference in considering prices, it is the assessment of their incentive power which is decisive. It is certainly very rare to be able to foretell in advance the impetus which a price will exercise on the allocation and distribution functions of the market mechanisms. One can only confine oneself to verifying the existence of such effects. If the conditions for the sound functioning of the market mechanisms, outlined in Part I, are satisfied, the examination of prices in the light of production will allow, in the case of growing demand, higher unit profits than the customary profits of the branch. On the other hand, if these conditions are not satisfied, compulsory authorisation will be used from this point of view also in the light of distribution. Such a use of compulsory authorisation cannot have any adverse effects on the market mechanisms. On the contrary, it calls for a favourable judgment if, with a better view of the market, the authorities are in a position to act quickly enough to counter any distortion of the functions. This method of use also lessens the danger that possible reduction will not be made for fear of encountering difficult authorisation proceedings in the event of increases subsequently again becoming necessary.

It should be noted, in conclusion, that a general procedure for compulsory authorisation may be introduced with a view to stabilising price levels even without any major adverse effect on market mechanisms. If the cause of an inflationary trend lies in a generally rising climate, the refusal, limited to a short period, to authorise any increase may combat the expected inflation, in so far as it is the cause of rising prices.

(b) As long ago as 20 December, 1959, *Belgium* had introduced simple compulsory reporting for certain merchandise, with a view to preventing, limiting, or at least checking price rises. Over the years, the number of products concerned has been considerably increased. The Ministerial Order of 8 October 1959 ([12]) stipulates that every price increase contemplated shall be reported to the Minister of Economic Affairs not later than 21 days before its application, during which period the authorities may object to the increase. In order that this compulsory reporting shall not be a bar to any tendency towards reduction, a provision introduced on 8 September 1961, empowered the Minister for Economic Affairs to agree with sellers giving prior notification of a reduction ([13]) on simplified conditions for any subsequent increases. A Ministerial Order of 2 September 1966 ([14]) has finally extended compulsory reporting accompanied by the right of veto to "all products, materials, commodities or merchandise, and to all services" (Art. 2). Reporting is also required for imported merchandise, though not for entirely new products or products whose quality has been greatly improved. ([15]) The report must specify, in particular, the conditions of sale of products, the old price and

([12]) Cf. *Moniteur Belge*, 10 October 1959.
([13]) Cf. Van Meerhaege, M. A. G.: Prior Notification..., *op. cit.*, p. 35.
([14]) Cf. *Moniteur Belge*, 6 September 1966.
([15]) Cf. Van Meerhaege, M. A. G.: Prior Notification..., *op. cit.*, p. 35.

the new price, and must justify the increase by reference to costs (Art. 2). If the Minister for Economic Affairs does not accept the proposed increase, the enterprise is certainly not obliged to comply with his refusal; but this possibility is academic, since the Minister can then fix a maximum price. Retailers can only increase their prices in line with the authorised increases of their suppliers and observing the same percentage mark-up (Art. 4). The justification in terms of costs required for any proposed increase shows that the fairness of the new prices at the production stage is assessed, to use our own words "in the light of distribution".

In the event of a more marked increase in demand, feasibility of action may be affected. The current adjustment of prices to falling costs not being prescribed, there is no reason to expect any diminution of the competitive spirit. Any diminution in the tendency towards price competition is also counteracted by the fact that enterprises which reduce their prices have greater facilities for introducing subsequent increases. If the market mechanisms are functioning, the possible consequences of the application of the right of veto in the light of distribution have not only a favourable effect on monetary distribution, but also an adverse effect on the pattern of outputs and the quantitative development function.

The fixing of retail mark-ups at a constant percentage counteracts the appearance of unjustified excess profits at this stage in the event of excess demand. It is true that the fixing of a relatively high maximum generally involves the danger that it may be in the interest of retailers to sell dear goods in preference to cheap. If this interest may result in a relatively low intensity of competition on retail markets, the macro-economic pattern of inputs may be appreciably distorted. The effect of manufacturer's prices linked to costs and absolute mark-up linked to purchase price may mean, in extreme cases, that low-cost producers are driven out of the market by high-cost producers.

In the *Federal Republic of Germany*, compulsory price authorisation applies in the following special cases only: ([16])

(a) the price of agricultural and forest land is examined in the authorisation proceedings to ensure that it is not grossly disproportionate to the value of the land ([17])

(b) fees for hospital treatment are checked to ensure that they are in line with costs ([18])

(c) motor car insurance premiums for third party liability require authorisation; ([19])

(d) passenger transport fares are subject to special procedure for authorisation by the authorities of the Land Governments; ([20]) fares are fixed in the light of the economic situation of the operator and of the public interest;

(e) the rates fixed by the Freight Commissions for inland water transport must be authorised by the Federal Ministry of Transport. ([21]) This authorisation must likewise take account of the economic situation of the operator and of the public interest. It generally results in fixed rates.

As will be seen, ompulsory authorisation affects only fields where the market mechanisms do not or should not function. In cases (d) and (e) the objectives aimed at are extra-economic. Objectives of this kind no doubt also exist for the other fields, but here, in addition, the fundamental conditions for the functioning of the market mechanisms are lacking; indeed, in cases (b) and (c) aggregate demand is almost wholly inelastic in relation to price, and in case (a) the disposable aggregate supply is wholly inelastic in relation to price. In consequence, any effect on the market mechanisms is either impossible or devoid of any importance.

In *France*, there are two types of supervision, "freedom under supervision" (*liberté surveillée*) and "freedom under control" (*liberté contrôlée*).

Freedom under supervision is a system of simple reporting, under which sellers must report their price lists to the competent authorities for information. The list of products or groups of products under this system includes 9 items, 3 at production stage and 8 at distribution stage. ([22])

Freedom under control takes the form of compulsory reporting accompanied by the right of veto. As in the former case, the seller must report his prices to the authorities; price formation is free and he does not have to justify the amount. But the authorities may object within 15 days and call for justification. If they do not exercise their right of veto within that period, the reported prices may be applied as maximum prices. This system covers 33 products or groups

([16]) Cf. also: Holzapfel. W.: Übersicht über die geltenden Preisvorschriften; in: *Der Betriebs-Berater*, No. 34 of 10 December 1964, pp. 1391 and foll.

([17]) Cf. Art. 9 of the Act of 28 July 1961 on immovable property transactions (BGBl I, p. 1091).

([18]) Cf. Price Decree No. 7/54 of 31 August 1954 (BA No. 173/9 Sept. 1954).

([19]) Cf. Articles 8-11 of the Compulsory Insurance Act of 5 April 1965 (BGBl I, p. 213).

([20]) Pursuant to Art 39 of the Passenger Transport Act of 21 March 1961 (BGBl, L. p. 241) compulsory authorisation applies to tramways and trolleybuses, scheduled services by motor vehicles of all kinds and occasional transport by taxi-cabs and coaches.

([21]) Cf. Articles 21 and foll. of the Act of 1 October 1953 on industrial or commercial inland water transport (BGBl 1953, I, p. 1453 and BGBl, 1961, I, p. 1163).

([22]) Cf. Annex, p. 137.

of products, 26 at production stage and 12 at distribution stage. (23)

No special influence on the market mechanisms can be inferred from freedom under supervision, or, in the absence of information as to the way in which the veto is exercised, from freedom under control. It is true that if these systems are applied in the light of the distribution function the same effects can be expected as in the case of the compulsory reporting in force in Belgium.

By Ministerial Order of 29 March 1956, producers and importers in *Luxembourg* are in general required to report to the Prices Department, not later than ten days before their proposed introduction, any price increases proposed on the Luxembourg market. According to information received from the Luxembourg Prices Department (24) the Ministerial Order of 13 November 1956 has converted this compulsory authorisation into compulsory reporting accompanied by the right of veto. The Director of the Prices Department emphasizes that "this Order—at least recently—has been applied fairly "liberally" so that one can no longer speak of a real price freeze. But if the application of the enactment were more restrictive, we should find the same effects as in Belgium.

In the *Netherlands*, the law does not expressly specify any general duty to report, but in view of the wide price powers of the Government, (25) price increases are voluntarily reported to the authorities.

The report must include a justification of the new price on the ground of costs. In general, the elements of justification are not wage increases, but exclusively increases in external costs:

(i) the purchase price of the end product;

(ii) the cost of raw material and instrumental material, and the purchase price of semi-manufactures;

(iii) freight;

(iv) advertising costs;

(v) the cost of maintenance by outside contractors;

(vi) taxation;

(vii) amortisation of net investments.

Distributors cannot increase the absolute value of their mark-up. If the authorities do not accept the reported price increases, they open talks with the enterprise concerned.

Although the supervision of production prices may be regarded, in the Netherlands, too, as essentially based on the distribution function, the recognition of the amortisation of additional investments as an element justifying price increases makes it easier to adapt capacity to increased demand. Supervision should therefore hardly prevent the necessary increase in investment ratios and, therefore, the quantitative development function. It is true that the pattern of outputs, here, too, may be distorted. Price increases may no doubt serve as a source of finance for corporeal fixed investments but cannot be used for wage increases designed to entice the work force of other branches of activity. Furthermore, price is prevented from fulfilling its information function.

The freezing of the absolute value of mark-up calls for a favourable judgment. In the event of increased demand, it prevents the non-functional increase of profits, without hindering the sale of the most advantageous products.

Under Netherlands practice, however, compulsory reporting applies not only to products, but also to wages. (26) The collective agreements negotiated between management and labour must be authorised by the *Stichting van der Arbeid*, the non-governmental central body of trade unions and trade associations, and are subject to the supervision of the *College van Rijksbemiddelaars* (originally an official arbitration board for labour disputes). The Stichting van der Arbeid must verify, in particular, whether the wage agreements conform to the rates judged appropriate to the overall plan by the *Social-Economischen Raad* (Social and Economic Council). In exceptional cases the Government may intervene by calling a wage halt or delegating its powers of authorisation to the College van Rijksbemiddelaars.

The effects of this reporting and authorisation procedure again depend on the way it is applied. If the rules allow wage increases in excess of those provided by the collective agreements, and tend to entice personnel away from less productive branches, no adverse consequence on the market mechanisms can be inferred. But it they try to prevent them, they may hamper the sectoral mobility of manpower, thus distorting the pattern of outputs and inputs of the market mechanisms.

(c) Compulsory reporting or authorisation by itself can hardly influence economic relations among Member States. It is true that if certain price increases are

(23) Cf. Annex, p. 138 and foll.
(24) Cf. letter ref Sch/PR No. 23,514 of 23 May 1967 from the Director of the Prices Department, Ministry of the National Economy and Energy.
(25) Cf. on this subject Van Meerhaeghe, M. A. G.: Prior Notification..., *op. cit.*, pp. 36 and foll.

(26) For fuller details on Netherland wage policy, see Busch-Lüty, Ch.: *Gesamtwirtschaftliche Lohnpolitik*, Basle-Tübingen, 1964, pp. 30 and foll.

rendered impossible by veto or refusal of authorisation, the international functioning of the market mechanisms cannot remain unchanged. As the result of an assessment of the fairness of a price level, based on the distribution function, external markets may be preferred to the internal market, if the state of demand makes it possible to obtain higher prices on foreign markets where prices are free than on the controlled home market. As already repeatedly pointed out, in this event adverse effects may be expected on the real distribution function as well as on the regional pattern and the pattern of inputs.

Since compulsory general reporting, accompanied by the right of veto, also affects imported products in Belgium, the obtaining of higher prices and higher profits as a result of demand can be forbidden to foreign sellers on the Belgian market. This equality of treatment between Belgian supply and foreign supply rules out the possibility of foreign supply at unfavourable costs earning higher profits on the Belgian market than Belgian supply at favourable costs. This prevents distortion in the regional pattern and the pattern of inputs. But as a result of the war on uncompetitive fixed price foreign supply, the volume

Summary Table showing the possible effects of national compulsory price reporting and authorisation rules on the functions of the market mechanisms.

Functions of market mechanisms	Belgium	France	Luxembourg	Netherland	
	A	B	A	C	D
A. *Effects in the national context in a closed economy*					
I. Development function					
1. quantitative	—	—	—	.	.
2. qualitative	.	.	.	.	.
II. Allocation function					
3. pattern of outputs	—	—	—	—	—
4. pattern of inputs	—(a)	.	.	.	—
5. regional pattern	.	.	.	.	.
III. Distribution function					
6. monetary	+	+	+	+	.
7. real	.	.	.	.	.
B. *Effects in the context of the EEC in an open economy*					
I. Development function					
1. quantitative	.	.	.	.	.
2. qualitative	.	.	.	.	.
II. Allocation function					
3. pattern of outputs	.	.	.	.	.
4. pattern of inputs	.	—	.	—	—
5. regional pattern	.	—	.	—	—
III. Distribution function					
6. monetary	.	.	.	.	.
7. real	—	—	—	—	.

Legend:
. no maior effect inferable or probable;
— = adverse effect;
+ = favourable effect.
A = compulsory reporting of price rises, subject to assessment of prices in the light of the distribution function;
B = price freedom under control, with assessment of prices in the light of the distribution function;
C = general compulsory price reporting, with assessment of prices in the light of the distribution function;
D = compulsory authorisation of collective agreements, on the understanding that price increases in excess of the agreed wage rates are forbidden,
(a) may result in freezing the relative value of mark-up at the distribution stage.

of Belgian supply may fall still further under the influence of this rule. Distortions in the allocation function are eliminated only at the cost of considerable intensification of the adverse effects on real distribution.

This reasoning also applies in principle to the Luxembourg reporting system, if—as also assumed in the case of Belgium—the right of veto tends to prohibit not only the increase of importers' margins, but also prices charged by foreign sellers above the ligitimate prices of Belgian sellers.

The special fields of application of compulsory authorisation in the Federal Republic of Germany have no effect on international economic relations.

The French rules, also, largely concern products reserved for internal trade. (27) The possibility cannot, however, be ruled out, in certain cases, of distortions in the real distribution function and the pattern of inputs and the regional pattern if the rules are applied in the light of the distribution function and solely to national supply.

The same result is possible from the general price supervision practised in the Netherlands.

If, as a result of the procedure for the authorisation of collective agreements, a procedure linked with wage directives, real wages in the Netherlands, considered over a long period, are below those in other Member countries, it is not impossible that the emigration abroad of Netherlands workers may be found. Since such induced shifts of factors may also intervene by counteracting cost advantages, a distortion in the pattern of inputs and in the regional pattern is not impossible.

(27) Cf. list in Annex, p. 138 and foll.

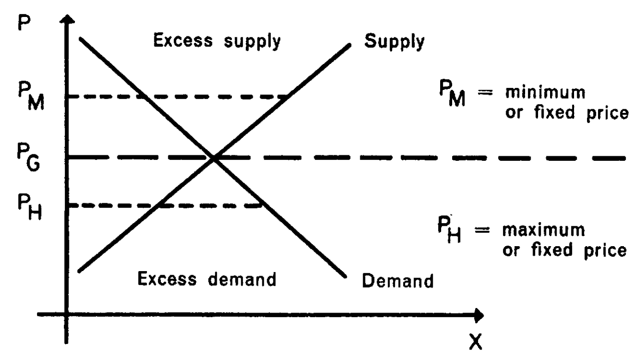
B. THE EFFECTS OF DIRECT PRICE CONTROLS

CHAPTER 7
THE THEORY OF PRICE CONTROLS

Direct price controls may set maximum prices, minimum prices, fixed prices, price brackets or numerical values. Von Mises had already studied the effects of such provisions in his Theory of Price Controls (*Theorie der Preistaxen*). (1) Since the substance of this theory is now generally accepted (2) we shall adopt it as the starting point of our analysis.

Von Mises selected as reference point for his analysis the price at which the volume of demand and the volume of supply are in equilibrium in a state of perfect competition. (3) He described a price control as a "false control" (*Ordnungstaxe*) if it simply set the value of the equilibrium price and a "true control" (*echte Taxe*) if the price set deviated substantially from the equilibrium price. According to Von Mises, false controls merely confirm the functioning of the market mechanisms. They can therefore have major effects only where free price formation cannot succeed in reaching the equilibrium price. Thus, in the case of monopoly of supply, "the intervention of the authorities has available the whole margin lying between the highest monopoly price and the lowest competitive price". (4) In this case a maximum price set at the level of the competitive price has the effect not only of preventing the exploitation of consumers, but also of improving market supplies by eliminating the motive to reduce production constituted by the obtaining of a higher price. But Von Mises attaches little importance to the cases in which it seems valuable to introduce controls. The most interesting fields for his analysis of the effects lie above and below the equilibrium price.

If the minimum price or the fixed price of a product is set below the equilibrium price, the volume of demand falls and the volume of supply increases, as shown on the graph below. The supply which becomes excessive creates a tendency to sell below the true control. To prevent illegitimate dumping, State intervention or an agreement between enterprises forming a cartel has to ensure either a reduction in supply or an increase in the volume of demand. Since the success of measures to increase demand (5) is somewhat uncertain in practice, it is generally supply that is reduced. Demand which is unwilling or unable to pay the higher price for the product invades other markets, on which it generates price increases and/or an extension of production. If it is desired to avoid these secondary effects also, the necessary intervention may involve the complete control of all prices and quantities of goods offered.



If the maximum price or fixed price of a product is set below the equilibrium price, the volume of demand increases and the volume of supply falls. The demand which becomes excessive generates the creation of black markets where the illicit prices are higher. To eliminate this phenomenon, supply must be increased by constraint, or demand must be restrained by rationing. The rationing of a product liberates an effective demand which turns to other markets where it generates price increases and/or increased production. The desire to prevent such secondary effects may here again lead to State control of all prices and quantities of goods offered.

As a result of his analysis, Von Mises reaches the conclusion that, in a market economy, true controls cannot be an instrument of economic policy consistent either with the objective or with the economic system. They are not consistent with the objective, since they are always introduced at the cost of those whom they are designed to protect or benefit. Minimum or maximum prices above the equilibrium price are

(1) Mises, L.: *Preistaxen* (Theorie); in: HdStW, Vol. 6, 4th edition, 1925, pp. 1055 and foll., reproduced in: Mises, L.: *Kritik des Interventionismus*, Jena, 1929, pp. 125 and foll.
(2) Cf. Meinhold, H.: Preis (III), *Preispolitik*; in: HdSW, Vol. 8, Stuttgart, Tübingen, Göttingen, 1964, p. 503.
(3) Von Mises calls this price the "natural or static price" (*natürlichen oder statischen Preis*) in absolute equilibrium. Cf. Mises, L.: *Preistaxen..., op. cit.*, in: HdStW, p. 1058.
(4) Mises, L.: *Kritik des Interventionismus, op. cit.*, p. 135.

(5) For example, when promoting or subsidising demand (cf. *Kohle- und Verstromungsgesetz* of the Federal German Republic.

no service to the sellers since the formal encouragement resulting from these higher prices is offset by the fact that only part of the supply finds a taker at that price. Fixed or maximum prices below the equilibrium price are no service to the consumers, since the reduction in supply operates to their detriment.

While true controls thus seem inconceivable as isolated State intervention, they are equally inconsistent with the economic system. On the basis of experience of the economic policy followed during the First World War, Von Mises infers the following escalation of official intervention: price controls, forced sales, rationing, forced production, and finally the taking over by the State of the planned direction of all production and distribution. As Von Mises finally emphasizes:

> "There is precisely no other alternative; either to refrain from isolated intervention in the play of the market or to entrust the authorities with the overall direction of production and distribution. Capitalism or socialism; there is no middle way." (6)

This view is only partially borne out by experience of direct price controls during and after the Second World War. In post-War Germany the general prevalence of profiteering and black marketeering corresponded with the effects described by Von Mises, but in the United States and France a whole range of products was price-controlled without any need to regularise production and without any extension of State intervention being observed.

It therefore seems manifest that price control is not necessarily followed by government control of volumes. This shows that at least the sellers do not modify their volume of production, as Von Mises has said. In verifying the traditional theory of price control in the light of American experience, Galbraith questions, not the accuracy of this theory, but its relevance, when he writes:

> "The doubts of economists as to the technical workability of price control prior to World War II proceeded not from an error of analysis, but from an error of assumption." (7)

In practice there is no perfect equilibrium of competition. The commonest form of market is not atomistic competition on perfect markets, but oligopoly on heterogeneous markets. In his study, Galbraith gives a casuistic list of the reasons why the policy of State price control does not necessitate authoritative control of volume on markets where sellers are few in number. The following may be cited among Galbraith's major conclusion:

(a) prices controlled at their highest level may prevent price increases, without involving a fall in production. Since they generally have reserve production capacity available, sellers on oligopolistic markets will certainly increase their prices, but even before making full use of their capacity. Price control may therefore encourage them to make full use of their capacity.

(b) If excess demand nevertheless appears, State rationing is not essential, since sellers on the market exercise an informal control over demand. Such control is possible since buyers and sellers do not act anonymously but as personally identifiable "suppliers" and "customers".

Galbraith concludes that:

> "in the imperfect market—in particular, in the market of small numbers—price control quâ price control is a workable instrument of economic policy, at least in the short run". (8)

But since, to a large extent, he does no more than show that controlled prices are relatively easy for the authorities to apply on these markets, and explain why there is no occasion, in a state of imperfect competition, to expect effects which would make price control impracticable as a means of achieving relatively short term objectives, Galbraith provides "less a theory of price control than... an interpretation that blends history with *ad hoc* reasoning. (9)

The oligopolistic market form is not enough by itself to explain why the effects inferred by Von Mises are rarely found in practice. It is, to all appearances, because the number of sellers is relatively small that no excess supply appears as a result of a fixed or minimum price set above the free market price. On olipolistic markets the sellers generally have a relatively good overall view of the conditions of supply and demand on the aggregate market. Their business behaviour is therefore not based on the idea that they can sell any quantity they like at the fixed minimum price; quite the contrary, in determining the volume of their production they evaluate the aggregate demand and the aggregate volume of production of their competitors.

Similarly, the possibilities of informal rationing by the sellers to which Galbraith alludes are no doubt all the greater, the fewer the participants in the market. The number of sellers is not always enough

(6) Mises, L.: Interventionismus; in: *Kritik des Interventionismus, op. cit.*, p. 12.
(7) Galbraith, J. K.: *A Theory of Price Control*, Cambridge, Mass., 1952, p. 25.

(8) Ibid.
(9) Hildebrand, G. H.: A recension of Galbraith's Theory of Price Control; in: AER, Vol. 42, 1952, p. 988.

to explain the absence of a reduction in the volume of supply. What is decisive here is that free market prices are not generally identical with costs, contrary to what Von Mises supposed. Since the State, as the originator of control, is conscious of the danger of a diminution of supply, it can be taken, in general, that the maximum price or fixed price which it sets covers at least the average costs of sellers. The form of the market may also be an important factor in determining the size of the sector in which a price control policy is possible without any reduction of supply. With regard to the whole possibility of pursuing such a policy in general, the form of the market is not a decisive factor. Prices above average costs are no doubt the rule both on oligopolistic markets and on atomistic markets.

An oligopolistic market situation affords no better explanation of the absence of secondary effects on other markets. The prior condition for the appearance of such effects is the multilateral interdependence of all the markets. This generally results from the fact that all markets contribute to the given national product for a period and to the existing factors of production. The possible effects of these relations are often negligible. There is no reason to fear major secondary effects for other free price markets, unless the products are interchangeable. In practice, relations of substitution exist, not among all products, but only within groups of products which satisfy the same basic need. In the absence of any other assumption, no other reliable indications can be given on the effects of price control on the price of substitute products. [10]

With regard to the short term effects which we have just considered in a closed economy, it is thus found that price control, if it is applied with due regard to the conditions of supply and demand in each market, may perfectly well constitute an instrument of economic policy consistent with the objective pursued. Furthermore, since it does not necessarily produce major secondary effects on other markets, it can also be regarded from this point of view as consistent with the economic system. [11] We shall therefore confine ourselves to analysing below the possible long term effects and the consequences which may result from the reciprocal penetration of national markets.

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(10) Cf. on this subject: Gould, J. R. and Henry, S. G. B.: The Effects of Price Control on a Related Market; in: *Economica*, Vol. XXXIV, 1967, pp. 42 and foll.

(11) Willeke, who has devoted himself to studying the theory advanced by Von Mises and other neo-liberal writers concerning cumulative State intervention, concludes as follows: "Theoretical analysis thus confirms what experience constantly recalls; the price of various goods, such as raw materials, metals, scrap metal and basic foodstuffs, can be administratively controlled without resulting in cumulative State intervention, inevitably leading to a wholly directed economy." Willeke, F.-U.: *Das Theorem der kumulativen Staatsintervention*; in: Jfs, Vol. 12, 1961, pp. 70 and foll.

CHAPTER 8
PRICE CONTROL BY MAXIMUM PRICES

(a) Price controls in the form of maximum prices, set in absolute figures, are found in all EEC Member States. Individually, they are an instrument of retail price and relative price policy, and in the aggregate they are an instrument of the government's price level policy.

With regard to the effects of these controls on competition, it can be said in general that they do not restrain the institutional freedom to reduce prices in market competition. But they hamper or prevent price increases connected with demand or with costs. Feasibility of action may therefore be limited, not only relatively, by the prohibition on making additional profits linked with demand, but also absolutely, by the impossibility of passing on cost increases. Similarly, the competitive spirit is bound to be affected. If the profits of all sellers on a market are limited by the introduction of a maximum price fixed in absolute value, the sellers may gang up against the State, which psychologically weakens competition among themselves.

Furthermore, on oligopolistic markets, the fixing of a maximum unit price may afford a reference point, backed by the authority of the State, for the guidance of the price policy behaviour of the sellers, which will ensure oligopolistic peace. In particular, a diminution of indirect pressure on competition may therefore be expected.

The effects on national economies are often regarded as negligible, and sometimes even as desiderable, since the enactment introducing the maximum price is generally motivated by the defective functioning of the market mechanisms. This argument cannot be verified in specific cases without knowing the conditions of supply and demand on the relevant market. It is also argued that price increases in themselves already reflect a defective functioning of the market mechanisms or prevent them from functioning.

A policy of general price control, or the control of certain key prices (1) is therefore said to be a proven means of preventing inflation and thus restoring sound conditions for the functioning of the market mechanisms. In considering this argument, we shall assume that inflation is induced by excess demand. (2)

The elimination of aggregate excess demand forms part of the quantitative development function of the market mechanisms. If factor prices and the monetary demand of the State and from abroad remain constant after an isolated increase in demand, the adjustment process takes the following lines: following the insufficiency of production capacity, many goods—if not all—become scarce. The prices of these goods may therefore be increased by all sellers. Price rises shift the distribution of incomes to the benefit of enterprises, i.e. the highest income earners. Since their consumption rate is generally lower (3) than that of more modest income earners, the aggregate consumption rate falls and aggregate demand declines. On the supply side, higher unit profits are an incentive to extend production capacity. Since the propensity to invest is sustained by better possibilities of self-financing, the result is increased investments and a higher investment rate. Aggregate supply does not increase until the new equipment is brought into service. The quantitative development function thus brings about a temporary shift in the use of incomes in favour of investment, and, according to the state of capacities, a change in the pattern of outputs in favour of the capital goods industries.

Excess demand is not without effect on the other functions of the market mechanisms. Monetary distribution depends more on the macro-economic state of the market than on market services. The regulation of the pattern of inputs by the market is partly eliminated, since, owing to the excess demand, the

(1) E.g. the prices which enter into the cost of living index.

(2) In practice, demand-pull and cost-push make their appearance simultaneously; but owing to the difficulty of distinguishing causes, the specialised literature (a) speaks of cost inflation only when a price rise is linked with a fall in employment. Since an "inflationist depression" of this kind manifested itself only in the American recession of 1957-58, we think it legitimate to limit our study to demand inflation.
(a) Cf. e.g. Rose, K.: Bemerkungen zur Theorie der Kosteninflation; in: Jfs, Vol. 12, 1961, pp. 340 and foll. Durr, E.: Kosten- und Nachfrageinflation als wirtschaftspolitisches Problem; in: Wirtschaftspolitische Chronik, 1964, pp. 44 and foll.
(3) The smaller propensity to consume of these categories is no doubt not purely a matter of will, but arises partly from the fact that compulsory saving is enforced on company shareholders by the policy of ploughing back profits and constituting reserves followed by companies.

manufacturers in a branch with relatively unfavourable costs may, at least temporarily, extend their production. The variations in price relations necessary to the regulation of the pattern of outputs are reflected, no longer by absolute price variations in both directions, but solely by differential increases in absolute prices. Although the regulation of the pattern of outputs may theoretically continue to function even with such a variation of relations, a distortion is not impossible in practice. One of the reasons for this is that the sellers are probably not immune to monetary illusions and that therefore a real decline in profits reflected simply in a highly differentiated increase in nominal profits, would not immediately lead to a change in their production policy. But the realisation of the effects of the development function in tending to extend production capacities will result in competition again becoming intensified, in high unit profits shrinking and in the disturbed functions becoming increasingly operative.

In practice, the adjustment process no doubt does not lead in quite such a clear-cut way to a new equilibrium. If price rises on their side set off an increase in factor costs, or of the monetary demand of the State or an increase of investments which are slow in coming into service, the excess demand may even be temporarily reinforced and the achievement of macro-economic equilibrium will be thereby delayed. So long as creeping inflation does not turn into galloping inflation, there will be no change in the tendencies indicated.

It remains to be noted that the increase in the investment rate through the quantitative development function may be accompanied by distortions in the monetary distribution function and in the pattern of inputs and outputs. It is therefore understandable that the State should try to prevent these adverse effects by economic policy measures. The only question is whether maximum price policy is really the appropriate instrument.

A policy of this kind covering all products no doubt does not do away with excess demand, but prevents a deterioration in the distribution of income. In sectors where the volume of supply is not enough to satisfy effective demand at the prices fixed, the market mechanisms can certainly no longer discharge their function of real distribution. The answer to the question whether, or when, demand is satisfied will no longer depend solely on the relations between income and utility expressed in the propensity to buy, but also on the goodwill of the producers. The necessary criterion of the urgency of variations in capacity to regulate the pattern of outputs is the sectoral pattern of profits, determined by prices and costs. Since the market, owing to excess demand, no longer compels price reductions, and since price rises are prohibited by price controls, price ceases to be a decisive factor in the variation of the pattern of profits. The variation in the pattern of demand may therefore no longer appear on the market in a way which would stimulate production above the average. Differential cost variations, on the other hand, would lead to a change in the sectoral pattern of profits. The pattern of outputs therefore tends to change with the change in sectoral cost relations. But such a trend may correspond to the pattern of demand only if the rise in costs and the fall in demand and the fall in costs and the rise in demand constantly move in parallel and to the same extent in each sector. Since this can happen only in exceptional cases, the patterns of supply and of demand evolve separately. The market regulation of the pattern of outputs no longer functions.

Since price control policy does not eliminate excess demand, all sellers will have the possibility of marketing. If factor prices (especially wages) are controlled, no improvement will result in the conditions for the regulation of the pattern of inputs. On the contrary, if the rise in factor prices is legitimate, and its passing on in the price of products is not, the rise in factor prices compels the sellers to exploit all their rationalisation possibilities. The disappearance of uneconomic marginal enterprises increases the average productivity of branches and thus improves the overall pattern of inputs. But if the most productive enterprises are not in a position to increase their supply in consequence, a supplementary distortion in the pattern of outputs may follow. The rise in factor prices reinforces, for price-controlled goods, the tendency to develop cheaper production processes. If price control does not apply to new products, but only to products in existence when it was introduced, the tendency to make new products will also increase. As to the question whether the tendency thus stimulated will lead to greater qualitative improvements, this is largely a matter of finance. Owing to the reduced feasibility of action, a favourable effect on the qualitative development function is, at the least, doubtful. The influence of price control on the quantitative development function is unquestionably adverse. The prohibition of increased prices or profits hampers or prevents any increase in investment rates. The necessary extension of capacities therefore takes place much more slowly, and consumers are compelled to wait much longer before they have access to better supplies. (4)

If the control does not extend to all products, the effects inferred for the general freeze can naturally appear only on the controlled markets. But the markets which remain free may not escape all influence

(4) Cf. also, on this subject, Kung, E.: Lohninflation und Gewinninflation; in: *Probleme der Einkommenpolitik*; (edited by E. Schneider), Tübingen, 1965, p. 40.

of such selective control. Kung expects that, on the markets which remain free:

> "natural price fluctuations (...) will follow their free course all the more impetuously. In practice, the sector which remains free will have to ensure, on its own, that equilibrium is restored on the market by price variations". (5)

But this conclusion is warranted only on certain specific conditions. The macro-economic pattern of outputs has a horizontal dimension and a vertical dimension. It must be recognised that the nature of the effects of a system of partial price control depends on the question whether price formation remains free in certain vertical stages.

In the event of horizontal differentiation, Kung will be right only if the unsatisfied demand on controlled markets shifts to uncontrolled markets by the substitution of products or of needs. (6) But the reinforcement of the price rise is temporary only, since the action—free in this case—of the market mechanisms points to a fairly rapid elimination of excess demand. The substitution of products and needs brought about by the price control policy represents an involuntary reorientation of demand. If the original preferences of demand continue to exist, supplementary investments in free price sectors may, after the removal of price controls, prove to be unsound investments. It may therefore be feared that selective freeze in this case involves an appreciable distortion in the pattern of outputs.

In contrast, if price freedom is left to goods which have no substitution relation with controlled goods—and for which the satisfaction of needs has almost reached saturation point—little major shift of demand will be found, and there will be no reinforcement of price rises on price free markets.

In considering the vertical differentiation of price control policy, we shall content ourselves with distinguishing, in the case of markets with several stages, the production stage and the distribution stage.

Control at the production stage alone is a convenient solution, since this system is very easy for the authorities to introduce or supervise at a stage where there are relatively few sellers. But excess demand is enough alone to generate price increases at the distribution stage, where there is usually no bottleneck due to insufficient capacity. The resulting supplementary profits therefore have no function to fulfil in connection with qualitative development. An adverse distribution effect is therefore found, accompanied, in certain cases, by a tendency to inflation at the distribution stage. The tendency towards vertical concentration resulting from this type of differentiation points to the partial neutralisation of adverse consequences on the regulation of the pattern of outputs and the quantitative development function. But it also involves the danger of restraint of competition which may, in a general way, impede the functioning of the market mechanisms.

Price control limited to the distribution stage may relate to the total price of the product, or simply to the price of the service rendered at that stage. Since mark-up at the distribution stage can be reduced only to a limited extent, the first alternative is hardly distinguishable from a general price control policy. But it is different if a ceiling is fixed only for the price of the service rendered by distribution (the mark-up). Insufficient capacity at the production stage generally gives distributors the opportunity of increasing the price of their service. As already pointed out, supplementary profits at this stage rarely have a function to fulfil in connection with the market mechanisms. If the State limits the mark-up in relative value, the non-functional profit increase is not eliminated. But if it control the absolute value of the mark-up, the increase in the total price of a product involves increased profit at the production stage only, and this profit then fully sustains the quantitative development function of the market mechanisms. A vertical differentiation of this kind is therefore generally calculated to sustain the functioning of the market mechanisms.

To sum up, it will be found that the setting of maximum (ceiling) prices, as an instrument of price level policy—except for the fixing of the absolute value of mark-up at the distribution stage always improves the long term results of certain functions at the cost of other functions. These contradictory effects reflect the conflict between the distribution objective and the growth objective constantly encountered by economic policy in the event of overall disequilibrium. The elimination of excess demand by the market mechanisms calls for reinforced action by the State in the context of its distribution policy. Contrariwise, if the State's price control policy prevents the deterioration of distribution, the State must take measures in favour of growth.

(b) In *Belgium* price control by setting ceiling prices applies to a total of 17 products or groups of products. (7) The following Table gives an idea of the nature of the provisions and their breakdown between the production stage and the distribution stage.

(5) Kung, E.: *Der Interventionismus*, Berne, 1941, p. 172.

(6) Kung is referring by this to the following situation: demand "turns to entirely different goods, which also correspond to other needs... when it is no longer possible to satisfy needs as in the past". Ibid., p. 172.

(7) Cf. Annex, p. 128.

Nature and breakdown of maximum price controls in Belgium.

Nature: / Breakdown:	Total products	Controlled at production stage	Controlled at distribution stage
1. Total price			
a) maximum unit price	4	4	2
b) price freeze	10	2	9
2. Control of mark-up			
a) in relative value	1	—	1
b) in absolute value	2	—	2

(¹) Cf. list in Annex, p. 128.

Judging from this Table, the Belgian Government rarely seems to fix a ceiling price. But since our Table only shows express price-fixing provisions, and does not indicate the number of price increases refused on the occasion of compulsory reporting accompanied by the right of veto, the numbers given here do not warrant any general judgment on the extent of ceiling price regulations in Belgium. The small number of express price-fixing rules nevertheless justifies the conclusion that they are not used primarily as an instrument for stabilising the price level. It is impossible, within the scope of the present study, to assess whether the market mechanisms have ceased to function on all the price-controlled markets. It is certainly doubtful whether price control can be explained on this ground, since in other EEC countries market prices are formed freely, especially for certain products which are subject to ceiling prices or control of mark-up in Belgium. The deterioration of the market mechanisms which may theoretically result must be regarded overall as insignificant for most of the products. Only the setting of a percentage mark-up for electrical household appliances seems delicate. This provision encourages distributing enterprises in this branch to obtain their supplies at high prices. If the intensity of competition and/or the price elasticity of aggregate demand are not very high, the distributors' profits will be all the higher the dearer they buy their products. It is therefore possible that this control of mark-up involves considerable distortion in the pattern of inputs for part of the Belgian electrical equipment industry.

The list (8) of ceiling price regulation in the *Federal Republic of Germany* covers seven items. All these controls relate to markets where the market mechanisms cannot or should not function because of overriding extra-economic objectives. (9) It is therefore idle to assess their effect on competition and the market mechanisms. As a replacement instrument, the fixing of pharmacists' mark-up as a percentage, and architects' fees according to the value of the building nevertheless seem open to question. These provisions may lead to distortions in the pattern of inputs in the pharmaceutical industry and the building industry.

The *French* provisions for ceiling prices or direct control of price levels (10) cover a total of 396 items. Their breakdown by nature and by stage affected is shown in the following Table:

Nature and breakdown of French maximum price controls.

Nature: / Breakdown:	Total products	Controlled at production stage	Controlled at distribution stage
A. Total price	343	309	61
of which:			
a) maximum unit price	69	43	33
b) price freeze	274	266	28
B. Mark-up	53	—	53
of which:			
1. in absolute value	8	—	8
of which:			
a) maximum unit mark-up	6	—	6
b) mark-up frozen	2	—	2
2. in relative value	45	—	45
of which:			
a) maximum unit mark-up			
— on cost price	14	—	14
— on selling price	16	—	16
b) mark-up frozen	15	—	15

(8) Cf. Annex, p. 130.

(9) Thus, the price control of nitrogenous fertilizers prevents the producers from exploiting prices under the subsidies granted to the fertilizer industry. The control of architects' fees may be regarded as a counterpart to the privilege, deemed unjustified from the overall point of view, enjoyed by this profession thanks to official aid to building. The provisions governing the price of medicaments and the fees of doctors and dentists, as well as of advocates and notaries, partly counteract the price exploitation of a virtually inelastic demand, and may be taken as expressing, to some extent, the view that contraction of demand owing to prices is not desirable in these fields for extra-economic reasons. In the case of electricity supply, there can be no question of free price formation, since the suppliers enjoy an almost absolute monopoly at regional level. The discussions which have taken place in recent years on the freeing of the price of electricity can be taken to have been unsuccessful.

(10) Cf. Annex, p. 139 and foll.

Most French maximum price controls are designed to stabilise price levels. It is only in the group of provisions imposing maximum unit price controls that a series of products is found for which it can be assumed that the market mechanisms are not functioning. The price of products in this group is controlled both at production and at distribution stage. Most provisions relate to freezing the selling price of each enterprise. For more than half of the products in this group price control applies at production stage only, price formation at the distribution stage remaining free. The products for which price freezing or mark-up control applies at the distribution stage are essentially final consumption goods and services which play a certain part in the cost of living. These controls are manifestly designed to stabilise the cost-of-living index. The dominant system of control for mark-up is that of fixing relative values.

The large number of French controls which cannot be interpreted as designed to replace badly functioning market mechanisms, suggests considerable effects on those mechanisms. It is highly probable that they will deteriorate, especially since these rules have been in force for a long time (five years and more).

In cases where maximum unit prices or frozen prices fixed in absolute values apply both at production and distribution stage the effect on monetary distribution is unquestionably favourable. The French controls counteract distortions in the real distribution function, theoretically possible in exceptional cases, in the sense that they raise the ceiling prices of products if rising costs give reason to fear a reduction in the volume of demand. Since such adjustment to shifts in the pattern of demand does not operate, it is possible that deliberate processes of real distribution may appear in sectors which correspond to the model of a closed economy. With regard to the pattern of outputs, it is similarly not to be expected that regulation by the market mechanisms will yield satisfactory results. Sectors with falling production costs will tend to over-produce and sectors with increasing demand, but where production costs are rising or constant will tend to under-produce. Since there is no State wage control, the obligation to rationalise arising from price control will necessarily have favourable effects on the overall pattern of inputs.

The effect on the tendency towards the qualitative improvement of production methods to lower costs is no doubt also favourable. But such improvements are often improbable owing to reduced possibilities of self-financing. Efforts to develop new products no doubt tend to fall off; in practice, ceiling prices fixed in absolute value first of all have the effect of limiting the feasibility of action, next, they perpetuate the danger of a weakening of the competitive spirit on oligopolistic markets, and, finally, this tendency is natural, since both new products and products whose quality has been improved alike fall within the scope of maximum price control. Price increases are legitimate in this case only if they represent cost increases. (11) Furthermore, the effect on the quantitative development function is unquestionably adverse.

The 160 or so products whose prices, while frozen at the production stage, are formed freely at the distribution stage, may give rise, as already pointed out in general terms, to excess profits with no utility for the markets down the line, if demand is strong. In this case general maximum price control lacks a favourable effect on monetary distribution.

Finally, it will be noted, for the 45 cases in France where the mark-up is fixed as a percentage, that this system may have adverse effects on the pattern of inputs at the production stage of the relevant products.

In *Italy*, maximum price control applies to 24 products, 21 at production stage and 6 at distribution stage. (12) To the best of our knowledge mark-ups are not controlled. A large proportion of this control relates to the products of public monopolies.

A comparison of the relevant markets in other EEC countries at least makes it doubtful that in all the other cases the market mechanisms are not functioning because the necessary conditions are not satisfied. Since the products in question are mainly raw materials, it may be assumed that the control is designed to lower the price of inputs for the benefit of the economic stages down the line.

If the market mechanisms function, maximum price controls have the following effects on them:

A favourable effect on monetary distribution is possible. Since the distribution stages of important products fall outside the scope of control, it certainly does not prevent this stage from exploiting this market situation in the matter of prices. Similarly, other processing activities down the line may increase their prices in consequence of the inflation of demand. The theoretically possible distortions in real distribution are therefore insignificant. Distortions may appear in the pattern of inputs. When factor prices increase, a favourable effect again becomes possible on the pattern of inputs, whereas, for the qualitative development function, there may certainly be expected to be a stimulation of the tendency to adopt cheaper production methods, but also fewer possibilities of developing them. The effect on the quantitative development function is adverse.

The list of maximum price controls applicable in *Luxembourg* covers 11 items. (13) But since this list,

(11) Cf. Champaud, *op. cit.*, Part I, p. 31.
(12) Cf. list in Annex, p. 154.
(13) Cf. list in Annex, p. 156.

according to information provided by the Luxembourg Price Department, is incomplete, and since the compulsory reporting of price increases accompanied by the right of veto is applied as a general freeze, this list may, to some extent give a deceptive view of Luxembourg State action to limit prices. The items listed mainly concern agricultural products and therefore markets which should not be regulated by market mechanisms, in the view both of EEC Member States and of the Community itself.

Since it may be assumed that, in Luxembourg, too, the price control of these products is only one State measure among others, we will refrain from inferring its effects. With regard to pharmaceutical products, it may be assumed, *prima facie*, that the market mechanisms do not function, or that regulation by the market is not desired for extra-economic reasons. Major effects on competition and the market mechanisms can therefore be inferred only in the case of fuel. But in the absence of detailed information on the relevant controls, this point cannot be considered either.

In the *Netherlands* there are 7 maximum price controls for the direct control of price levels. ([14]) But we refrain from inferring their effects here, since they are not primarily designed to stabilise price levels, and, furthermore, we know nothing of their motivation or their application.

(c) Since they do not prohibit price dumping, maximum price controls create no institutional barriers to trade channels among Member countries. As already said in considering stability contracts, ([15]) the feasibility of action of sellers in a country where prices are controlled will certainly tend to be less than that of sellers in a country where prices are free. An effect on economic relations among States can, however, be inferred only on condition that the state of the market in foreign countries where prices are free makes it possible to obtain prices above the maximum prices on the home market. If the maximum price controls prevent the equalisation of product prices in the integrated territory, the exports of sellers from price-controlled countries may reach a sub-optimum level, and bring about, in the short or long term, an insufficiency of demand on the internal market. If these controls apply to national products as well as foreign products, the only result is a distortion in the real distribution function (trade optimum).

On the other hand, if the prices of foreign products are free, a distortion in the pattern of inputs may also be added when the potential high prices of the internal market are obtained by foreign sellers producing at higher costs than national sellers. A shift of production capacities from controlled price countries to free price countries cannot be ruled out if such a situation lasts a long time. The regional pattern would then be distorted.

As a result of the controls applicable in *Belgium*, such effects are certainly not impossible in theory, but they can be regarded as negligible, since most of the products concerned have no importance in trade among Member States. Only the maximum rate of mark-up applicable to electrical household appliances might have the effect of inducing Belgian distributors to import the dearest possible appliances instead of the cheapest possible, which might distort the pattern of inputs in the European electrical appliance industry.

In the Federal Republic of Germany, the maximum price for fertilizers, which also applies to imported products pursuant to Article 2 of the Prices Act of 10 April 1948, may have an effect on trade channels between Member countries. But this theoretical possibility is negligible, since the market prices for fertilizers are often below the maximum prices. ([16])

Pursuant to the Medicaments Act of 23 June 1964, only the import of medicaments registered in the Federal Republic is legitimate. The fixing of a mark-up in relative value may, so far as these products are concerned, distort the pattern of inputs of the pharmaceutical industry in the integrated territory. But no doubt this possibility has little importance.

In view of the large number of *French* maximum price controls and the fact that they have been in force for a long time, the appearance of the effects described in general terms above is not improbable. But since they generally apply also to foreign supply, the French controls may merely involve a distortion of the real distribution function and not of the pattern of inputs.

Our list ([17]) includes some special provisions for imports. It may therefore be assumed that in these cases foreign products are treated differently from French products. In the absence of detailed information, it may be emphasized in general that a foreign supply at more favourable costs may in theory equally well be driven off the French market by setting a very low maximum. Where this happens, distortions in the real distribution function may be expected as well as in the pattern of inputs and the regional pattern. A distortion in these mechanisms for the regulation of patterns is also possible as a result of a special control

([14]) Cf. Table in Annex, p. 158.
([15]) Cf. pp. 38 and foll. above.

([16]) Thus, for example, the maximum price for nitrogenous fertilizer was reduced by 6% on 1 July 1967 and thus adjusted to the market conditions; cf. *Preissenkung für Stickstoffdünger*; in: Handelsblatt, 13 June 1967.
([17]) Cf. Annex, p. 138 and foll., p. 142.

Summary Table showing the possible effects of national maximum price controls on the functions of the market mechanisms.

	Belgium	Federal Republic of Germany	France	Italy	Luxembourg	Netherlands
	A/B	B/C				
A. *Effects in the national context in a closed economy*						
I. Development function						
1. quantitative	.	.	—	—	.	.
2. qualitative	.	.	+ (a) — (b)	+ (a) — (b)	.	.
II. Allocation function						
3. pattern of outputs	.	.	—	—	.	.
4. pattern of inputs	—	—	+ (c)	+	.	.
5. regional pattern	.	.	.	.	.	.
III. Distribution function						
6. monetary	+	+	+ (d)	+	.	.
7. real	.	.	—	.	.	.
B. *Effects in the context of the EEC in an open economy*		Germany B only				
I. Development function						
1. quantitative	.	.	.	.	.	.
2. qualitative	.	.	.	.	.	.
II. Allocation function						
3. pattern of outputs	.	.	.	.	.	.
4. pattern of inputs	—	—	— (a)	.	.	.
5. regional pattern	.	.	— (e)	.	.	.
III. Distribution function						
6. monetary	.	.	.	.	.	.
7. real	.	.	—	—	.	.

Legend:
A = maximum percentage mark-up for electrical household appliances;
B = maximum percentage mark-up for pharmaceutical products;
C = maximum percentage for architects' fees;
a = tendency to develop new production methods to reduce costs;
b = possibilities of (a) and development of new products;
c = adverse effects are not ruled out, if mark-up is fixed in relative value;
d = only where there are maximum price controls at distribution stage also;
e = as a result of special provisions for imports.

applicable in general to imported merchandise. In the case of merchandise entitled to reduced customs duties ([18]) importers are bound to maintain the relative margins applicable one month before the reduced customs duties came into effect. If the margin is calculated on cost price, including customs duties, the tariff cut lessens the absolute value of that margin.

([18]) Cf. Order No. 25.013 of 20 January 1965.

Following representations by the German producers, importers are similarly not allowed to increase their margin as a result of price reductions by foreign exporters. The object of this provision, which is to give consumers the benefit of the results of integration, is certainly praiseworthy, but since the price elasticity of demand is relatively low for imported goods, any reduction in the production price means an absolute diminution of the importers' profits. If, owing to the fact that importers are not interested in price reductions thus effected on the French market, foreign supply at more favourable costs cannot impose itself there, there is a consequent distortion of the pattern of inputs; the regional pattern may also be affected.

Among the products with ceiling prices in *Italy*, 12 only play an important role in external trade. In the case of these products, the shift in supply indicated above is possible in corresponding conditions and may involve a distortion of real distribution.

Most of the maximum price controls in force in *Luxembourg* and the *Netherlands* have no significance for trade among Member countries. Since, in addition, we lack sufficient particulars on this subject, we refrain from inferring their effects.

CHAPTER 9

PRICE CONTROL BY MINIMUM PRICES

(a) Minimum price controls can be considered very briefly, since they play only a very secondary role in the market for products and factors in the EEC countries.

If the minimum price is designed to guarantee and improve the sellers' income, it is merely a unit price established on the market for products in the light of the costs of the seller with the least favourable conditions. Thus, minimum price controls do away with institutional freedom to reduce prices and eliminate all price competition. The feasibility of action in respect of preparatory competition no doubt tends to increase for all non-marginal sellers. A shift of price competition towards quality competition and other forms of non-price competition is therefore theoretically conceivable, but in practice it cannot be looked for, since the competitive spirit cannot generally remain indifferent to the diminution of institutional feasibility. Since a substantial increase in demand is possible only by relatively substantial qualitative improvements, the spontaneous impulse to competition will weaken. Since no one need any longer fear a price offensive by his competitors, indirect pressure will also be considerably reduced. The virtually complete paralysis of competition due to minimum price controls, should be reflected, in particular, by a marked change in the pattern of inputs and the qualitative development function as regulated by the market mechanisms.

On the factor market, minimum price controls apply mainly to wages. We cannot speak here of their effect on competition, since price competition among workers is, in any event, largely eliminated by the trade union policy of collective agreements. If the minimum wage is set too high, an increased substitution of the capital factor for the labour factor must be expected, which might lead to unemployment.

The pattern of inputs will certainly continue to function formally within the enterprise, but it will no longer reflect the relations of scarcity between the factors of production. If the controlled minimum wage is set above the average of wages in certain branches, we shall arrive at a distortion of the pattern of outputs, as in the case of an excessive increase of monopolistic origin in the price of certain products.

Minimum price controls can be regarded as raising no problem for competition and the market mechanism, if they fix a price which is a certain amount below the market price. In this event, they merely prevent the exploitation of certain economic transactors ill informed about market conditions, without having any appreciable importance for the regulation of the economic process.

(b) Whereas there is no control of this kind in Belgium, the relevant list for the *Federal Republic of Germany* [1] includes four items, two on the products market and two on the labour market. The products relate to branches which, partly for extra-economic reasons, it is thought desirable in Germany to withdraw from regulation by the market mechanisms. It is therefore unnecessary to study their possible effects on these mechanisms. Similarly, we shall refrain from considering the minimum wage controls for homeworkers and casual dock labourers owing to their minor importance.

In *France* and *Luxembourg* minimum price controls relate solely to the guaranteed minimum statutory wage, indexed in both countries to the retail price index.

But since they are generally appreciably below the wages fixed by individual contract and collective agreement, [2] guaranteed minimum wages cannot affect the regulation of economic processes by the market.

Since it has been forbidden in France since 1959 to index agreed wages under collective agreements to the guaranteed minimum wage, an indirect influence is equally impossible.

We have no information on the reasons for the Italian minimum price control for olive cattlecakes

[1] Cf. Annex, p. 131.

[2] Thus, the average hourly earnings of Luxembourg industrial workers [a] already amounted to Lux. Fr. 58.62 in April 1965, whereas the minimum wage was fixed at Lux. Fr. 28 per hour on 25 June 1965. Since, according to the statistics of industrial wages [a] the actual wage (Lux. Fr. 26.23) was below the minimum wage only in the "footwear, clothing and bedding" branch, the variation of the minimum wage can have had no effect except in this branch of minor importance.

[a] Cf. Statistique harmonisée des gains. Séries « Statistique sociale », 1965, No. 5, 1966, Statistical Office of the European Communities; for France, cf. e.g. Commission of the EEC: *Exposé sur l'évolution de la situation sociale dans la Communauté en 1965*, August 1966, p. 84.

("*sanse*"). Since this is an agricultural product, it may be assumed that this market is deliberately withdrawn from regulation by the market mechanisms.

(c) In principle, minimum prices are calculated to act as a decisive obstacle to international trade channels. By suppressing institutional freedom to reduce prices, these controls may prevent the harmonisation of product prices in the integrated territory and may take the place of customs duties in protecting national sellers against foreign supply at lower prices and costs. With regard to the functioning of market mechanisms throughout the integrated territory, therefore, they involve, in particular, distortions in the allocation function and the real distribution function.

But such effects are theoretically possible only for the German control of sugar beet and the Italian control of olive cattle cakes. Since both these products belong to the agricultural sector, which the EEC Treaty in any event brings under a common policy, the relevant effect can be disregarded. For the reasons already indicated, the minimum wage controls currently in force are equally negligible in the EEC context.

CHAPTER 10

COMBINED CONTROLS: FIXED PRICES AND PRICE BRACKETS

(a) So far as we are aware, this type of control is not very widespread in the EEC countries. Since they merely represent a combination of minimum price controls and maximum price controls, there is no point in considering their effects. According to the state of the market, the probable effect will result either from the maximum price element or from the minimum price element. Fixed price controls therefore completely eliminate the market mechanisms, while price bracket controls leave them only a slight margin of action, depending on the range of the bracket. As already indicated at the beginning of this study, this type of control is generally used as an instrument of market organisation designed to prevent inopportune price variations. Theoretically, their introduction is desirable for example when, prices being free, market processes appear which correspond to the "Spider's web theory", (1) particularly when equilibrium is unstable as a result of market conditions.

(b) The only controls existing in *Belgium* are fixed price controls; our list covers five items. (2) Apart from fees for hospital treatment, they all concern transport charges. While supply and demand for hospital services should not, for extra-economic reasons, obey the market laws, the transport market is regarded as being in disequilibrium. (3)

Similarly, in the *Federal Republic of Germany*, the eight fixed price controls and the two price bracket controls (4) relate mainly to transport charges. Our list shows only three other products, which at least originate in the agricultural sector. All these controls are based on the view widely held in the EEC countries that the market mechanisms cannot operate in these sectors. They therefore reflect the deliberate renunciation of regulation by the market mechanisms and constitute an element in the market organisation policy replacing those mechanisms.

Whereas, to the best of our knowledge, there are manifestly no fixed price or price bracket controls in France and Luxembourg, the only *Italian* fixed price control relates to pharmaceutical specialties; similarly, the *Netherlands* use this method to control the price of building workers' housing and of agricultural products. As already pointed out in connection with controls in other countries, State action on the price of medicaments is manifestly justified by extra-economic motives. But it is hard to understand why the priority attached to objectives of public health should lead to fixed prices. If the absence of patent protection for medicaments may, to some extent, impose fixed price controls in Italy, it would certainly seem more appropriate to introduce such protection and to make use of maximum price controls to prevent adverse effects on the pattern of inputs and the qualitative development function. The desirability of fixed prices is equally questionable in the case of the Netherlands legislation on the building of workers' housing. It is true that, for the purposes of this study, it is unnecessary to inquire whether the protection of this part of the Netherlands building sector against competition is justified or not from the overall economic point of view.

(c) With regard to the possible international effects of fixed price and price bracket controls, it may be noted that, in principle, they are additional to the effects already inferred from maximum and minimum price controls.

The concrete consideration of the controls in force may disregard the controls applicable to the agricultural and transport sectors, since the EEC Treaty in any event provides for a common policy in these sectors which has already been defined—at any rate as to its starting points—or implemented. Since the fixing of daily charges in Belgian hospitals has not the least importance for economic relations among Member States, we shall merely consider the Italian fixed price control for pharmaceutical specialties and the Netherlands control of the building of workers' housing.

In both cases, the flow of products among Member States may theoretically be distorted if the Italian medicament producers or the Netherlands builders prefer to supply foreign markets to the detriment of the national market when the fixed price is too low compared with the price on external markets; thus, at least the real distribution function is distorted on the integrated territory. The minimum price element

(1) Cf. in this connection: Krelle, W.: *Preistheorie*, Tübingen-Zürich, 1961, pp. 555 and foll. and Schneider, E.: *Einführung in die Wirtschaftstheorie*, Part II, Tübingen, 1961, pp. 312 and foll.
(2) Cf. Annex, p. 128.
(3) Cf. e.g. Linden, W.: *Grundzüge der Verkehrspolitik*, Wiesbaden, 1961, p. 19.
(4) Cf. Annex, p. 131.

may also prevent foreign sellers from profiting on the Italian and Netherlands markets from any possible cost advantage. In addition to this distortion of the real distribution function, we should thus arrive at a distortion of the three components of the allocation function.

In practice, there is no present reason to expect these effects to any important extent from the Italian price control for medicaments. The export of Italian medicaments to the other EEC countries is partly considerably handicapped by very severe import restrictions ([5]); when import is possible, the imported products are generally subject to maximum price controls, which do not normally allow much higher profits than in Italy. The Italian minimum price control does not hamper imports into Italy, since Italian prices are generally below those on foreign markets.

This state of affairs is essentially explained by the absence, so frequently deplored, of patent protection in Italy, which enables the producers of that country to profit from the results of foreign research without incurring any cost. Thus, the German producers complain, not that they cannot exploit their cost advantages on the Italian market as a result of minimum price controls, but that they cannot charge more for their products than the price of comparable Italian products. In fact, the Italian authorities go so far as treating as "comparable medicaments", preparations with an allied chemical composition or the same or similar clinical indication. If distortions result in the market mechanisms in the integrated territory, they must be attributed not to the existence of the fixed price control but to its abuse or to the absence of patent protection.

The importance of the theoretically possible consequences of the Netherlands fixed price control for the construction of workers' housing should similarly not be exaggerated at the present time. In practice, even if these controls fixed the price at a relatively high level, compared with the production costs of foreign sellers (which is hardly probable), the adverse effect on the market mechanisms would be limited, since the export activity of house builders is certainly not very substantial today.

([5]) In France, for example, the "autorisation de débit" (marketing licence) also required for foreign products, has practically the same effects as an import prohibition.

But since the importance—which we have assumed to be slight—of the two fixed price controls may vary, we adopt their theoretically possible effects as the result of our analysis.

Summary Table showing the possible effects of national fixed price controls on the functions of the market mechanisms.

Functions of market mechanisms	Italy A	Netherlands B
A. *Effects in the national context in a closed economy*		
I. Development function		
1. quantitative	.	.
2. qualitative	—	—
II. Allocation function		
3. pattern of outputs	.	.
4. pattern of inputs	—	—
5. regional pattern	.	.
III. Distribution function		
6. monetary	—	—
7. real	.	.
B. *Effects in the context of the EEC in an open economy*		
I. Development function		
1. quantitative	.	.
2. qualitative	.	.
II. Allocation function		
3. pattern of outputs	—	—
4. pattern of inputs	—	—
5. regional pattern	—	—
III. Distribution function		
6. monetary	.	.
7. real	—	—

Notes: In considering the national context we have assumed that the State deliberately wishes to withdraw the regulation of the volume of supply and demand from the market mechanisms, while being interested in the production, at the lowest possible costs, of high quality products. The sign. therefore partly means that the effects are not important, in the light of the assumed objectives.
A = pharmaceutical specialties,
B = workers' housing.

PART III

ASSESSMENT OF EFFECTS

CHAPTER 11

INTRODUCTION

The effects inferred in Part II as tending to distort the functions of the market mechanisms may result in loss of productivity, growth and well-being for the economies they affect. The level of productivity and of growth is a decisive factor in the competitiveness of the various sectors in particular, and of the economy in general. If price controls involve the loss of productivity and of growth they thereby prejudice competitiveness. Such effects have a great influence on the international competitive position mainly when they affect products directly and indirectly capable of external trade. But, owing to the general interdependence of economic processes, similar secondary effects cannot be ruled out when the distortions, though limited to goods intended for the internal market, are nevertheless on a large scale.

Now, the possible effects indicated can naturally be important for the real economic processes only when the conception of the economic order accepted in each case assigns the regulation function primarily to the market mechanisms. In the extreme case of a planned economy, adverse influences on the market mechanisms are therefore entirely negligible, since these mechanisms have no role to play in the regulation of economic processes. Being unable to test the efficacy of the different economic systems, we have to judge the effects in the light of the accepted idea of the economic system. We say that the effects are "inconsistent with the system" when the distortions are serious for the regulation function if the controls are applied in the conditions we assume.

An assessment of this kind cannot be made without defining the conceptions of the economic system, on the subject of which a few preliminary remarks must be added to those already made in the general introduction to Part I.

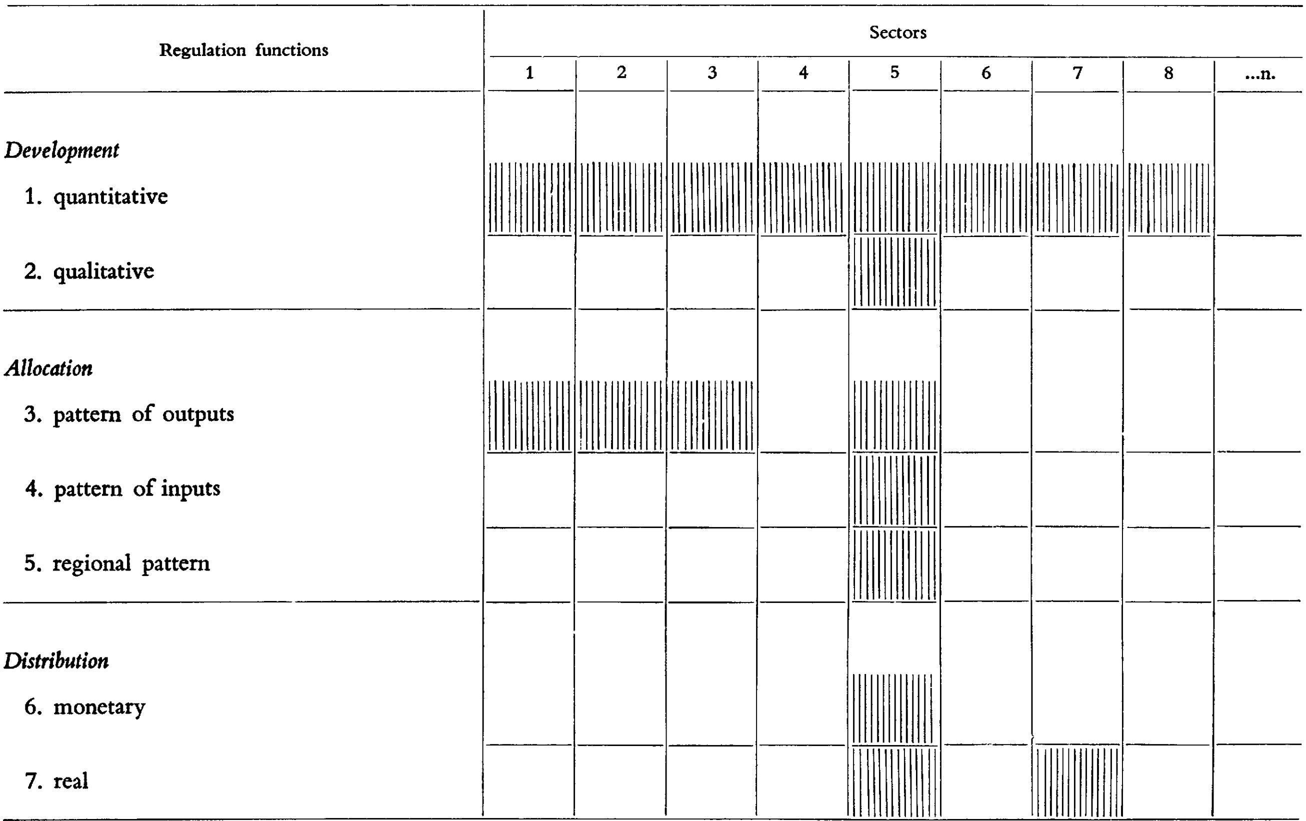
In no Member State of the European Community are all economic processes left exclusively to the regulation of the market mechanisms. Quite the contrary, dual principles of regulation prevail everywhere, in other words, automatic regulation by the market and autonomous regulation by economic policy coexist and operate together. While these two principles are often applied together, the primacy, in each case is generally accorded to one of them. Sectoral disparities in the predominance of the principles of regulation appear quite clearly, which explains why economic science has been studying them for a long time. In connection with our analysis of effects, we have frequently referred to exceptional sectors which are not subject to the primacy of the market mechanisms. But a survey of the overall economic policy of the different States nevertheless indicates that the dualism of regulation principles is apparent not only at sectoral level, but at overall level for the different regulation functions connected with the fundamental problems listed in Part I, namely development, allocation and distribution. The dualism involved in a country's conception of the economic system can therefore be schematically represented as follows:

In this example, sector 5 is in no way subject to the market mechanisms, and, in the case of quantitative development, it is autonomous regulation by economic policy which dominates in all sectors. In addition, the pattern of outputs in sectors 1-3 and real distribution in sector 7 escape regulation by the market.

It is impossible, within the scope of the present study, to present complete and detailed conceptions of the economic system. In the nature of things, our assessment must be more modest. As we have already indicated in Part I, we merely intend to infer, on the basis of the consideration of post-War economic policy, what are the regulation functions for which, under the national conceptions of the economic system, the market mechanisms are generally accorded primacy. Our assessment cannot therefore allow for sectoral differences. Even this limitation of the problem, strictly requires special work. Our results can therefore be regarded only as a first attempt along these lines.

To prevent any misinterpretation, we would recall once again that, in all countries, both the market mechanisms and economic policy affect all fundamental problems. If, on the basis of the nature and extent of economic policy action, we try to infer a classification of the principles of regulation, our inference will always refer to the principle which, in our view, is dominant. If the primacy for a regulation function is assigned to the market mechanisms, this means that they are relied upon in principle, economic policy intervening only *by reaction* when they fail to function. In this case, any adverse effects of price controls on the regulation function of the market mechanisms are very important, since, far from coming to the assistance

Diagram: Schematic example of the dualism of dominant principles of regulation in a country's conception of the economic system



Blank rectangles: automatic market regulation.
Shaded rectangles: autonomous regulation by economic policy.

of automatism, they merely hinder it more. In contrast, if economic policy seems to us the dominant instrument of regulation, the *active* implementation of that policy will be characterised by a scepticism in principle towards regulation by the market. The existence of overall plans is generally regarded as the expression of such scepticism.

In this case a distortion of functions due to price controls can be regarded as relatively negligible, since the State in question will not hesitate to counteract adverse tendencies by the increased use of instruments of economic policy.

We shall now start by considering the national conceptions of the economic system and inquiring whether the controls are consistent with that conception in the light of the effects inferred in the national context. The country studies will always be conducted in three stages, as follows.

(a) We shall start with a rapid review of economic policy and official statements on the conception of the economic system. It may be said straight away that, in general, the dominant problems of the early post-War years in all EEC countries were the reconstruction of the economy, its reconversion to peacetime production and the war on unemployment. The common characteristic of economic policy was the persistence of extensive rationing and the conviction that the automatism of the liberal market economy of the nineteenth century, uninfluenced by the State, was incapable on its own of solving the specific post-War problems, any more than it was, in general, of solving the fundamental problems of the economy. The evolution of the price policy of the different countries is therefore particularly interesting.

(b) The second stage sets out what, in our view, is the dominant assignment, under present conditions, of the regulation functions between economic policy and the market mechanisms. It can be noted straight away that, in general no country leaves the responsibility for monetary distribution to the market mechanisms. Although the nature and extent of action in this field vary, we feel justified in assigning this regulation function to economic policy in all countries. On the other hand, real distribution is primarily a matter for the market mechanisms, since the natural distribution actions of countries are of secondary importance. It should further be noted that there is, in all countries, a regulation of the short term economic situation in the matter of quantitative development. But we shall classify this regulation function only after the long term effect on quantitative development.

(c) The third stage will be to tabulate our assessment of the consistency with the economic system of the price controls in force in each country.

CHAPTER 12

THE CONSISTENCY OF NATIONAL PRICE CONTROLS WITH THE ECONOMIC SYSTEM

1. *BELGIUM*

(a) The Act of 22 January 1945, on economic offences ("loi ... sur la répression des infractions à la réglementation économique"), (1) (2) crystallising the extension of the powers of the executive in the matter of economic controls, still forms the basis of the Belgian price system. This Outline Act empowers the Minister for Economic Affairs to fix maximum prices and profit margins for:

> "the purchase or sale of products, materials, commodities, merchandise and livestock and for the offer, acceptance or performance of all services other than services rendered under a contract of labour, employment, apprenticeship or domestic service". (3)

Subsequent judicial decisions have held that intervention of this kind is justified whenever the economic interest of the country so requires.

Although this Act gives the Government very wide powers of intervention, Belgium follows a relatively liberal conception of the economic system. (4) Economic action by the State should essentially be limited to the subsidiary support of regulation by the market. Since the Belgian economy suffered relatively little from the Second World War, it was possible to repeal earlier than in other countries the measures of State control and direction imposed by reconstruction. Bills for the nationalisation of the coalfields, the armaments industry, electricity and the banks were rejected. The inflationary experience of the years 1944-1948 led to priority being given to price stability as an objective of economic policy. (5)

Up to 1959, State economic policy action was mainly designed to combat inflationary tendencies. This action was crowned with success, since prices, on the whole, rose less than in other countries and the trade balance showed a surplus. The instruments used to maintain stability were budget policy, (6) fiscal policy, (7) monetary and credit policy, and price policy. But since the overall policy to combat strong upward tendencies was too timid, or maladjusted, it was constantly necessary to resort to price measures not simply as instruments of dissuasion, but as veritable emergency brakes. It is true that the obvious and clumsy system of maximum prices and maximum margins was increasingly replaced by the more elegant system of compulsory reporting of price increases, accompanied by the right of veto.

Since the stability policy constantly affected capital investments, (8) the period 1949-1959 was marked by relatively slight development in Belgium compared with its EEC partners, a development which even showed a negative trend. (9) This unsatisfactory situation led the Government to work out, in 1959, the legal basis for overall and regional "programming". (10) It was expressly emphasized on this occasion that the formulation of economic programmes did not prejudice

(1) Cf. Champaud, C. Part I, *op. cit.*, p. 22.
(2) Cf. *Moniteur Belge*, Brussels, for the following dates: 25 January 1945, 11 February 1945, 17 May 1945, 16 May 1946, 23 June 1946, 18 February 1948.
(3) French text cited from Champaud, C., Part I, *op. cit.*, p. 26.
(4) By a "social pact" concluded towards the end of the War, trade unions and employers' associations agreed, in particular on the post-War freedom of prices and supplies. Cf. Duquesne de la Vinelle: *Les traits essentiels de la politique belge de la concurrence*; text of report in: Zijlstra, J.: *Wirtschaftspolitik..., op. cit.*, p. 8.
(5) The extreme sensitiveness of Belgian economic policy to price rises is understandable; the import of food and raw materials and the export of industrial products are vital, owing to the country's small area and dense population and the narrowness of the internal market. If exchange rates are fixed, a stronger price thrust in Belgium than among its competitors prejudices the competitiveness of the exporting industry and therefore the essential exports. But, in its turn, the substantial share of external trade in the national product (about 40%) means that even a slight surplus on the balance of payments creates a strong inflationary pull on demand.
(6) Since the budget deficit was large and constant, the temporary limitation of public capital expenditure could hardly have a decisive influence. Cf. on this subject: Morrissens, L.: *Economic Policy in Our Time*, Vol. III, *op. cit.*, p. 8.
(7) Owing to the marked public dislike of taxation, the attempt has sometimes been made to reduce demand by heavier indirect taxation, while endeavouring by tax reliefs and subsidies to keep the retail price index stable, in view of its importance for the indexing of wages. The last set of measures certainly helped to moderate cost-push, but it had an encouraging influence on demand-pull.
(8) By the limitation of public capital expenditure, the restriction of external financing possibilities by means of monetary and credit policy, and the reduction of the possibilities of self-financing as a result of price ceilings.
(9) Cf. Kleps, Kh.: *Langfristige Wirtschaftspolitik in Westeuropa*, Fribourg, 1966, pp. 116 and foll.
(10) This character clearly shows that Belgium does not contemplate adopting the French planning formula.

Belgium: Table of major effects of price controls on market mechanisms deemed important under the conception of the economic system.

Regulation functions	Conception of the economic system	Prescribed prices	Costing rules A a	Costing rules A b	Normal price rule	Price ticketing	Compulsory price reporting	Maximum prices B
Development								
1. quantitative		+	—	+	+	.	—	.
2. qualitative		—	—	—	.	.	.	.
Allocation								
3. pattern of outputs		—	—	.	.	+	—	.
4. pattern of inputs		—	+	—	—	+	—	—
5. regional pattern		.	.	.	.	.	.	.
Distribution								
6. monetary		—	+	—	—	+	+	+
7. real		.	—	.	.	.	.	.

Notes:
Blank rectangles: regulation by market mechanisms.
Shaded rectangles: autonomous regulation by economic policy.
A = price control of pharmaceutical specialties with a foreign equivalent;
a = production costs of Belgian makers above the foreign price;
b = production costs of Belgian makers well below the foreign price;
B = ceiling on relative value of mark-up on electrical household appliances and pharmaceutical products.

the fundamental liberalism of the Belgian economy and that its aim was simply to increase the transparency and soundness of an economic policy consistent with the market laws, so as to make that market economy more effective. [11]

The first overall plan for the period 1961-1965 was to contribute towards increased growth, better co-operation between the authorities and the private sector and a reduction in State intervention. [12] The plan was divided into 21 sectors covering all branches of the economy. [13] Although the quantitative targets were not imperative for the private sector, the Government sought, as far as it could, to encourage their achievement. Not having any new instrument available for this purpose, [14] it made large use of subsidised interest rates.

In order to prepare the way for regional programming, [15] a Regional Development Committee was created in 1961, which has since formulated a series of experimental programmes for seriously underdeveloped regions.

The main instrument of regional policy, in addition to State guarantee, is also subsidised interest rates. Price control has not so far been used for the purposes of precise planning objectives. It remains however, one of the instruments of price stabilisation policy. The last price freeze in the form of a general prohibition of all increases was in force from May to Septem-

(11) Cf. Van Waterschoot, J.: Fünf Jahre Wirtschaftsprogrammierung in Belgien, *Kieler Vorträge*, New Series, No. 34, Kiel, 1965, p. 3.
(12) Cf. Kleps, Kh.: *Langfriste...*, *op. cit.*, p. 127 and 132.
(13) Cf. Carpreau, R.: *Ziele und Instrumente der belgischen Wirtschaftspolitik*, Tübingen, 1967, p. 60.

(14) Cf. Duquesne de la Vinelle, *op. cit.*, p. 10.
(15) Cf. on this subject: Waterschoot, J.: Vers une programmation économique régionale en Belgique; in: EEC Commission: *La Politique Régionale dans la CEE*, Brussels, July, 1964, p. 92 and foll.

ber 1966. [16] It was pointed out when it was introduced that there was no intention of neutralising the market mechanisms, but merely of combating a general rising climate. [17] The extent of the price controls discussed in the present study must be regarded as normal.

(b) Quantitative development therefore results not only from a short term cyclical policy, but also, since the introduction of programming, from a long term growth policy. Qualitative development is certainly the object—as in all countries—of general encouragement, particularly in the matter of vocational training, but, in detail, State action is not decisive.

With regard to allocation, it follows from the intentions officially expressed as to the pattern of outputs, the somewhat slight degree of articulation of programming and the extent of differentiated sectoral measures to achieve the plan, that while it is not immune from the effects of the plan, it should nevertheless be primarily regulated by the market mechanisms. While the regulation of the pattern of inputs is also a matter for market automatism, the responsibility for the regional pattern will in future lie with a regional programming policy.

(c) If, in the following Table, we compare the possible effects of Belgian price controls, as inferred in Part II, with the conception of the economic system outlined above, it will be seen that, with the exception of compulsory price ticketing at the retail stage, these controls are inconsistent with the economic system for the general assignment of regulation functions ruling in Belgium.

2. *FEDERAL REPUBLIC OF GERMANY*

(a) The economic situation of West Germany, immediately after the War, was mainly marked by the loss of territory, the division of the country, the inflow of refugees, the collapse of the currency and the dismounting of production capacity. In such a precarious situation the Price Formation Act of 26 November 1936 (*Preisbildungsgesetz*) and the Price Freeze Order of the same date (*Preisstoppverordnung*) initially remained in force.

The introduction of an economic system relying primarily on individual action was undoubtedly an act of extraordinary courage, but it could count on wide public support as a result of the adverse experience of the economy of constraint under the Hitler regime. Basing himself on the theories and conceptions of the Freiburg school, Muller-Armack, [18] above all, developed the idea of a "social market economy", which Erhard was to establish on the political plane. Under this conception the contemplated economic system in principle assigned the regulation of development and allocation to the market mechanisms, while at the same time making the State responsible for the sound functioning of these mechanisms (especially competition) and for a social policy modifying the primary distribution of incomes. The choice of instruments of economic policy was based on the criterion of consistency with the market, under which the only measures accepted are those "which do not eliminate the price mechanisms and the resulting self-regulation, but which adapt themselves to these mechanisms as new 'data' ". [19]

But since the market mechanisms themselves are only instrumental in character [20] this principle applies only when those mechanisms function or can be made to function by appropriate measures. The intervention of a price control is therefore not ruled out in any form and in each specific case. [21] Before the beginning of the liberalisation corresponding to this principle, the price controls cited above were replaced by the Prices Act of 10 April 1948 (*Preisgesetz*) which although presented as a transitional measure, is still in force today. Article 2 of this Act empowers the competent authorities:

> "to make Ordinances or Orders fixing or approving prices, rents, premiums on leases, charges and other remuneration for goods or services of

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[16] Cf. Order: *Moniteur Belge*, 11 May 1966; repeal, *Moniteur Belge*, 6 September 1966.

[17] According to Katona, such a prize freeze limited in time, when the psychological climate is on the rise, combats not only the superficial signs of inflation, but one of its causes, namely the expectation of inflation. Cf. Katona, G.: *Das Verhalten der Verbraucher und Unternehmer*, Tübingen, 1960, p. 317.

[18] Cf. on this subject, the collected articles: Muller-Armack, A.: *Wirtschaftsordnung und Wirtschaftspolitik*, Freiburg 1966.

[19] Ropke, W.: *Die Gesellschaftskrisis der Gegenwart*, 5th edition, Erlenbach-Zürich, 1948, p. 259. On the problems raised by consistency with the market, cf.: Watrin, Ch.: *Zur Diskussion um das Problem der Marktkonformität*; in: Wirtschaftspolitische Chronik, 1957, pp. 47 and foll., and Tuchtfeldt, E.: *Zur Frage der Systemkonformität wirtschaftspolitischer Massnahmen*, SdVfS, New Series, Vol. 18, ed. Seraphin, H.-J., Berlin, 1960, pp. 203 and foll.

[20] Cf. Muller-Armack, A.: Wirtschaftslenkung und Marktwirtschaft, reproduced in: *Wirtschaftsordnung..., op. cit.*, p. 106.

[21] Muller-Armack, in the article cited in [1] above, also devotes a special section to possible government intervention in price policy (cf. p. 120 and foll.). A recent proposal by Mr. Gunther, President of the Federal Cartel Office, has caused some sensation: Mr Gunther thinks that in the event of an abusive price policy followed by a group of oligopolists, among whom there is no real competition, it would be sound temporarily to prohibit all price increases not warranted by cost variations. Cf. Gunther, E.: Preispolitik und kartellrechtliche Gesichtspunkte; in: *Wirtschaft im Wandel* (ed. Stackelberg, K.-G. von) Düsseldorf-Vienna, 1967, p. 53.

any kind, other than wages, or for the purpose of maintaining the price level". [22]

According to a later judgment of the Federal Constitutional Court, [23] Article 2 is designed purely to ensure the normal state of the economy and cannot be applied to change the economic system.

The social market economy found its first application in the monetary reform of 20 June 1948 and the Price Liberalisation Decree of 24 June 1948 (*Preisfreigabe-Verordnung*) which repealed about 90% of direct price controls. [24]

The wage freeze was abolished in November 1948 and the dividend freeze in December 1952 and the heavy industries which were still subject to regulation by the central authorities, together with the capital market and external trade were progressively restored to the operation of the market laws. To overcome any obstacles which the private sector might place in the way of the functioning of the market mechanisms, an Act was passed in 1957 against restraints on competition; it was based on the principle that competition is not an end in itself but a means of encouraging progress and increasing production. [25] The last major measure of liberalisation was the termination, with effect from 1 April 1967, of the fixing of interest rates by the State. Only the sectors of agriculture, transport, fuel and power and housing have not yet been entirely restored to competition; it is in these sectors that provisions for the direct control of price levels are still to be found. Price control is therefore not regarded as an instrument of price policy and has therefore not been used as a weapon against rising trends. Cyclical action has been taken almost exclusively by the Federal Central Bank, the Bundesbank, through monetary and credit policy. If the results of this policy were already somewhat unsatisfactory during the boom period, action limited to these means during the depression would inevitably have been a complete failure. That is why the Act for the encouragement of stability and economic growth (*Gesetz zur Förderung der Stabilität und des Wachstum der Wirtschaft*) came into force on 9 June 1967, described by Mr Schiller, Minister for Economic Affairs as "the fundamental law of the economy" („*Grundordnungsgesetz der Wirtschaft*") [26] and requiring the Federal Government and the Länder to use their budgetary and fiscal policies as instruments of an overall cyclical policy.

(b) In spite of all the criticisms, justifiable in economic theory, against certain specific measures [27] the predominance of the market mechanisms for most regulation functions cannot be seriously challenged. With regard to quantitative development, there is no long term growth policy. The five-year financial planning of the Federal Government and the Länder, recommended by Articles 9-11 of the Stability Act, serves not to guide the trend of growth, but merely to contain the variations in this trend which may be caused by demand. Qualitative development is no doubt favoured by isolated measures, but, for the rest, the initiative lies with enterprises; in consequence, here, too, it is the market mechanisms which are dominant.

With regard to the regulation of the pattern of outputs, there is no State action designed to influence the direction of structural changes. Even the "Principles of Sectoral Structural Policy" (*Grundsätze der sektoralen Strukturpolitik*) [28] issued in 1966 by the Federal Minister for Economic Affairs leave it in principle to enterprises to detect structural changes in good time and to fall into line with them. [29] The structural policy of the State is simply designed to facilitate, in supplementary fashion, structural changes, on the principle of "helping those who help themselves" (*Hilfe zur Selbsthilfe*). Similarly, the regulation of the pattern of inputs is left entirely to the market mechanisms. At the present time, the Working Party on Competition (*Arbeitsgruppe Wettbewerb*) set up inside the Federal Ministry for Economic Affairs is confining itself to considering whether the competition policy so far followed has had any undesired and adverse effect on this regulation mechanism.

Regional policy is largely a matter for the Länder, [30] whose action is partly based on subsidised interest rates and soft loans.

Since the overall effect of these measures is relatively limited, and since there is no co-ordination for the whole of the Federal territory, the market mechanisms

[22] Cited from Champaud, C., *op. cit.*, Part I, p. 13.
[23] Judgment of 12 November 1958, reproduced in NJW 1959, 475.
[24] For fuller detail, see: Besters, H.: Economic Policy in Western Germany, 1949 to 1961; in: *Economic Policy in Our Time*, Vol. III, *op. cit.*, pp. 389 and foll.; also, Kleps, Kh.: *Langfristige Wirtschaftspolitik...*, *op. cit.*, pp. 293 and foll.
[25] Cf. Explanatory Memorandum to the Act against Restraints on Competition in *Verhandlungen des Deutschen Bundestages*, 2 Wahlperiode, Anlage zu den stenographischen Berichten, Vol. 33, Bonn, 1954/55, printed paper No. 1158, p. 21.
[26] Schiller, K.: Der Wettbewerb muss noch intensiver werden; in: *Zehn Jahre Kartellgesetz*, special number of Industriekurier of 30 December 1967, p. 25.
[27] Cf. e.g. Kleps, Kh.: *Zur Konkurrenz wirtschaftspolitischer Konzeptionen in der Europäischen Wirtschaftsgemeinschaft*, in: Ordo, Vol. XV/XVI, 1965, pp. 281 and foll.
[28] Published in BA No. 219 of 24 November 1966, reproduced in WuW, 17th year, 1967, pp. 97 and foll.
[29] Cf. ibid., p. 199.
[30] Cf. also for the assignment of competences; Weller, F.: *Wirtschaftspolitik und föderativer Staatsaufbau in der Bundesrepublik Deutschland*, Study Papers of the Adolf-Weber Foundation, Vol. 2. Berlin, 1967, pp. 36 and foll. And for the regional policy of the Federal Government: Langer, W.: *Die Politik der Deutschen Bundesregierung auf dem Gebiet der Regionalstruktur*; in: EEC Commission : La politique régionale dans la CEE, *op. cit.*, pp. 87 and foll.

Federal Republic of Germany: Table of major effects of price controls on market mechanisms deemed important under the conception of the economic system.

Regulation functions	Conception of the economic system	Prescribed prices a	Prescribed prices b	Prohibition of discriminatory practices	Rebate controls	Price ticketing	Maximum prices A
Development							
1. quantitative		+	.	.	.	.	.
2. qualitative		—	+	.	+	.	.
Allocation							
3. pattern of outputs		—	+	.	.	+	.
4. pattern of inputs		—	+	.	+	+	—
5. regional pattern		.	.	.	.	.	.
Distribution							
6. monetary		—	+	+	+	+	+
7. real		.	.	.	+	.	.

Notes:
Blank rectangles: regulation by market mechanisms.
Shaded rectangles: autonomous regulation by economic policy.
A ceiling on relative value of mark-up on pharmaceutical products and on architects' fees;
a = legitimate prescribed prices for branded goods;
b = prohibition of prescribed prices.

are also dominant in the regulation of the regional pattern.

(c) The comparison (see Table below) between the conception of the economic system set out above and the possible effects of German price controls shows that only legitimate price agreements for branded goods, and the ceilings for mark-up on medicaments and for architects' fees can be regarded as inconsistent with the system for the assignment of regulation functions applicable in the Federal Republic of Germany. But it must not be forgotten that the adverse effects of prescribed prices and the nature of the system of architects' fees have also been recognised by the Federal Government and that their abolition or modification has already been contemplated. ([31])

([31]) Cf. Schiller, K.: *Der Wettbewerb muss noch intensiver werden*, op. cit., p. 25 and *Hochstpreisregelung für Architekten*; in: FAZ of 22 March 1967.

3. *FRANCE*

(a) In the light of experience of the market economy in the between-War years and of a long tradition of centralisation, ([32]) there was a general conviction in France, towards the end of the conflict, that the responsibility for economic initiative could only be assumed by the State. By means of a considerably extended public sector, economic planning extending over periods of several years, and instruments of policy for the phasing of programmed action, the State, it was thought, should guide private economic activity towards the achievement of overall economic objectives.

([32]) Cf. in this connection: Hoselitz, B. F.: Entrepreneurship and Capital Formation in France and Britain since 1700; in: *Capital Formation and Economic Growth*, (ed) NBER, Princeton, 1955, especially page 336.

Its competence in the matter of prices is derived from Ordinances No. 45.1483 ([33]) and No. 45.1484 of 30 June 1945, together known as "the Price Charter" (*charte des prix*). In spite of many amendments and additions ([34]) these enactments are still the basis of French price law. The Charter empowers the government to control the prices of all goods and services by any appropriate means. Since then, this power has been constantly used. Starting in 1947, the economic evolution of France has been more and more subject to the decisive influence of Plans and the measures taken to implement them, ([35]) measures to which we can do no more than allude here. ([36])

The main object of the *First Plan* (1947-1952) was to direct the greatest possible volume of capital investment towards the basic sectors (fuel and power, transport, iron and steel, cement and agricultural machinery) where bottlenecks had been found in 1946. Economic policy made use of quotas, price fixing, and investment control, as well as protectionism with a view to central market regulation. ([37]) Price control, originally relaxed in 1949, had to be tightened up again in 1950 following the outbreak of hitherto contained inflation. ([38]) The *Second Plan* (1954-1957) already extended to the whole of the production of goods, thus covering two-thirds of aggregate investments. ([39]) The objectives, in addition to the development of scientific and technical research, included the diffusion of modern production methods, the adaptation and specialisation of enterprises, the encouragement of the planning spirit and the competitive spirit. ([40]) This apparently paradoxical combination of objectives already indicates that the functions assigned to competition and the market mechanisms were very limited.

The *Third Plan* (1958-1961) for the first time attempted orientation towards long term development and consistency between the objectives of the Plan, the national accounts and public finance. The scope of the Plan was extended to commerce, handicrafts and town planning. The investment plan was thus converted into an overall plan, whose detailed forecasts by branches indicated the growth prospects in all fields.

The economic policy of this period was marked by the progressive changeover from direct market regulation to indirect action on the market.

But, as a result of failure to eliminate excess demand, it was necessary to fight price rises in 1954, 1956 and 1957, by a general price freeze. ([41]) With the deflationary measures proposed by Mr Rueff and Mr Armand, a price policy was finally followed in 1958-60 which attacked the cause, i.e. excess demand. The proposals made were designed, in particular, to restore the regulatory function of prices. With the abolition of some hundred price controls ([42]) the liberalisation movement reached its peak in 1961.

During the period of the *IVth Plan* (1962-1965), not only the setting of growth rates, but also the listing of measures to be taken by enterprises and/or by the State to implement the Plan formed an integral part of planning. The sectoral breakdown sometimes included such combinations of targets and means even for particular products and services. ([43]) This systematic action on sectoral structures gave the programming aspect precedence over the forecasting aspect of the Plan.

But economic policy did not succeed in orienting incomes in line with the Plan. ([44]) Faced with a speed-up in the price thrust, the Government reacted in Autumn 1962 by the Giscard d'Estaing Stabilisation Plan, which reintroduced, in particular, a general freeze

([33]) Cf. the partial reproduction of the text in Ulmer, E. (ed): *Das Recht des unlauteren Wettbewerbs in den Mittgliedstaaten der Europäischen Wirtschaftsgemeinschaft*, Vol. IV; Krasser, R.: Frankreich, Munich-Cologne, 1966, pp. 605 and foll.

([34]) Cf. Champaud, C., Part I, *op. cit.*, p. 27.

([35]) But Plan and economic policy have not always been consistent. Measures of application with short term aims, often inconsistent with the objectives of the Plan, have to some extent prejudiced their achievement. Cf. Rhein, E.: *Möglichkeiten und Probleme staatlicher Investitionsplanung in der Marktwirtschaft*, Cologne and Opladen, 1960, p. 22.

([36]) See, in particular, from a very full bibliography: Muller-Ohlsen, L.: *Wirtschaftsplanung und Wirtschaftswachstum in Frankreich*, Tübingen, 1967; Kleps, Kh.: *Langfristige Wirtschaftspolitik..., op. cit.*, pp. 69 and foll.; Benard, J.: *Economic Policy in France*, 1949 to 1961; in: Economic Policy in Our Time, *op. cit.*, pp. 287 and foll.; Sheahan, J.: *Promotion and Control of Industry in Postwar France*, Cambridge, Mass., 1963; Rhein, E.: Möglichkeiten..., *op. cit.*

([37]) Cf. Kleps, Kh.: *Wirtschaftsplanung in Frankreich*; in: HJB, 8th year, 1963, pp. 37 and foll.

([38]) Price controls in particular kept the prices of the products of the basic industries at a low level. The prices of the sectors of activity down the line remaining free, the industries in question were able to make exceptional profits, which encouraged the maintenance of unproductive methods in those sectors. Cf. on this subject: Rhein, E.: Möglichkeiten..., *op. cit.*, pp. 26 and foll. and Sheahan, J.: Promotion..., *op. cit.*, p. 223.

([39]) Cf. Kleps, Kh.: Wirtschaftsplanung..., *op. cit.*, p. 51, note 36.

([40]) Cf. Bauchet, P.: *La planification française. Quinze ans d'expérience.* Paris, 1962, p. 84.

([41]) The resulting decline in profits made it more difficult, in particular, to extend the equipment of the mechanical and electrical engineering industries. The desire to eliminate these bottlenecks by means of imports contributed to the substantial balance-of-payments deficit of 1956-57. Cf. Sheahan, J.: *Promotion..., op. cit.*, p. 224.

([42]) Cf. *Bulletin officiel des prix*, 31 April 1961.

([43]) Cf. Commissariat Général du Plan: Quatrième Plan de développement économique et social, 1962-1965 (Act No. 62-900 of 4 August 1962, in: *Journal officiel* of 7 August 1962) Paris, 1962, pp. 315 and foll.

([44]) During the first two years, the disposable income of households grew twice as fast as the volume of production. Cf. Balassa, B.: Whither French Planning? in: QJE, Vol. LXXXIV, 1965, p. 548.

of prices and margins. [45] Some major elements in this freeze are still applicable in principle today and are to be found in the long list annexed to this document. In order to make the price freeze more flexible, entrepreneurs were given the facility, after March 1965, of regaining limited price freedom by signing "stability contracts". On the whole, the economic policy of this period was marked by further reinforcement of State intervention.

Since its main objective was to improve the economic structure while maintaining the stability of the price level, the *Vth Plan* (1966-1970) laid the stress on incomes policy, the encouragement of investment and aid in the regrouping of enterprises. Although the Plan itself includes no targets in volume by branches, the sectoral breakdown is given in annex. Convinced that international competitiveness increases with the dimensions of enterprises, the State also acts on the pattern of inputs in certain sectors. But, according to Molsberger, [46] the encouragement of the regrouping of enterprises is explained not by the desire to improve productivity, but also partly by the desire to enhance the country's prestige and by the fact that co-operation between the State and the private sector in preparing and executing the Plan is all the easier, the fewer the autonomous production units.

General economic planning is completed by setting regional development targets. [47]

Mr Debré's economic policy has pursued the achievement of the objectives of the Plan more ambitiously than ever. The reinforcement of the tendency to concentration should be supported by financial aids, government contracts and the relaxation of price controls through contractual exceptions. The existing price supervision should continue in force at least until the end of the Vth Plan. [48] Price freedom is the exception and requires the special approval of the authorities. In order still further to relax the price freeze the "programme contract" was introduced in March 1966.

This survey clearly shows that French planning has evolved since 1947 from an originally limited investment programme to become an economic planning affecting every economic and social activity, for which the name of "concerted economy" (*économie concertée*) has been invented. No doubt people are not compelled to act in conformity with the Plan, but merely encouraged to do so.

If the Plan is no longer described today as "indicative" or as an "instrument for the orientation of the economy", [49] but as "active planning" [50] this expresses the determination of the State "to regularise the flow of economic life, and finally to orient it in a direction different from that which it would have taken if left to itself". [51]

(b) As an instrument for the regulation of the French economy, the market mechanisms play only a secondary role. [52] The dangers for competition among French producers resulting from the co-operation of enterprises in the modernisation commissions [53] and from the encouragement of concentration, are therefore regarded as negligible. To an increasing extent, competition in France is interpreted solely as international competition. With regard to the assignment of regulation functions, it may be noted that quantitative development is subject not only to government cyclical control, but above all to long term planning. Similarly, qualitative development is the subject, from the point of view of organisation [54] and financing, of substantial State encouragement; [55] but there can be no doubt that this development is not yet predominantly regulated by economic policy. But as various signs seem to indicate that the State will intervene even much more substantially in this field, we nevertheless take the risk of assigning this regulation function to economic policy.

The articulation of the Plan and the large number of measures taken to implement it [56] leave no room for doubt that the regulation of the pattern of outputs is

[45] Cf. in this connection, Dieterlen, P.: Stabilisierungsplan und Einkommenspolitik in Frankreich (*Kieler Vortrage*, New Series, 31, ed. Schneider, E.) Kiel, 1964.
[46] Cf. Molsberger, J.: *Konzentration, Gemeinsamer Markt, und Planification*; in: WChr 1966. Miscellany; A. Muller-Armack, pp. 210 and foll.
[47] On overall regional policy in France, cf.: Weinstock, U.: *Regionale Wirtschaftspolitik in Frankreich*, Hamburg, 1968.
[48] Cf. „Verstärkter Preisdirigismus in Frankreich"; in: *Handelsblatt*, 15 March 1966.

[49] Cf. Article 2 of the Act on the IInd Plan.
[50] Cf. Masse, P.: Preface to Perroux, F.: *Le IVe Plan français* (1962-1965) (Que sais-je ?), Paris, 1963.
[51] Cazes, B.: *Logique et finalité du Plan français*, stencilled, p. 2; cited from Kugler, K. F.: *Entstehung, Hauptprobleme und Grundsätzliches zur Technik der Planifikation unter besonderer Berücksichtigung Frankreichs*; in: Fikentscher-Hoffman-Kugler: *Rechtsfragen der Planifikation*, Stuttgart, 1967, p. 7.
[52] Cf. Houssiaux, J.: *Les tendances d'évolution de la politique économique en France, leurs incidences sur la politique de la concurrence*; contents of paper in; Zijlstra, J.: *Wirtschaftspolitik und Wettbewerbs problematik, op. cit.*, p. 15.
[53] Cf. Giersch, H.: *Aufgaben der Strukturpolitik*; in: HJB, 9th year, 1964, p. 88.
[54] E.g., as part of such measures, the creation in 1968 of the National Foundation for Education in Business Management and the National Information Centre for Business Productivity. Cf.: „Staatliche Förderung in Frankreich", in Handelsblatt, 6 March 1968, p. 6.
[55] An influence is thus exercised on the tendency to qualitative improvement when enterprises have to undertake, in increasingly numerous programme contracts, to keep in the forefront of technical progress and to report to the authorities, in order to obtain a modest price freedom.
[56] The main ones are cited in: Kugler, K. F.: Entstehung..., *op. cit.*, p. 18.

France: Table of major effects of price controls on market mechanisms deemed important under the conception of the economic system.

Regulation functions	Conception of the economic system	Prescribed prices: A	Prescribed prices: B	Stability contract	Programme contract	Prohibition of discriminatory practices	Costing rules: C	Costing rules: D	Price ticketing	Compulsory price reporting	Maximum prices
Development											
1. quantitative		·	·	—	—	+	·	—	·	—	—
2. qualitative		+	+	—	—	—	—	·	·	·	+ (a) — (b)
Allocation											
3. pattern of outputs		·	+	—	—	—	+	—	+	—	—
4. pattern of inputs		+	+	+	+	—	·	·	+	·	+
5. regional pattern		·	·	·	·	·	·	·	·	·	·
Distribution											
6. monetary		+	+	+	+	—	+	+	+	+	+
7. real		·	·	·	·	·	·	·	·	·	·

Notes:

A = exceptions to the prohibition of prescribed prices,
B = prohibition of prescribed prices,
C = prohibition of sale below cost,
D = price range and estimated prices,
a = tendency to develop new production methods to reduce costs,
b = possibility of (a) and of developing new products.

essentially within the competence of economic policy. Before the encouragement of the regrouping of enterprises figured among the main objectives of the Vth Plan, the regulation of the pattern of inputs could have been considered as left almost entirely to the market mechanisms. Although this has now become questionable for productive enterprises—at any rate for the future—we prefer to accept it for the purposes of our study, since aid to concentration in the private sector has not yet reached any large overall dimensions and the regulation of the factors of production remains dominated by the market mechanisms. But the regional pattern is primarily regulated by economic policy, particularly since the Vth Plan.

(c) The comparison made in the following Table between the conception of the economic system just described and the effect of price controls, shows that French legislation can, on the whole, be said to be consistent with the system in the general assignment of regulation functions. It is only in the case of the general prohibition of discriminatory prices that we have inferred in Part II an adverse effect on the pattern of inputs. But as this effect can occur only if price formation is free, the adverse tendency is, on the whole, insignificant. Furthermore, in view of the fact that stability contracts, programme contracts and the prohibition of discriminatory prices may have adverse effects on qualitative development, some reservations must be expressed. If, however, State activities increase in this field, these reservations will become largely pointless.

4. *ITALY*

(a) At the end of the War, Italian economic policy was particularly concerned to eliminate the sequels of the Fascist policy of autarky and to overcome the disparity between the development of the industrial North and the agricultural South. This policy had to take account of mediocre natural resources, low productivity, an unsatisfactory rate of savings and a balance-of-payments deficit. [57] Like other countries, Italy had to choose between centralised State direction of the economy and a transformed market economy. The deliberate option was made in favour of the market economy. Under the Constitution of 22 December, 1947, the Italian economy is based on private enterprise and private property, provided that they fulfil social functions. [58]

As types of State intervention to complete and orient private economic activity, the Legislature cites nationalisation and planning, while giving priority to the direct State management of enterprises. [59]

Furthermore, the already considerable State participation in the economy was extended during the adaptation and conversion crisis of 1947, by the taking of holdings in iron and steel and in the processing industries. [60] Since the taking over, against compensation, of the electricity supply industry in 1962, Italy has had the largest State participation in the economy of all West European countries. [61]

But, except for the economic development of South Italy, these enterprises have not been used in an active and planned way to serve the objectives of State economic policy. They act largely on the principles of private economy and have been able to defend themselves against attempts at State direction by relying on their competitive position vis-à-vis the private economy. Owing to the difficulty of acting on the public enterprises, less importance is now attached to nationalisation than to planning.

The first experiment [62] in overall planning of the whole public sector was aimed at reconstruction and was dropped on the completion of that period. But since the market mechanisms had been incapable, even before Fascism, of preventing the cleavage between North and South, the State, in 1950, began to encourage the economic and social development of the Southern Provinces and the development of regional planning. By infrastructure investments and direct incentives to investment, regional policy encouraged private enterprise and, by the installation of enterprises, launched State holding companies in what was virtually vacant territory; this policy did not therefore tend to restrict existing private activities for the benefit of public activities. [63]

It was not until 1962 that the National Commission for Economic Programming (*Commissione nazionale*

[57] Cf. on the starting situation and policy: Tosco E.: Economic Policy in Italy, 1949 to 1961; in: *Economic Policy in Our Time, op. cit.*, pp. 138 and foll.
[58] Cf. Bernini, G.: *Sur le rôle de la politique de concurrence en Italie,* contents of report in: Zijlstra, J.: Wirtschaftspolitik..., *op cit.*, p. 19.

[59] Cf. Cassese, S.: *Organe, Verfahren und Instrumente der Planung in Italien*; in: Kaiser, J. H. (ed.): *Planung II*, Baden-Baden, 1966, p. 210.
[60] Cf. Jochimsen, R.: Die öffentlichen bzw. öffentlich beherrschten Wirtschaftsunternehmen in Italien; in: *Gemeinwirtschaft in Westeuropa* (ed. Weber, W.), Göttingen, 1962, p. 244 and Tables, pp. 309-374.
[61] The main State-controlled holding companies are the IRI (Istituto per la ricostruzione Industriale = about 300 enterprises), the ENI (Ente Nazionale Idrocarburi = about 100 enterprises) and the ENEL (Ente Nazionale Energia Elettrica).
[62] Cf. on this subject: Morgenroth, U.: *Die italienische Wirtschaftsplanung*; in: WA, Vol. 96, 1966, I. pp. 351 and foll.
[63] This can easily be believed on reading Kleps, who describes the decision to follow an active regional policy as an attempt "to limit fundamental decisions of a liberal character to the North and thus apply two different and juxtaposed conceptions of economic policy".
Kleps, Kh.: Langfristige Wirtschaftspolitik..., *op cit.*, p. 218.

per la programmazione economica, CNPE) was set up, responsible for formulating an overall long term economic programme.

After the political setbacks of two projects, the Government for the first time presented to Parliament a Plan for the period 1966-1970, designed to serve as "a framework for the Government's economic, financial and social policy, especially for public capital investment programmes, and as a framework for regional economic plans". [64] In its nature, this Plan is very close to Belgian planning. The private sector is expected to conform voluntarily to the general objectives of the Plan, and subsidies are the main instrument of intervention in enterprise decisions, especially with regard to the objectives of regional policy. The instruments previously used also remain available. [65] Cassese attaches particular importance to price controls. The future will tell whether and how far this instrument will be used to assist in achieving the Plan.

Government competence in the matter of prices is derived from Decree No. 347 of 19 October 1944 assigning official price policy to an Inter-Ministerial Prices Committee (*Comitato interministeriale dei prezzi, CIP*), set up for the purpose. The CIP has power to fix the prices of all goods and services at all stages of their economic circuit and on export and import, but its competence does not extend either to salaries and wages or to rent. [66]

The very large number of price controls existing at the end of the War has been steadily reduced from year to year. Although price policy considerations have played a part in particular cases, maximum price controls have primarily been maintained or introduced only if the market mechanisms failed to function satisfactorily owing to insufficient competition, or for any other reason.

In detail, the products and objectives can be classified in three categories: [67]

(1) For unworked products (including energy) and for certain industrial products, there is the danger, especially in the event of excess international demand, that the disappearance of the pressure of foreign competition will be taken advantage of by the relatively few enterprises in the branch to increase their prices. Particularly in periods of difficult international supply, the fixing of ceiling prices should therefore prevent a speculative price drive [68] and thus avoid any interference with distribution and growth.

(2) The prices of public utility services and a number of other services have always been subject to a ceiling. [69] The objectives have been to prevent monopolistic abuse and thus favour the stabilisation of the cost of living, endangered by other rises due to the general application of the sliding scale. Unit prices being generally set as low as possible, it should be possible to obtain, especially with the aid of Price Equalisation Funds, a sort of financial equalisation. [70]

(3) There were also price controls for agricultural and food products. In this sector, they were used preferably to stabilise price variations and aid the producers. As in other European countries, these measures thus constituted an instrument of sectoral distribution policy.

(b) While Italian economic policy in many respects resembles that of France, [71] this is not true of the conception of the economic system. Deliberate and systematic State exercise of functions of regulation is considerably less in Italy than in France.

Quantitative development has been subject since the beginning of overall planning to short term orientation by cyclical policy, but also to the commencement of a long term growth policy which will certainly be reinforced in future. The qualitative aspect of development is largely a matter for the market mechanisms. No doubt, as in other countries, research and training outside the enterprise are the subject of general encouragement, but there does not seem to be any effective or projected influence on the activity of enterprises in this field.

On the question of allocation, it is the market mechanisms which are dominant in the regulation of the pattern of outputs and inputs. The temporary tax incentives to mergers, conversions and concentrations

[64] Cassese, S.: Organe, Verfahren... *op cit.*, p. 218.
[65] Cf. the Table of the possibilities of State action, described—somewhat arbitrarily—as "indirect" in Cassese, S.: *ibid.*, p. 228.
[66] Rent control is a matter for Parliament: cf. Duchini, F.: *Kartell- und Wettbewerbsrecht in Italien* (1953-1954) in: WuW 5th year, 1955, p. 559.
[67] Cf. Calcaterra, E., Mazzocchi, G., Lombardini, S., Vito, F.: Main Outlines and Evolutionary Trends of the Structure of the Italian Economy; in: *Wirtschaftssystem des Westens* (edited by Frei, R.) Vol. II, Basle-Tübingen, 1959, pp. 96 and foll.

[68] As this control generally related to the maker's ex-works price, it was sometimes possible to get round it by vertical concentration.
[69] E.g. telephone charges, radio and television licences, canal dues, transport charges, the price of gas, hotel charges and house rents.
[70] Recourse to the *Cassa di conguaglio prezzi* must certainly have been more widespread in 1951 [a]; according to CIP, there are now only four Funds, three for the sugar market and the fourth for electricity supply.
[a] Cf. Champaud, C. *op. cit.*, Part I, p. 38.
[71] This is the opinion of Champaud, C. Part I, *op. cit.*, p. 5.

Italy: Table of major effects of price controls on market mechanisms deemed important under the conception of the economic system.

Regulation functions	Conception of the economic system	Permitted price agreements	Compulsory price ticketing	Maximum prices	Fixed prices
Development					
1. quantitative		+	.	—	.
2. qualitative		—	.	+ (a) — (b)	.
Allocation					
3. pattern of outputs		—	+	—	.
4. pattern of inputs		—	+	+	—
5. regional pattern		.	.	.	.
Distribution					
6. monetary		—	+	+	—
7. real		.	.	.	.

Notes:
a) tendency to develop new lower-cost production methods.
b) possibilities of (a) and development of new products.

under Act No. 170 of 18 March 1965, cannot be deemed to imply the assignment of essential functions of regulating the pattern of inputs. The regional pattern, on the contrary, is strongly and systematically influenced by the instruments of economic policy. (72) Though dominant in this regulation function, economic policy endeavours, here, too, to use the market forces in conformity with its objectives, by creating favourable conditions.

(c) The comparison, in the following Table, between the general assignment of regulation functions and the possible effects of Italian price controls shows that both permitted price agreements and part of the maximum price controls, as well as the fixed price controls must be deemed inconsistent with the economic system.

5. LUXEMBOURG

(a) In Luxembourg, the first price control legislation made its appearance only in 1944 (73) to ensure the country's supplies. In 1956 general compulsory price reporting, accompanied by the right of veto, already referred to, was introduced; the Outline Act at present governing State price action dates from 30 June 1961. Article 5 of this enactment requires the Government to supervise, control and even to fix the price of purchase and sale of all goods and services. This duty is discharged by the Prices Department. The only exceptions to this rule are wages, salaries and fees and certain prices for the fixing of which other agencies are responsible under statute.

There are few documents concerning economic policy and organisation in the smallest of the EEC States. Since personal research was not possible in the context

(72) For fuller details, cf. CEE Commission: *La politique régionale dans la CEE*, op. cit., p. 118 and foll, and pp. 321 and foll.

(73) Grand-Ducal Orders of 11 August 1944, 28 October 1944 and 8 November 1944. Cf. on this subject, Champaud, C.: Part I, *op. cit.*, p. 39.

Luxembourg: Table of major effects of price controls on market mechanisms deemed important under the conception of the economic system.

Regulation functions	Conception of the economic order	Prescribed prices		Rebate rules		Normal price rule	Declaration price ticketing	Compulsory price ticketing	Maximum prices
		A	B	C	D				
Development									
1. quantitative		.	.	.	+	.	.	—	.
2. qualitative		+	+	+	—	.	.	.	.
Allocation									
3. pattern of outputs		.	+	.	—	.	+	—	.
4. pattern of inputs		+	+	+	—	.	+	.	.
5. regional pattern		.	.	.	.	.	.	.	.
Distribution									
6. monetary		+	+	+	—	.	+	+	.
7. real		.	.	+	.	+	.	.	.

Notes:
A = permitted price agreements,
B = prohibition of price agreements,
C = for retail trade,
D = general limitation of rebates.

of the present study, all that can be done is to make assumptions about the ruling conception of the economic system. In principle, the opinion of the Conseil d'État on the Prices Act of 10 June 1961, confines itself to indicating, according to Champaud, that "liberalism is regarded as the normal economic state, but that State intervention in the free play of competition (...) is justified when the national economy is in danger...". [74] Pursuant to this principle, we treat all regulation functions for which there is, so far as we know, no more important State intervention, as falling within the competence of the market mechanisms.

(b) The market mechanisms are manifestly predominant in the regulation both of quantitative development and of qualitative development. There is no doubt, as there is everywhere, a short term cyclical policy, but there does not seem to be any overall growth policy.

Similarly, the regulation of the pattern of outputs and inputs is not, so far as we know, systematically influenced by the State. It is different with the regional pattern. Since 1962, the Government has itself taken in hand the formulation of the necessary measures in this field. An Outline Act co-ordinates regional development programmes at national level. The instruments of regional policy are tax exemptions, direct subsidies and land improvements. [75] This regulation function should, to all appearances, be assigned to economic policy.

(c) If we compare, in the following Table, the possible effects of Luxembourg price controls on our assumed assignment of the functions of regulation, we can say

[74] Champaud, C.: Part I, *op. cit.*, p. 9.

[75] Cf. Camy, P.: Problèmes et perspectives d'une région frontalière au centre de la Communauté; in: EEC Commission: *Documents de la conférence sur l'économie régionale*, Brussels, 6-8 December 1961, Vol. I, p. 259, and similarly, La politique régionale au Luxembourg; in: EEC Commission: *La politique régionale dans la CEE*, op. cit., pp. 127 and foll.

that the general limitation of rebates and compulsory reporting on the assumption adopted in Part II are inconsistent with the system. Maximum price controls for the direct regulation of price levels call in general for the same assessment. Since the provisions in question essentially concern only exceptional sectors, this assessment carries little weight for the markets contemplated in the present study.

6. *NETHERLANDS*

(a) The rapid growth of the Netherlands population at the end of the War called for an increased effort in the matter of housing and the creation of employment. Since the capital goods needed to create employment had to be largely imported, it was also necessary to increase the country's exports.

The contemplated conception of the economic system was a compromise, described as "oriented market economy", between a free market economy and State control. ([76]) In the immediate post-War years, this policy was centred on orientation by the State; in applying it much less use was made of the extension of "the nationalisation of ownership" ([77]) than of the maintenance and development of the "nationalisation of the power of disposal". In order to fulfil its function of orientation, the State had to intervene indirectly—and, if necessary, directly—in the decisions of enterprises. The instrument of indirect intervention today still remains planning. Since 1946, the choice and mix of short term economic policy measures is effected pursuant to a central annual plan. The *Centraal Economisch Plan* forms a consistent system of macro-economic forecasts. Since the end of rationing it has not included either overall growth targets or sectoral targets, and, since 1955, it no longer includes economic policy recommendations. Since it is not binding either on the private sector or on the government, it has a purely forecast character. ([78])

The expression "oriented market economy" also originates from the practice of preparing and executing the Plan. ([79])

The first elements of long term growth planning ([80]) were abandoned on the expiry of the Marshall Plan. The other long term plans related solely to partial fields ([81]) of public action. It was only in 1963 that the Government decided, starting with the period 1966-1970, to add to the central plans, focussed solely on economic equilibrium, outline growth plans for the whole of the economy extending over several years. The basis of the new outline plan was to be constituted by a macro-economic model and a sectoral model, ([82]) in the construction of which economic groups were invited to take part. Outline growth planning was no more binding on the private sector, but it was designed to allow the Government to orient an overall growth policy and its economic action in the sectors for which it is directly responsible. ([83])

Among economic policy measures it was not indirect intervention, but direct control of prices, wages, imports, investments and credit, and the rationing of a series of consumer goods, which constituted the dominant element. ([84]) The meticulous control inherited from War was repealed only very gradually.

In 1955, again, the Minister for Economic Affairs was empowered to control the installation or extension of certain strictly defined enterprises, and, where appropriate to make such installation or extension subject to prior authorisation, when existing or potential surplus capacity threatened to prejudice the industrialisation policy, or when the co-ordination of investments was required under an international obligation. ([85]) This power has been used in certain cases.

Since external trade plays a fairly important part in the level of internal prices, efforts to increase exports explain why the price trend (in addition to the objectives of distribution policy) has been given special attention. Factor prices and product prices were for a long time directly controlled. Whereas in the other West European countries, wage trends were hardly State-controlled, Netherlands wages were subject to strict control by the *College van Rijksbemiddelaars*

([76]) Cf. Estor, M.: *Der Sozial-ökonomische Rat der Niederländischen Wirtschaft*, Berlin, 1965, p. 121.
([77]) Cf. in this connection: Hartog, F.: *Economic Policy in the Netherlands*, 1949 to 1961; in: *Economic Policy in Our Time*, Vol. III, *op. cit.*, p. 78 and 110, and Vos, H.: Die öffentliche Hand im Wirtschaftsleben der Niederlande; in: *Öffentliche Wirtschaft in Europa, Schriftenreihe der Gesellschaft für öffentliche Wirtschaft*, No. 8, Berlin, 1962, p. 48.
([78]) Cf. Hartog, F.: *Die Marktwirtschaft in den Niederlanden*: Ihre Grenzen, die Auffassungen über sie, ihre Zukunftsaussichten; contents of report in: Zijlstra, J.: Wirtschaftspolitik, *op. cit.*, p. 24.
([79]) The plan sets indicators for the projects of the private sector, which is able, through the *Sociaal Economische Raad* (SER) to intervene in defining objectives as well as in the choice of the instruments and methods of State economic policy. For fuller details, cf. Estor, M.: Der Sozial-ökonomische Rat... *op. cit.*, p. 123.
([80]) Outline Plan (1946-1952) and Memorandum on structural development in the Netherlands (1948-1952/53).
([81]) Territorial development policy, regional policy and industrialisation policy, cf. Kleps, Kh.: Langfristige Wirtschaftspolitik..., *op. cit.*, pp. 286 and foll.
([82]) The number of sectors has been estimated at 24 by Kleps and at 30-40 by Hartog.
([83]) According to De Wolf, the public sector, building, agriculture and transport. Cf. De Wolff, P.: *Central Economic Planning in the Netherlands*; in: WA, Vol. 92, 1964, p. 202.
([84]) Cf. Hartog, F.: Economic Policy..., *op. cit.*, p. 68.
([85]) Cf. on this power and its application, Goedhart, C., Haccou, J. F., Hennipman, P., Van Stuyvenberg, J. H.: Das Wirtschaftssystem der Niederlande nach 1945; in: *Wirtschaftssystem des Westens*, Vol. I..., *op. cit.*, p. 132.

up to 1963. ([86]) This control, however, could not be accepted by the workers unless the State also acted on product prices.

After the end of the War, the 1939 price legislation came back into effect. No doubt price control was abolished, at the same time as rationing, at the beginning of 1949, but as early as September 1949, it became necessary to reinstate a price freeze for four months to avoid increases consequent on currency devaluation. Another occasion for the introduction of price control was the increase following the Korean conflict in 1951. When, in 1954, a number of wage increases threatened to relaunch inflation, the Government again intervened in price formation. In 1959, the Minister of Economic Affairs required the industrial and commercial sector to report its price increases after the event. The Outline Law at present in force on the adoption of price measures was promulgated on 24 March 1961. ([87])

If the government deems that the prices of goods and services are exaggerated, it can, under the Act, intervene at three different levels:

— Pursuant to Article 2 (1) (a) it can fix maximum prices for the offer, sale or leasing of goods. The validity of these maximum price controls is limited to one year [Art. 2 (2)].

— Pursuant to Article 2 (3) it may order the publication of certain prices, so as to increase the demand transparency of the market and to make consumers more sensitive to questions of price.

— Pursuant to Article 2 (1) (b) the government may, with a view to maximum price control, order that accounts shall be kept showing the price formation of goods and services subject to control.

During the whole post-War period, rents and agricultural product prices were fixed by the State. ([88]) Except for the system applicable to these sectors, the primary reason for direct price control was, for a long time, stability. With the transition to limited sectoral measures the accent was increasingly laid on the desire to prevent the abuse of monopolies by applying a competition policy. In recent years less use has been made of price authorisations. "As a stick behind the door" these authorisations encourage industry, voluntarily or quasi-voluntarily, to make agreements with the State. ([89]) The very small number of price controls, compared with previous years, collected in the present document, must be regarded as a provisional full stop to a liberal trend in this field.

(b) With regard to the conception of the economic system in the Netherlands, it may be noted that competition and the market mechanisms are regarded as the fundamental basis of economic activity; ([90]) thus, State intervention is always exceptional in character. If the force of this principle might have been doubted towards the end of the 1950's owing to the large number of "exceptions" recognised, the situation has profoundly changed in recent years.

Quantitative development is subject, in the short term, to the cyclical policy based on the Central Plan and, since 1966, to a long term growth policy based on the Outline Plan. Although this regulation function is therefore attributable to economic policy, the influence of the market mechanisms in this sphere is scarcely hampered, since micro-economic interventions have been largely replaced by overall macro-economic control in the field of credit, the budget and taxation. In the case of qualitative development, the State exercises no major activity. As demonstrated by the review of planning action, the market mechanisms may also be taken to dominate the regulation of the pattern of inputs and outputs. State action in the matter of territorial development and regional policy enjoys a long tradition in this country, but largely relates to infrastructure only. It is true that there is an aid programme for the construction of industrial buildings in the poles of development, ([91]) but its resources were substantially cut in 1962. Although the government ensures a certain co-ordination of regional policy measures, the Netherlands rejects all central planning as sterile and rigid. We therefore consider in spite of some reservations, that the regional pattern is largely regulated by the market mechanisms.

(c) From the comparison in the following Table between the conception of the economic system outlined here and the possible effects of Netherlands price controls on the market mechanisms, it appears that permitted price agreements, and fixed prices for the construction of workers' housing can be deemed inconsistent with the economic system. The same assessment is permissible as to intervention in product prices and wages, resulting from the practice of compulsory price reporting which we have taken as an assumption.

([86]) For details on the trend of the wage system in the Netherlands, see, e.g. Busch-Luty, Ch.: Gesamtwirtschaftliche..., *op. cit.*, pp. 30 and foll. and Jansen, H. L.: *Der Sociaal-Economische Raad und die niederländische Lohnpolitik*, in: HJb 8th year, 1963, pp. 21 and foll.

([87]) Prijzenwet, in: *Staatsblad* No. 135/1961.

([88]) It should be noted in this connection that a large proportion of the dwellings held in common occupation belong to public agencies and that private building is largely encouraged by the State.

([89]) Cf. Hartog, F.: Economic Policy..., *op. cit.*, p. 77 and p. 111.

([90]) Thus, Hartog cites among the objectives of Netherlands economic policy, "naturally, the utmost possible respect for the market mechanisms". Cf. Hartog, F.: Die Marktwirtschaft..., *op. cit.*, p. 24.

([91]) Cf. Verburg, M. C.: La politique régionale aux Pays-Bas; in: EEC Commission: *La politique régionale dans la CEE*, *op. cit.*, pp. 131 and foll.

Netherlands: Table of major effects of price controls on market mechanisms deemed important under the conception of the economic system.

Regulation functions	Conception of the economic system	Prescribed prices		Compulsory price reporting		Fixed prices
		A	B	C	D	
Development						
1. quantitative		+	.	.	.	.
2. qualitative		—	+	.	.	—
Allocation						
3. pattern of outputs		—	+	—	—	.
4. pattern of inputs		—	+	.	—	—
5. regional pattern		.	+	.	.	.
Distribution						
6. monetary		—	+	+	.	—
7. real		.	.	.	.	.

Notes:

A = permitted price agreements,
B = prohibition of prescribed prices,
C = general spontaneous reporting of increases in product prices,
D = compulsory reporting of wage increases.

CHAPTER 13

CONSISTENCY WITH THE ECONOMIC SYSTEM AS CONCEIVED BY THE EEC

1. *CONSISTENCY WITH THE OBJECTIVES OF THE TREATY CONSTITUTING THE COMMON MARKET*

(a) If the economic objectives of the EEC Treaty are grouped in two categories, fundamental objectives and secondary objectives, it will be found that the fundamental objectives very largely correspond to national objectives:

(1) the constant and balanced maximisation of the national product (1)

(2) the more equal distribution of that national product, (2) and

(3) the bringing into line of regional productivities connected with the labour factor by intensive reforms. (3)

The secondary objectives to be achieved in order to realise the fundamental objectives, are constituted, according to the Treaty, by "the establishment of a common market" and by "the progressive approximation of the economic policies of Member States" (Article 2), to the extent necessary to achieve the objectives of the Treaty (Article 6).

In detail, the establishment of a customs union (Art. 9 and foll.), the elimination of quantitative restrictions (Art. 30 and foll.) and of government restrictions on the free performance of services (Art. 59 and foll.) are designed to establish the free movement of merchandise and the free performance of services. Thus, when Member States do not differentiate between identical products coming from anywhere in the integrated territory, but apply a different common treatment to products of third country origin, then *the mobility of products* throughout the integrated territory will tend to be improved.

The free movement of workers is ensured by the abolition of all discrimination based on nationality in the matter of employment, remuneration and other working conditions (Art. 48 and foll.) and by the harmonisation of the social security schemes (Art. 117). These measures represent a contribution to the enhanced mobility of labour as a factor of production within the Community.

Articles 67 and following, also require the abolition of all restrictions on the movement of capital belonging to persons resident in Member States and of all discrimination based on the nationality or place of residence of the parties or on the location of the investment, so far as necessary for the functioning of the Common Market. (4) This liberalisation of financial transactions not directly connected with the exchange of goods and services, i.e. in particular, credits, holdings, direct investment and the repatriation of income, helps to enhance the mobility of capital as a factor of production.

Furthermore, Articles 52 and following also specify, in principle, (5) the right to freedom of establishment for independent workers on the Community territory. The right of establishment, by placing nationals of other EEC countries on the same footing as nationals of the State in question, considerably increases the mobility of the residual human factor. (6)

These provisions of the Treaty, designed to introduce the free movement of workers and capital and the right of establishment, can be regarded as *contributions towards establishing the mobility of factors.*

(1) Cf. Preamble and Art. 2. The "harmonious and balanced" development specified in Article 2, must be interpreted not as the participation of all sectors of activity in the expansion (a) but simply as a balanced overall growth with no structural distortion.

(a) Such is for example, the opinion of Wohlfarth, E., Everling, U., Glaesner, H.-J., Sprung, R.: *Die Europäische Wirtschaftsgemeinschaft - Kommentar zum Vertrag* - Berlin, Frankfort, 1960, p. 5.

(2) Cf. Preamble, Art. 2 and Art. 117.

(3) The vague formulation of the objectives of regional policy in the Preamble and Article 2 is clarified only by the subsequent complements and developments of Community practice. E.g. *Sixth General Report...*, June 1963, pp. 140 and foll. Cf. subsequently: EEC Commission: *General Reports on the activity of the Community.* EEC Commission: *Documents de la Conférence sur les économies régionales*, Vol. I and II, Brussels, 1961. EEC Commission: *Memorandum of the Commission on the Action Programme of the Community for the second stage*, Brussels, 24 October 1962, pp. 68 and foll.

(4) This proviso refers back to the fundamental objective, which may become important if, for example, the free movement of capital, as a result of speculation, results in short term disequilibrium in the balance of payments of certain countries, thus prejudicing the sound functioning of the Common Market.

(5) Exceptions are provided in the case of official public offices (Article 55) or for reasons of public policy, public safety or public health (Article 56).

(6) Cf. Gutenberg, E.: *Einführung indie Betriebswirtschaftslehre*, Wiesbaden, 1958, p. 27.

But States have many other ways of limiting the mobility of products and factors. In order to prevent the direct obstacles cited above from being replaced by indirect means to the same end, the Treaty includes a series of complementary provisions:

(i) In the absence of a common monetary system, the right to the free exchange of natural currencies is, on the technical level, the prior condition for the mobility of products and of factors. The Treaty (Article 106) no doubt does not prescribe total free convertibility, but it obliges Member States to authorise the payments necessary to achieve the liberalisation measures which it lays down; (7)

(ii) Measures of taxation may also hamper imports or aid exports. Under the Community taxation rules (Art. 95-99) the conditions of competition for products coming from Member States cannot be worsened by the importing State by means of taxation at a higher level than that of similar national products; similarly, the exporting country cannot improve conditions of competition by tax relief. It is thus clear that the Treaty aims at favouring not all intra-Community movement of merchandise, but only those which, resulting from differences in productivity, serve the fundamental objective of growth.

(iii) The mobility sought for may also be hampered by legislation, regulation or administrative measures. (8) The Council and the Commission must therefore make directives for the harmonisation of provisions "which have a direct influence on the establishment or functioning of the Common Market" (Art. 100).

In addition, the Commission is required to take action if disparities existing between the provisions in question "adversely affect the conditions of competition on the Common Market and thereby cause a distortion" which must be eliminated in accordance with the objectives of the Treaty. (9)

(iv) Subject to any derogations expressly specified in the Treaty, aids which distort competition granted by States for the benefit of certain enterprises or certain products (Art. 92-93) and dumping practices (Art. 91) are inconsistent with the Common Market.

In addition, public and private enterprises are forbidden to enter into any agreement or to adopt any decision or common practice which hampers or distorts the movement of products and factors between Member States (Art. 85-90-). (10) The object of these "rules of competition" is to prevent States or enterprises from impeding, restraining or distorting the free movement of merchandise. (11)

The above are the main provisions designed to establish the Common Market. It is clear from what we have said above that the attainment of the direct objectives of the Treaty already calls for a certain common orientation of economic policies.

With regard to the spheres of activity indicated above, the treaty requires Member States to ensure the equilibrium of their balance of payments, and the stability of price levels and "to ensure a high level of employment" (Art. 104) (12) and recommends the co-operation of cyclical policies [Art. 105 (1)]. But since the different rules of co-operation are subject to the proviso contained in Article 6 (1), (13) their concrete content depends on the objectives to which they relate. They may relate, in principle, both to the direct objective of the establishment of the Common Market and to the fundamental objectives outlined above. (14) In this section, therefore, we shall inquire whether the possible effects of price controls prejudice the establishment of the Common Market in the light of the minimum requirements of the Treaty.

(b) The EEC conception of the economic system corresponding to the establishment of the Common Market relates only to the movement of merchandise and factors within the Community. As appears from the

(7) Since free currency convertibility has been largely ensured in all States since 1958, this limitation no longer raises any problems today.

(8) Including price controls.

(9) In connection with approximation, however, only the problem of specific distortion arises, since general distortions can be compensated by variations in the exchange rate. Cf. Sprung, R.: Die Bestimmungen über die Beseitigung von Verzerrungen des Wettbewerbs im Vertrag über die EWG; in: *FA New Series*, Vol. 20, 1960, p. 202.

(10) In Mestmacker's view, Art. 90 (1) is also applicable "when a Member State by law restricts competition between enterprises, for example, by fixing minimum or maximum prices, by investment orders or by setting a quota on production or sales". Mestmäcker, E.-J.: Offene Märkte im System unverfälschten Wettbewerbs in der Europäischen Wirtschaftsgemeinschaft; in: *Wirtschaftsordnung und Rechtsordnung*, Miscellany in honour of F. Bohm (edited by Coing, H., Kronstein, H., Mestmäcker, E.-J.) Karlsruhe, 1965, p. 389.

(11) Furthermore, according to Gunther, there is no doubt that these rules should be regarded as "the nucleus of a system of competition embodying all the economic events in the Community". Gunther, E.: Europâische und nationale Wettbewerbspolitik; in: *Wirtschaftsordnung und Rechtsordnung, op. cit.*, p. 281.

(12) Article 104 legitimately assigns a certain priority to the equilibrium of the balance of payments, since persistent difficulties of this kind in a State could gravely compromise the freedom of economic exchange within the Community. Cf. on this subject: Gleske, L.: Die Währungspolitik im Gemeinsam Markt; in: *Währungspolitik in der europäischen Integration* (ed. Rieber, H., Köllner, L.) Baden-Baden, 1964, p. 64.

(13) "...so far as may be necessary to attain the objectives of the present Treaty".

(14) The last case corresponds to the stage of integration of the "economic union".

Table of major effects of price controls on market mechanisms under the Common Market conception of the economic system.

Regulation functions	Conception of the economic system	Prohibition of price agreements:	Stability contract	Programme contract	Prohibition of discriminatory prices	Costing Rules		Normal Price Rule	Compulsory price reporting				Maximum prices					Fixed prices	
		DFLN	F	F	F	B	F(1)	L	B	F	L	N	B	D	F	I	L	I	N
Development																			
1. quantitative	X	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
2. qualitative	X	+	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Allocation																			
3. pattern of outputs		+	.	.	+	+	.	+	.	.	.	.	.	.	.	.	.	.	.
4. pattern of inputs		+	—	—	+	+	—	+	.	—	.	—	—	—	—	.	.	—	—
5. regional pattern		+	—	—	+	+	—	+	.	.	.	—	.	.	—	.	.	—	—
Distribution																			
6. monetary	X	+	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
7. real		.	—	—	+	+	—	+	—	—	—	.	.	.	—	—	.	—	—

Notes:

X = the regulation function does not depend on the conception of the economic system.
B = Belgium.
D = Federal Republic of Germany.
F = France.
I = Italy.
L = Luxembourg.
N = Netherlands.

1) price range and estimated prices.
A) ceiling on relative values of mark-up on pharmaceutical products.

summary of the Treaty provisions, regulation from the point of view of utility and productivity should be ensured by the market mechanisms. In economic relations among Member States, the market mechanisms should therefore regulate real distribution, the pattern of inputs and outputs and the resulting regional pattern for all national territories. In the case of the regional pattern, there is no doubt an autonomous fundamental objective from which regulation functions for economic policy can be inferred; this applies, however, not to the whole of the national territories, but only to less developed regions, regardless of national frontiers.

The only sectors in which the regulation function is not assigned to the market mechanisms are agriculture (Art. 39 and foll.) and transport (Art. 129 and foll.). The Treaty further recognises that, in certain particular cases, exceptions to regulation by the market are warranted where these are priority non-economic objectives, as specified by Articles 36, 48 (3), 56 and 90.

(c) One preliminary remark is called for in connection with the comparison made in the following Table between the economic system as conceived by the Common Market and the possible effects of price controls as inferred in Part II, in the context of the Common Market. It must be emphatically recalled that these effects are *possible* effects only. Their appearance in practice depends, in particular, on three conditions:

(1) the price controls in question must relate to products capable of external trade;

(2) the price controls must be strictly applied in the way we have assumed;

(3) the economic situation partly taken as a hypothesis must be realised.

If these conditions are satisfied, the following national controls must be assessed as inconsistent with the economic system as conceived by the Common Market, wherever they are not necessitated in a specific case by priority extra-economic objectives, on the basis of the exceptions indicated above.

In *Belgium*, we would cite the general compulsory reporting of prices, accompanied by the right of veto and the ceiling in relative value of mark-up for electrical household appliances.

In the *Federal Republic of Germany* only the ceiling on the relative value of mark-up on pharmaceutical products is inconsistent with the conception of the economic system.

The *French* price controls which are inconsistent with the economic system are the stability contract, the programme contract, the price range and the system of estimated prices, the two systems of freedom under control, and freedom under supervision, and the maximum prices for the direct control of price levels.

In *Italy* it is the maximum prices for the direct control of price levels and the fixed price controls applicable to pharmaceutical products which are likely to prejudice the hoped-for effects of integration.

The system of compulsory authorisation in force in *Luxembourg* can also be described as inconsistent with the system. It is, moreover, not impossible that there may be maximum prices for the direct control of price levels.

In the *Netherlands*, we would cite the practice of quasi-voluntary price reporting and the fixed price controls for the construction of workers' housing.

2. *CONSISTENCY WITH A COMMON ECONOMIC ORGANISATION FOR THE ECONOMIC UNION*

(a) It was relatively easy to identify the Common Market conception of the economic system. It is a more delicate matter to try to develop a conception of organisation if the proviso in Article 6 (1) of the EEC Treaty is directly related to the fundamental objectives and if, following the prevailing opinion of the commentators, we regard the institution of an economic union as the objective of the Treaty. The efforts made by the Contracting Parties not to compromise the signature of the Treaty by a controversy over conflicting concepts of economic organisation has had the consequence that the Treaty does not clearly commit itself to an economic system generally valid for the economic union. Since Member States have not so far reached agreement on a common conception for the future, all that we can do here is to attempt to outline an assignment of the regulation functions on which agreement seems likely. Agreement on a common conception will probably result from an economically pertinent interpretation of the Treaty, determined by the political conceptions of the majority of Member States and implemented under the responsibility of the Commission. We therefore propose to proceed to a new and wider interpretation of the text of the Treaty, a comparison of national conceptions of the economic system, and, finally, a consideration of the attitudes already adopted by the Commission on this subject.

(b) As already partly demonstrated in the previous section, the text of the Treaty assigns the short term regulation of quantitative development to economic policy (Art. 104, 105), but it is silent on long term growth policy. If certain provisions [15] allude to

[15] E.g. Art. 128 on a common vocational training policy.

qualitative development, we cannot thereby say that its regulation is a matter for economic policy.

With regard to monetary distribution, the Treaty is not content with the results of the market mechanisms, and it follows that, in the last analysis, this distribution must be regulated by economic policy. The actual text of the Treaty does not indicate any dominant principle of regulation for the regional pattern. The market mechanisms, on the other hand, are unequivocally called upon to play a decisive part in trade between Member States and in the mobility of factors within the Community. The relevant provisions of the Treaty are meaningful, in the light of the fundamental growth objectives, only if the regulation of the pattern of inputs and outputs, the regional pattern by countries, and the real distribution of products capable of international trade, is a matter for the market mechanisms. The Treaty does not confine its favourable attitude towards the market regulation of the movement of factors to cases where those factors are employed in sectors producing such products. It may therefore be inferred that the regulation of the pattern of inputs in the integrated territory—at least so far as it concerns the employment of the factors of production—must generally be left to the market mechanisms. On the other hand, no general inference can be drawn as to the structural elements of the dimensions of enterprises.

sector, while economic policy is combating these trends by encouraging the production of goods which are the subject of internal trade.

The converse situation is equally possible: restrictive economic policy measures may hamper the employment in the internal trade sector of factors of production liberated by the market mechanisms in the external trade sector. An economic policy embracing the whole of the internal trade sector can therefore be conducted without prejudicing the objectives of the Treaty only if it regulates this sector in conformity with the requirement of the external trade sector. But one could then no longer speak of autonomous regulation by economy policy. An autonomous regulation of the pattern of outputs by economic policy which did not appreciably distort the external trade sector could therefore relate only to relations within the internal trade sector, whereas the level of that sector is the result of the market mechanisms which are decisive for the external trade sector.

It is certainly questionable whether such an assignment of regulation functions is operational and meaningful.

In the light of these comments, the elements of economic policy contained in the EEC Treaty which are important for the Economic Union can be summarised in the following Table.

Table of principles which can be inferred from the EEC Treaty for the definition of the conception of economic policy applicable to the Economic Union.

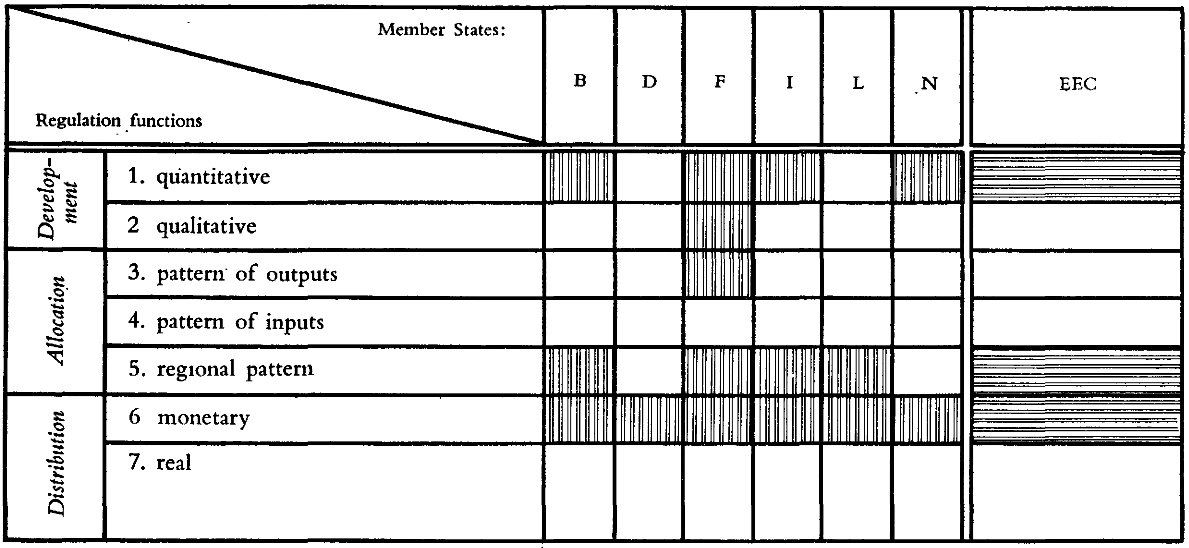
Development		Allocation			Distribution	
quantitative	qualitative	pattern of outputs	pattern of inputs	regional pattern	monetary	real
X	X			X		

Data on the regulation of the whole of the pattern of outputs (including products which are the subject of internal trade) can be indirectly inferred if, for the purposes of theoretical consideration, we assemble in a single sector the branches which produce goods capable of international trade and those which produce goods intended for the national market. If the external trade sector is regulated by the market and the internal trade sector by economic policy, distortions in the effects expected from integration are not impossible, owing to the general interdependence. Situations are indeed conceivable in which, as a result of increases in factor prices or product prices, trends resulting from the market mechanisms become manifest and have the effect of extending the sector of direct importance to external trade at the cost of the internal trade

Since information is scanty on economic policy concerning the components of development we have marked them (as well as the regional pattern) with an X meaning that the assessment remains uncertain. The blank rectangles in the columns for the pattern of inputs and outputs and real distribution mean that the market mechanisms are dominant, while the shaded rectangle for monetary distribution means that it falls within the competence of economic policy.

(c) In order to designate the economic policy conceptions of Member States of the Community we can refer back to the national conceptions already discussed and summarised in the Table below. Since agreement on a common future economic organisation largely depends on majority decisions, a common conception

Table of conceptions of the economic system in Member States of the Community and of the common conception of the organisation of the economic system which would probably result in the Economic Union from a majority decision.



Notes:

Blank rectangles: predominance of market mechanisms.

Shaded rectangles: predominance of economic policy.

B = Belgium;

D = Federal Republic of Germany;

F = France;

I = Italy,

L = Luxembourg;

N = Netherlands.

can be inferred from the existing assignment of regulation functions in Member States, under which the regulation of quantitative development, regional structure and monetary distribution would be essentially assigned to economic policy and the other regulation functions primarily to the market mechanisms.

Our deductions do not conflict with our first indications of a common conception of the economic system inspired by the text of the Treaty. The probability of such an agreement is, for example, enhanced by the fact that certain signs of approximation can be noted between the two countries which differ most widely in this respect, the Federal Republic of Germany and France. In the Federal Republic, the first elements of overall planning have recently been introduced and systematic regional policy is being increasingly discussed. As a first sign of a change of climate in the French conception of the economic system, we may cite the fact that the sectoral breakdown in the Vth Plan was relegated to the Annex. With regard to qualitative development, it may be recalled that, by an isolated anticipation, it has already been partly assigned to economic policy.

(d) The taking into account of these influence in formulating a common conception of the economic system by the Commission of the Community is most clearly evidenced by the official attitudes adopted by the Commission on the question of common economic programming and common medium term economic policy.

The very general Action Programme for the second stage ([16]) includes formulations which seem to indicate that the regulation of quantitative development (p. 7, p. 61 and foll.) regional pattern (p. 68 and foll.) and monetary distribution falls within the competence of economic policy. The idea of "market mechanism"

([16]) EEC Commission: *Memorandum of the Commission on the Action Programme of the Community for the Second Stage*, Brussels, 24 October 1962.

is absent from this programme. The role of the State in the economy, which the Introduction emphasizes in general terms, is, moreover placed on the same footing as that of competition, especially in Chapter II. Convinced that the aims of a prosperous and free society will be best achieved by competition, the authors of the programme consider that it "will have an essential role to play in the control of the economic process...". [17]

Effective decisions on the assignment of regulation functions to the market mechanisms cannot, however, be inferred either from these passages or from the list of the favourable effects of competition. [18] The Chapter on economic policy, when it proposes the introduction of programming extending over several years, has, moreover, a certain tone which recalls French planning. [19] It was not without reason [20] that the guidelines of the action programme on economic policy aroused criticism, especially in the Federal Republic of Germany, and that the Commission was blamed for seeking to transpose into the Community the French planning system. [21] The Commission was thus induced to clarify, and partly to correct, its treatment of common economic policy in its Recommendation to the Council on medium term economic policy for the Community. [22]

This appreciably more precise statement of attitude expressly refers to the market mechanisms. Whenever this text says that State intervention may distort the market mechanisms, it may be generally inferred that certain regulation functions are predominantly assigned to these mechanisms.

This assumption is borne out by the requirement that State action shall be made to fit into a coherent framework and shall neither be inconsistent in itself nor

> "upset the free play of the market except in so far as this is essential and expressly agreed to by all authorities concerned" (p. 14).

Quantitative projections should not be regarded as growth targets for the Community; they should simply give indications of the possibilities and probabilities of economic development. The breakdown of projections is thought necessary for

> "those sectors in which government or Community policy plays a predominant part (e.g. agriculture, energy, transport or housing)". (p.16).

For the internal test of consistency another breakdown is no doubt provided by major sector of activity, but it should not be made public. The draft Common Medium-Term Economic Policy Programme aims at co-ordinating national economic policies; it should in no case co-ordinate the activity of the different economic transactors. It should lead nor to an increase but to a diminution in the number of State interventions in the economic process.

We shall now try to clarify the assignment of regulation functions which is implicit in this text; whenever an active competition policy is advocated because

> "... the free play of the market is the most effective instrument to ensure the best use of available resources and is a fundamental factor making for economic progress", (p. 13)

it can be taken that at least the regulation of the pattern of inputs is assigned to the market mechanisms. A similar conclusion can in general be drawn for the regulation of the pattern of outputs, since it is recognised that

> "investment in the private sector can be left to the mechanism of the market" (p. 18)

and a common policy is advocated only for public investment to meet public needs.

While referring back to the autonomous fundamental objective of the Treaty concerning regional policy (see above), this text assigns the regulation of the regional pattern to economic policy through "balanced regional development in the EEC". The Recommendation is silent on distribution and quantitative development. Qualitative development is envisaged in the sections on "Teaching and vocational training" and "Scientific and technical research". It cannot, however, be in-

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(17) *Ibid.*, p. 20.

(18) EEC Commission, *Memorandum of the Commission on the Action Programme of the Community for the second stage*, Brussels, 24 October 1962, p. 20.

(19) For example, in the establishment of a "consolidated programme" for the Community countries which would spell out "the course that Community action should as far as possible follow" (p. 56) and "the probable breakdown (or that which is desirable or deemed acceptable) of the gross national product as between the main sectors of activity" (ib). While the question of the finer structure of the programme was left outstanding, the section on "Structural Policy" said that "the Commission was not proposing that targets should, *at this juncture*, be set for individual industries".

(20) Cf. also Berg, H.: *Auf dem Wege zu einer mittelfristigen Wirtschaftspolitik der EWG*; in: WD, 46th year, 1966, p. 490.

(21) This presumption has been particularly reinforced by the fact that it was, and is, in the interests of France to diminish the distortions which external trade creates in the execution of its Plan by extending its economic system to the whole of the Community.
Cf. on this subject, e.g. Balassa, B.: *Planung in einer offenen Marktwirtschaft*, in WD, 47th year, 1967, pp. 257 and foll.

(22) Medium-term economic policy for the Community, Recommendation by the Commission to the Council, submitted on 26 July 1963, reproduced in *Supplement to the Bulletin of the EEC*, No. 8-1963, pp. 13-22.

ferred from the passages on the co-ordination of national policies in these fields that economic policy is regarded as the dominant principle in the regulation of qualitative development.

The First Medium-Term Economic Policy Programme ([23]) throws no fresh light on the conception of the economic system. The first part, and the model medium-term economic policy developed by the Commission (Part 2, Chapter 1) stress in general terms the importance of competition and the market mechanisms for the development of the Community. The essence of this programme is centred on proposals designed to encourage the economic policy of increasing aggregate supply. It is already more clearly apparent here that quantitative development at least must fall within the competence of economic policy. Even if comparable tendencies can be noted for certain partial fields of qualitative development (vocational training policy, research policy) it does not thereby seem justifiable to assign all the qualitative components to economic policy. The passages on sectoral structure policy seem to indicate that economic policy should not assume the regulation of the pattern of outputs but should simply sustain the structural changes initiated by the market. With regard to the pattern of inputs, the programme merely proposes the lifting of State-imposed obstacles to economically reasonable concentrations of enterprises. The guidelines of regional policy, in their turn, stress the predominance of economic policy for the regional pattern. The passages on incomes policy are partly based on the State's responsibility in the matter of monetary distribution.

The overall conception of the economic system so far established is equally reflected in the recently published draft Second Medium-Term Economic Policy Programme. ([24]) This programme is regarded as completing and intensifying the first programme and its keystone is the declaration of the principles of a general structural policy. The text begins by recalling the responsibility of enterprises themselves in initiating the necessary measures of adaptation; but it emphasizes that Member States and the Community institutions should create the general conditions to enable enterprises to prepare and pursue their adaptation (I. p. 9). In the matter of quantitative development, it is indicated that economic policy should ensure a vigorous, continuous and balanced growth and, to this end, should systematically encourage the mobility of the factors of production (II. p. 12) and, where appropriate should encourage, by tax measures, the investments of enterprises of all categories (II. p. 18).

In the matter of qualitative development, an active policy is advocated in the field of vocational training and of scientific and technical research and of innovation (V. p. 6). While the programme sets the target of increased total expenditure on research and innovation, ([25]) it does not specify whether the direction of the research and innovation process should be assumed by economic policy. Such an assumption seems most plausible in the case of research, since reference is made to a general orientation, by way of indication, of State subsidies in favour of research in enterprises (V. p. 15) and of the combination of subsidies and government contracts with research contracts (V. p. 16)

In the case of innovation, on the other hand, the conviction is expressed that:

> "Competition, if exercised in satisfactory conditions of effectiveness, constitutes (...) one of the essential driving forces of innovation". (V. p. 10).

A decisive role is therefore attributed to competition policy in stimulating innovation. The qualitative regulation function therefore cannot be assigned with relative unambiguity. If, on the basis of the foregoing considerations, we assign it to the market, this is not without a certain arbitrary element.

Although Member States should reinforce their action in the field of sectoral structure policy, it is manifestly not intended to assign the regulation of the pattern of outputs to economic policy. The competence of the market mechanisms is clearly emphasized when it is said that

> "sectoral evolution is primarily the result of action by enterprises"

and that it must not be overlooked that

> "the final responsibility for the structural development of industry and services lies with enterprises". (III, p. 4).

Sectoral structure policy should therefore first and foremost improve the bases which enable enterprises to adapt themselves on their own initiative (I. p. 13). Measures of public support for certain sectors should play a subsidiary role or should be regarded as exceptions (III. p. 12). All measures of sectoral aid should, as far as possible, introduce or reinforce an effective competition (III. p. 16) and, therefore it is particularly necessary to refrain from manipulating the prices of certain sectors in order to keep down the input prices of other sectors (III. p. 17 and foll.). The only thing

([23]) EEC Commission: First Medium-Term Economic Policy Programme, published in the *Official Gazette* of the European Communities, No. 79 of 25 April 1967.

([24]) Commission of the European Communities: *Draft Second Medium-Term Economic Policy Programme.* COM (68) 148 (Final), Brussels, 20 March 1968.

([25]) It is recommended, for example, that priority should be given to resources assigned to research (V. p. 8) and that the fastest possible depreciation should be allowed for equipment used for research.

which seems out of place in these remarks is the exception of price manipulations in favour of households.

Similarly, the competence of market regulation is emphasized in the case of the pattern of inputs, when it is said that the improvement of productivity and the strengthening of competition depend, to an essential degree, on the efforts made by enterprises to bring their structures into line with future conditions (II, p. 3) and that competition is the best incentive to adaptation (II. p. 14).

The policy deemed necessary should therefore not tend

> "to limit, in one way or another, the freedom of decision of enterprises in a matter which is fundamentally their own responsibility" (II, p. 11).

It should merely create the desired conditions which allow this freedom of choice to be exercised in the direction most favourable to the overall plan.

In the matter of regional patterns, the document again stresses the great importance of a vast regional programme and emphasizes that it must create the conditions

> "to enable all the regions of the Community to share in economic and social progress, and, in particular, to make up the leeway of the less favoured regions" (I. p. 14).

Since all the measures referred to fall into the category of intensive reforms, the decision on the question of allocation is unequivocally in favour of regulation by economic policy.

The competence of economic policy to regulate monetary distribution is confirmed, since the distribution of incomes must be improved to the advantage of the less favoured categories of the population and capital formation must be encouraged among wide social strata (I. p. 16; VI. p. 2).

Although no unambiguous attitude has been adopted towards direct State action on prices (VII. p. 20), the programme implicitly casts doubt on the value of price controls for distribution policy. The text recalls in this connection that:

> "when competition plays a large part, especially in the matter of prices, it... affords the best guarantee against unwarranted price increases, provided that there is no excess aggregate demand" [26] (VII. p. 18).

and that:

> "any measure tending to control profits is in danger of prejudicing free enterprise, the essential foundation of economic development, and, in particular, of discouraging innovation..." (VII. p. 17).

In order to supervise the functioning of the market mechanisms, the text recommends the continuous observation of prices (VII. p. 18) and in order to improve that functioning, the abolition of resale price maintenance (VII. p. 19).

As it is self-evident that real distribution is governed by the market mechanisms, this regulation function is not discussed in the draft programme.

(e) We have thus seen that the official attitudes adopted by the Commission do not conflict with the "average" conception of the economic system inferred from the national conceptions; better still, they can, broadly speaking, be relied upon to support it. It therefore seems legitimate to assess the national price controls in the light of this conception. In an economic union involving a common economic organisation, the consequences inferred in the context of the EEC may be just as important as those inferred in the national context. It is certainly not out of the question that, in particular cases, the effects studied in certain conditions may counterbalance, or more than counterbalance each other. But it is difficult to infer in general the probable relative influence of these effects, compared with each other; this question cannot, in any event, be dealt with in the present study, if only for reasons of space. The Table below therefore combines the possible effects resulting from the Tables in Part II. As it is primarily the adverse effects in which we are interested here, priority has been given to them; where the effects are two-way the synoptic Table therefore shows the adverse effect only. This procedure may lay itself open to criticism, but it nevertheless seems to us to be justified by the object of our study.

It should once again be pointed out, for the interpretation of the Table, that the effects which it shows are simply *possible* effects. It is certainly not important at this stage of the appreciation that each control should relate to products capable of external trade, but the conditions taken as a hypothesis in our analysis of the effects must be fulfilled. Even in this case, however, a control cannot be described as "inconsistent" with the economic system where its application is justified, exceptionally, by priority extra-economic objectives. Subject to these conditions, the following national price controls are inconsistent with the conception of the economic system adopted for the Economic Union.

In *Belgium*: permitted resale price maintenance agreements, the costing rules for pharmaceutical specialties

[26] In this case the general recommendation should be applied that "it is principally the causes themselves of general price increases which it is necessary to combat and to try to eliminate in lasting manner" (VII. p. 20).

Table of the effects in the context of the EEC of price controls on market mechanisms deemed important under the conception of the market system ruling in the Economic Union.

Regulation functions	Conception of the economic system.	Prescribed prices			Stability contract	Programme contract	Discriminatory practices			Rebate controls			Costing Rules				Normal price rule			Price ticketing	Compulsory price reporting				Maximum prices				Fixed prices	
		Permitted		Prohibited	F	F	D	F	L	D	L		B		F		B	L		BDFIL	B/L	F	N		B	D	F	I	I	N
		BDIN	FL	DFLN							a	b	c	d	e	f		g	h		i	k	l	m	n	o			p	q
Development																														
1. quantitative		+	.	.	—	—	.	+	.	.	.	.	—	+	.	—	+	.	.	.	—	—	.	.	.	.	—	—	.	.
2. qualitative		—	+	+	—	—	.	—	.	+	+	—	—	—	+	.	.	.	.	.	.	.	.	.	.	.	+2 —3	+2 —3	—	—
Allocation																														
3. pattern of outputs		—	.	+	—	—	.	—	.	.	.	—	—	.	+	—	.	.	+	+	—1	—	—	—	—	—	—	—	—	—
4. pattern of inputs		—	+	+	—	—	.	—	.	+	+	—	+	—	.	—	—	—	+	+	—	—	—	—	—	—	—	+	—	—
5. regional pattern		.	.	+	—	—	.	+	.	.	.	.	.	.	.	—	.	—	+	.	.	—	—	—	.	.	—	.	—	—
Distribution																														
6. monetary		—	+	+	+	+	.	—	.	+	+	—	+	—	+	+	—	+	+	+	+	+	+	.	+	.	+	.	.	.
7. real		.	.	.	—	—	.	—	.	+	+	.	—	.	.	.	.	—	+	.	—	—	—	.	.	.	—	—	—	—

Legend:

B = Belgium;
D = Federal Republic of Germany;
F = France;
I = Italy;
L = Luxembourg;
N = Netherlands;
1 = Belgium only;
2 = tendency to develop new lower cost production methods;
3 = possibilities of (2) and development of new products;
a = retail trade;
b = general;
c/d = price control of pharmaceutical specialties with equivalent foreign supply;
c = Belgian producers' costs above foreign prices;
d = Belgian producers' costs below foreign prices;
e = prohibition of sale below cost;
f = price range and estimated prices;
g = normal price rule for Luxembourg products;
h = normal price rule for foreign products;
i = compulsory reporting of price increases, applied in accordance with distribution function;
k = price freedom under control applied in accordance with distribution function;
l = general compulsory price reporting applied in accordance with distribution function;
m = compulsory authorisation of wage agreements whenever wage increases above the agreed rates are forbidden;
n = ceiling on relative value of mark-up on electrical household appliances and pharmaceutical products;
o = maximum rates for pharmaceutical products and architects' fees;
p = pharmaceutical specialties;
q = construction of workers' housing.

with an equivalent foreign supply, the normal price rule, compulsory reporting accompanied by a right of veto and the ceiling for the relative values of mark-up on electrical household appliances and medicaments.

In the *Federal Republic of Germany*: permitted resale price maintenance agreements for branded goods and printing and publishing products and the ceiling percentage for mark-up on medicaments and for architects' fees.

In *France*: stability contracts, programme contracts, the prohibition of discriminatory practices, price ranges and estimated prices, price freedom under control and maximum prices for the direct control of the price level.

In *Italy*: permitted resale price maintenance agreements, maximum prices for the direct control of the price level and fixed prices for medicaments.

In *Luxembourg*: the general control of rebates, the normal price rule for Luxembourg products and compulsory reporting accompanied by the right of veto.

In the *Netherlands*: permitted resale price maintenance agreements, the system of quasi-voluntary price reporting and the fixed price rule for the construction of workers' housing.

The aim of our study is now achieved. It has been to set out as fully as possible the price controls applicable in each Member State of the European Community, to infer their possible effects and to assess the consistency of these controls with the economic system. Our assessment depended on the conception of the economic system prevailing in each country. It has been demonstrated that certain controls can be said to be inconsistent with the system in the light of the conceptions of the economic system both of the country itself and of the EEC, corresponding to the different stages of integration. Other controls are certainly consistent with the national conceptions of the economic system, but cease to be so on the introduction, by integration, of a common economic system. A third group of controls is not inconsistent either with the national or the common system for the assignment of regulation functions. We were naturally tempted to convert our conclusions into concrete economic policy recommendations, but this conversion did not seem to us to be sufficiently unchallengeable in every case, and we have therefore renounced it completely. If, for some of the controls, the results we have reached make it perfectly possible to infer recommendations, in other cases the weight to be attached to our results depends on the practical validity of the assumptions made as to the conditions of application, assumptions which we have been constrained to introduce for lack of adequate information. But the results of the present work could be used as a basis for particular research capable, owing to its more limited objectives, of paying closer attention to the real facts than we have been able to do. We shall conclude with some general indications of the work which still remains to be done if it is desired to draw practical conclusions for the common economic policy. These conclusions might be as follows:

(a) the repeal of controls;

(b) the uniformisation (harmonisation) of controls;

(c) the retention of controls in their present form.

In principle, the repeal of controls should be contemplated where they do not correspond to the common conception of the economic system. Even consistent controls, however, cannot be maintained in their present form if their disparities of detail are in danger of creating major obstacles to the exchange of factors and products among Member States; in this event harmonisation is essential. Before any decision as to the policy to be adopted in this field, it is necessary to ascertain whether the partly hypothetical conditions of application assumed in the present study correspond to the facts.

It should, in the first place, be verified empirically whether the way in which the controls are applied, which may have been taken as an assumption, corresponds to the true facts, or whether an application of this kind is possible under the legal interpretation of the controls. If so, there is no obstacle to the decision to repeal inconsistent controls if they are general controls whose validity is not limited to specific products. [27] Consistent controls of this kind should again be compared and examined to see whether their disparities of detail raise any obstacle to the movement of products and factors between Member States. Whenever this seems possible, there must be harmonisation. If such obstacles are highly improbable, there is no objection to retaining these controls in their existing form.

For controls of limited application to certain markets, further research is necessary. If we have classified these controls as inconsistent, it must be considered in the first place whether there are valid arguments against the suppression of State intervention.

These arguments might be the following:

(a) the market mechanisms are not capable of functioning in the fields subject to price control because certain fundamental conditions are not satisfied; [28]

(b) the market mechanisms so far as their fundamental conditions are concerned, are certainly capable of discharging the regulation functions assigned to them by the conception of the economic system, but the results may nevertheless:

- either be unsatisfactory for economic reasons; functioning too slow, or collapse of costs or private and social incomes,
- or may not be deemed desirable in the light of priority extra-economic objectives.

[27] E.g. the general prohibition of discriminatory prices, the normal price rule, and general compulsory price authorisation, among others.

[28] Cf. pp. 18 and foll. above.

But the absence of fundamental conditions or the presence of economically unsatisfactory results is not enough in itself to compel the introduction of the corresponding control. It is only when appropriate economic policy measures cannot satisfy the conditions in question, or cannot sufficiently speed up the functioning, that the retention of an inconsistent control may be justified.

On the other hand, in the case of exceptional sectors which must systematically be regulated by economic policy in the light of priority extra-economic objectives, the repeal of a control because it distorts the regulation functions of the market mechanisms cannot be recommended. In every case where the introduction of a price control is justified, it must be verified in practice whether its harmonisation or the co-ordination of its application is not essential.

All inconsistent controls which show an adverse result on the completion of these verifications, should be the subject of a proposal for their repeal. In the case of controls classified as consistent, it must be ascertained whether disparities of detail are calculated to distort economic relations among Member States. If so, the controls must be harmonised with each other.

A word must be said in conclusion on the urgency of the efforts needed to repeal or harmonise price controls. The degree of urgency of the necessary measures depends both on the controls themselves and on the stage reached in the process of integration. If the controls considered in the present document are not at present applied, or if infringements are not penalised, their repeal or harmonisation is not absolutely essential today, since the effects inferred are at present of no importance. The controls in question should not, however, be entirely disregarded, since they may at any time emerge from their slumber and exercise the corresponding effects. From the point of view of the integration process, attention should primarily be concentrated on the controls which have been assessed as inconsistent with the economic system as conceived by the Common Market. The achievement of the Customs Union, scheduled for 1 July 1968, and the progress in eliminating barriers to the movement of factors point to a reinforcement of the tendency to harmonise product prices and factor prices in the integrated territory, which the controls in question might distort to the prejudice of growth and well-being. Since the adverse effects in many cases hit the price-controlled country first, it is in the interests of each partner to sustain the efforts of the Commission.

It may be recalled, in general, that national price controls represent only one measure of intervention among many others which are calculated to prejudice the favourable effects on growth and well-being to be expected from integration. Thus, the measures advocated here, by way of allusion, can make only a small contribution to the economically sound achievement of the Economic Community and the Customs Union.

ANNEX

PRICE CONTROLS IN EEC MEMBER STATES

SOURCES

1. Champaud, C. *op. cit.* Part III, p. 7 and foll.
2. Van Meerhaeghe, M.A.G.: *The Belgian Price Commissions*, in W.A. Vol. 99 1967 II, pp. 257 and foll.
3. *id.*: Prior Notification of Price Increases as an Instrument of Price Stabilisation Policy; in Kyklos, Vol. XXII, 1968, pp. 26 and foll.
4. Ministère des Affaires Économiques, Administration du Commerce, Service des Prix, Brussels, letter of 19 June 1967.
5. Chambre de Commerce, Brussels: *Réglementation des prix*, 1962, partly translated into German by the EEC Commission, 2827/IV/67-D.

A. *ENACTMENTS GOVERNING PRICE FORMATION*

I. Enactments on price fixing

1. Resale price maintenance in general permitted, simple supervision of abuse under general provisions
2. —
3. —
4. —

II. General price fixing controls

1. Costing rules for pharmaceutical specialties (MB, 1 June 1967).
2. Normal price rule pursuant to Act of 22 January 1945 on offences against the legislation on national supplies.
3. —

III. Publicity and supervision

1. Compulsory publication of prices for retail trade and for services of an industrial or commercial character (Ministerial Order of 30 April 1948).
2. General compulsory price reporting, accompanied by right of veto (M.B. 2 September 1966).

B – Direct price controls

Serial Number	Product	Stage		Remarks
		Production	Distribution	
	I. *Price controls*			
	(1) *Unit prices*			
1.	Bricks	x	x	For some sizes also frozen at the level reached at 1 June 1965 + + 21.2 %
2.	Milk	x	x	
3.	Film rentals	x	-----	
4.	L. T. electricity	x	-----	
	(2) *Price freeze*			
5.	Gas (mains supply)	x	-----	
6.	Wheat flour	x	x	
7.	Rice		x	
8.	Roast chicory		x	
9.	Baking powder		x	
10.	Cornflour		x	
11.	Maizeflour		x	
12.	Vanilla sugar		x	
13.	Biscuits		x	
14.	Tyres and inner tubes		x	Compulsory authorisation
	(3) *Control of mark-up*			
15.	Home-produced and imported butter		x	Maximum % in absolute value
16.	Electrical household appliances other than heating & lighting etc.		x	Maximum % in relative value
17.	Pork and beef		x	Maximum % in absolute value
	II. *Fixed Prices*			
1.	Passenger transport, by:			
	a) Tram or trolleybus	x		
	b) Omnibus	x		
	c) Taxi	x	-----	
	d) Light railways	x		
	e) Railway	x		
2.	Goods transport, by:			
	a) Light railway	x		
	b) Railway	x	-----	
3.	Inland water transport	x	-----	
4.	Towage charges	x	-----	
5.	Hospital charges	x	-----	

SOURCES

1. Champaud, C. op. cit. *Part III*, p. 1 and foll.
2. Ebisch, H. Preisrecht, Supplement VIII E — Wirtschaftsverwaltungsrecht — Section I-V of the Series.
   M.v. Brauchitsch, Verwaltungsgesetze des Bundes und der Lände (new edition by ULE, Ch.) Cologne, 1966.
3. Holzapfel, W.: Ubersicht über die geltended Preisvorschriften; in: Der Betriebs-Berater, 19th year 1964, pp. 1391 and foll.
4. Bundesminister für Wirtschaft, I B 1 - 24 OO 79 letters of 23 May 1966 and 19 April 1967.

A. *ENACTMENTS GOVERNING PRICE FORMATION*

I. Enactments on price fixing

1. Resale price maintenance generally forbidden pursuant to Art. 15 of the Act on Restraint of Competition; under Art. 16, they are, however permitted for branded goods and printing and publication products, subject to supervision of abuse.
2. —
3. —
4. Limited prohibition of price discrimination pursuant to Art. 26 (2) of the Act on Restraint of Competition.
5. Limitation of discount for cash at the retail stage under the Rebates Act of 25 November 1933.

II. General price controls

1. Costing rules for public contracts under the following enactments:
   - Decree of 21 November 1953 on the price of public contracts (VPöA)
   - Directives for determining prices based on costs (Annex to VPöA above, dated 21 November 1953)
   - Decree of 9 December 1955 on the price of public contracts (construction)
   - Directives of 25 May 1940 for the determination of the price of public contracts (construction) on the basis of costs (LSBö) and amendments of 12 February 1942.
2. —
3. General prohibition of overcharging under Art. 2 (a) of the Economic Offences Act of 9 July 1954.

III. Rules of publicity and supervision

1. Compulsory ticketing of retail prices under the Decrees on compulsory price marking of 16 November 1940 and 6 April 1944.
2. Compulsory price authorisation for:
   (a) agricultural and forest land (Art. 9 of the Act of 28 July 1961 on transactions in land).
   (b) hospital charges (Price Decree 7/54 of 31 August 1954).
   (c) premiums for compulsory third party liability motor insurance (Arts. 8 to 11, Compulsory Insurance Act of 5 March 1965).
   (d) Passenger transport fares (Art. 39 of Passenger Transport Act of 21 April 1961).
   (e) Inland water transport charges (Art. 21 and foll. of the Act of 1 October 1953 on industrial or commercial inland water transport.

B – List of products subject to direct price controls in the Federal republic of Germany

Serial Number	Product	Stage		Remarks
		Production	Distribution	
	I. *Maximum Prices*			
1.	Fertilizers made from	x	x	
	a) lime			
	b) potassium			
	c) nitrogen			
	d) calcium cyanamide			
	e) basic slag			
2.	Electricity	x	-----	*Exception:* basic price for industrial, commercial and agricultural users, and contractual price variation clauses linked to wages and coal prices
3.	Motor insurance agents' commissions	x	-----	Since 1 January 1968, these scales may be blocked under the Compulsory Insurance Act of 5 April 1945
4.	Furniture removals (short distance)	x	-----	
5.	Residential rents	x	-----	The consequences of rent restriction have been repealed. Since the liberalisation of rents only State-aided housing ("social housing") is subject to control during the period of the State loan
6.	Medicaments in pharmacies	x	x (1)	See scales of German physicians in 1936, in the text of 19 April 1952 (1) Mark-up in relative value, progressive by price brackets
7.	Professional fees			
	a) doctors and dentists	x	-----	medical fees (Preugo), 1924
	b) advocates and notaries	x	-----	
	c) business and tax consultants	x	-----	
	d) engineers	x	-----	
	e) architects	x	-----	Rates proportional to building costs

Serial Number	Product	Stage		Remarks
		Production	Distribution	
	II. *Minimum prices*			
1.	Sugar beet	x	x.	Fixed annually
2.	Stevedoring	x	-----	
3.	Minimum wage for homeworkers under Act of 14 March 1951 (BGB1 1951 I, p. 191)	x	-----	
4.	Statutory fixing of working conditions and *wages* for casual dock labourers	x	-----	
	III. *Fixed prices and price brackets*			
	1. *Fixed prices*			
1.	Colza and rape	x	-----	
2.	Milk	x	x	
3.	Sugar	x	x	Full control
4.	Long distance goods transport by road	x	-----	
5.	Customs clearance of long distance goods transport by road	x	-----	
6.	Furniture removals (long distance)	x	-----	
7.	Road transport operated by the railways	x	-----	
8.	Road passenger transport	x		
	2. *Price brackets*			
9.	Short distance road goods transport	x	-----	
10.	Grouped goods transport through forwarding agents	x	-----	

Abbreviations used in the following list

as	maximum mark-up in absolute value
B	price frozen
cp	programme contract
cdp	price range
ES	stability contract
LC	freedom under control
LS	freedom under supervision
rS	maximum mark-up in percentage
T	controlled price
tdm	rate of mark-up (on cost price)
-------	no special distribution stage

A – Enactments governing price formation

I – Enactments on price fixing:

1. Resale price maintenance is prohibited.

2. **Table of products or groups of products covered by stability contracts** (as at 27 June 1966).

Serial Number	Product	Stage		Remarks
		Production	Distribution	
1.	Talcum	x		
2.	Cast iron sanitary ware, central heating boilers and radiators	x		
3.	Malleable cast iron joints	x	-----	
4.	Motor and hand pumps	x		
5.	Industrial and commercial refrigerating plant	x		
6.	Machine tools	x		
7.	Electrical and pneumatic hand tools	x		
8.	Woodworking machinery	x		
9.	Agricultural tractors and motor-cultivators	x		Free import
10.	Agricultural winches	x		
11.	Land preparation and drainage equipment, sowers, sprays	x		
12.	Harvesting and haymaking equipment	x		For reapers and binders B 51
13.	Threshing and pressing equipment	x	(1)	
14.	Other equipment for sorting and packing after harvest	x		
15.	Dairy and cheese-making equipment	x		
16.	Miscellaneous agricultural implements	x		
17.	Sewing machines	x		
18.	Agricultural, domestic and industrial handtools	x		
19.	Ironmongery	x		
20.	Galvanised and tinned articles	x	rs[24]	
21.	Cutlery	x		
22.	Safes	x		
23.	Industrial and commercial metal furniture	x		
24.	Metal beds and mattresses	x	rs[39]	
25.	Hospital furniture	x		
26.	Metal kitchen furniture	x	rs[40]	
27.	Metal garden furniture, miscellaneous metal seats, metal indoor and outdoor furniture, mechanical steps and ladders	x		
28.	Spare parts and accessories for motor cars	x	B[82]	

Serial Number	Product	Stage		Remarks
		Production	Distribution	
29.	Spare parts and accessories for cycles and motorcycles	x		
30.	Radio and television receivers, record players and tape recorders	x	tdm[41]	
31.	Incandescent electric lamps	x	(1)	(1) For 25 and 40 W lamps see T[15]
32.	Clocks and clockwork	x		
33.	Watches and chronometers	x	B[102]	
34.	Compasses and drawing instruments	x		
35.	Surgical, medical and veterinary instruments	x		
36.	Handmade and semi-automatic glassware	x		
37.	Sanitary ceramics	x		
38.	Stoneware	x		
39.	Pottery or stone facing tiles	x		
40.	Clay and enamel powders	x		
41.	Asbestos cement products	x		
42.	Concrete products	x		
43.	Sulphuric acid	x	rs[27]	
44.	Hydrochloric acid	x		
45.	Carbon disulphide	x		
46.	Caustic soda	x		
47.	Metal salts and oxides	x		
48.	Nitrate	x		
49.	Methanol	x		
50.	Synthetic rubber and elastomers	x		
51.	Sulphamides, vitamins, hormones	x		
52.	Iodine and salts of iodine	x		
53.	Detergents	x		
54.	Grinding wheels and compound abrasives	x		
55.	Wood board and fibres	x		
56.	Man-made continuous fibres and yarn	x	-----	
57.	Preserved vegetables	x	rs[16]	
58.	Preserved fish	x	rs[18]	

3. **List of main programme contracts.**

Date of signature	Group of products
2-5-1966	Electrical household appliances
7-7-1966	Motor cars
31-8-1966	Maize flour and the like
31-8-1966	Confectionery
16-9-1966	Miscellaneous electrical appliances
30-9-1966	Aluminium and products thereof
30-9-1966	Sporting guns and the like
10-11-1966	Foundry products
10-11-1966	Binders
30-12-1966	Incandescent lamps and valves
30-12-1966	Paper and paperboard
30-12-1966	Blown and semi-automatic glassware
7-2-1967	Chemical products
14-2-1967	Office machinery
Nov. 1967 a)	Electronics: television and radio receivers, electronic spare parts

Source: „ Aufhebung der Preisblockade in Frankreich "; in: *Zeitschrift der Deutsch-Französichen Wirtschaft*, 3.1967, p. 14 (published by the official Franco-German Chamber of Commerce, Paris).
(a) cf. *Handelsblatt*, No. 232 of 1-2 December 1967, p. 6.

4. General prohibition of price discrimination
— Decree on competition of 24 June 1958 (Price Ordinance No. 45 - 1483, Art. 37 No. 1 a)

II – General price controls:

1. Costing rules:

a) Prohibition of sale below cost: Art. 1 of Finance Act 2 July 1963, (No. 63-628)

b) **List of products and groups of products subject to system of estimated prices**

Serial Number	Product	Stage		Remarks
		Production	Distribution	
1.	Heavy forgings and drop forgings	x	-----	
2.	Moulded steel foundry and malleable castings	x	-----	Exception: malleable cast joints = ES
3.	Copper and copper alloy foundry	x	-----	
4.	Pressure foundry and non-ferrous foundry other than copper	x	-----	
5.	Foundry models	x	-----	
6.	Brassfoundry, sheet metal working and welding	x (1)	-----	(1) or: B
7.	Steam engines, steam turbines, steam and gas turbines	x	-----	
8.	Refrigeration plant	x	-----	
9.	Lifting and handling equipment	x (1) (2)	-----	(2) except: mass produced
10.	Machinery for the processing of ores and materials	x (1)	-----	
11.	Machinery for the ceramics and glass industries	x (1)	-----	
12.	Foundry equipment	x (1)	-----	
13.	Railway equipment	x	-----	
14.	Structural steelwork, sale or rental	x	-----	
15.	Stamping, forging and diecasting presses	x (1)	-----	
16.	Shipbuilding	x	-----	
17.	Coachwork, tractors and tip-lorries	x (1)	-----	
18.	Aircraft construction	x	-----	
19.	Heavy electrical engineering	x	-----	
20.	Unlisted electrical industrial and commercial appliances	x	-----	
21.	Unlisted medium and light electrical machines (rotors, transformers, converters)	x	-----	
22.	Railway signalling equipment, light electrical road or rail traction equipment	x (1)	-----	
23.	Manufacture and installations of electrical lifts and hoists	x	-----	
24.	Unlisted radio and electronic appliances and spare parts for the trade	x	-----	
25.	Listed equipment for telegraph and telephone installations and the like	x (1)	-----	
26.	Unlisted measuring apparatus and electrical and electronic installations	x	-----	

c) **List of products and groups of products the prices of which are generally limited by a price range**
(List as at 27 June 1966)

Serial Number	Product	Stage		Remarks
		Production	Distribution	
1.	Fuel (ordinary and high octane petrol, gas-oil, paraffin oil)	LC[2]	x (1)	(1) Also: absolute value of mark-up; price reporting
2.	*Imported* crude sulphur	x	B[137]	
3.	*Imported* pyrites	x		
4.	Unadvertised pharmaceutical specialties	x	rs[44]	
5.	Linseed oil for industrial use	x	rs[11]	
6.	French and *imported* furniture and beds in any material	x	T	
7.	Specially prepared wheat flour	x	T	
8.	Methylated spirits	x	T	
9.	Construction work and the like	x	-----	

III – Rules of publicity and supervision

1. Retail traders are required to ticket and display prices.

2. Price reporting and compulsory authorisation

a) **List of products and groups of products subject to freedom under supervision** (as at 27 June 1966)

Serial Number	Product	Stage		Remarks
		Production	Distribution	
1.	Special quality lubricants	x	x	
2.	Aviation fuel	LC[8]	x	
3.	Aluminium and aluminium oxide	B[16]	x	
4.	Zinc and lead	B[22]	x	
5.	*Imports of:* crude aluminium and crude unalloyed tin	x	-----	
6.	Plate glass	B[121]	x	
7.	*Imported* iodine		x	
8.	Advertised pharmaceutical specialties	B[166]	x	
9.	Bread	x	x	

b) **List of products and groups of products subject to freedom under control** (as at 27 June 1966)

Serial Number	Product	Stage		Remarks
		Production	Distribution	
1.	Refinery repurchase price for petroleum products	x	-----	
2.	*Fuels*: ordinary and high octane petrol, gasoil, paraffin oil	x	T[4]	
3.	Fuel-oil	x	x	
4.	Petroleum pitch and tar	x	x	
5.	Paraffins	x	x	
6.	Liquefied petroleum gases (butane, propane)	x	x	
7.	Ordinary lubricants	x	x	
8.	Aviation fuel	x	LS[3]	
9.	Special fuels for two-stroke engines	x	T[4]	
10.	Home produced and *imported* coal, anthracite and coking briquettes	T[5] (¹)	x	(¹) ECSC provisions
11.	Home produced gas coke	B[2]		
12.	*Imports* of copper, ferro-nickel, nickel matte	x	-----	
13.	Ceramic electrical insulators in electro-technical porcelain	B[94]	x	
14.	Ocular prosthesis for persons insured under Social Security	B[120]	x	
15.	*Imported* Chile nitrates	x	T[20]	
16.	Schoolbooks and technical textbooks, first and subsequent editions	B[214]	x	
17.	Textile articles listed in the inter-Ministerial scale for certain health services	B[224]	x (²)	(²) or B[224]
18.	Pasteurised milk in certain Départements		x	
19.	Sterilised milk	x	B[227]	
20.	Assembly work under estimate or by direct labour at enterprise wages	x	-----	
21.	Hiring and maintenance of listed mechanical and electrical engineering products subject to price scales	x	-----	
22.	Cold storage, deep freezing and allied operations	x	-----	
23.	Tourist hotels (1 to 3 stars)	x	-----	
24.	Meals in dining cars	x	-----	
25.	Hire of radium for medical purposes	x	-----	
26.	Hydropathic establishments	x	-----	
27.	Spa establishments	x	-----	
28.	Professional football matches	x	-----	
29.	Entrance fees and rent of stands at fairs and exhibitions	x	-----	
30.	Charges of hairdressers (other than luxury establishments) and men's barbers	x	-----	
31.	Industrial railways	x	-----	
32.	State-approved Customs warehouses and general warehouses	x	-----	
33.	Services rendered (new and varied)	x	-----	

I – Fixed total price

(List as at 27 June 1966)

B – List of products and groups of products subject to maximum price control

a) products controlled

Serial Number	Product	Stage: Production	Stage: Distribution	Remarks
1.	Electricity	x	-----	
2.	Mains gas	x	-----	
3.	Water	x	-----	Competence of Prefects
4.	Special fuel for two-stroke engines	LC[9]	x	
5.	*Imports* of coal, lignite and blast furnace briquettes from non-ECSC countries	x	LC[10]	
6.	Unalloyed crude nickel	x	-----	
7.	Sporting ammunition	x	(1)	(1) Compulsory price publication
8.	Delivery of vehicles and motors to the authorities	x	(1)	Fixed minimum rebates
9.	Optical medical attention included in the inter-Ministerial list of health services		x	
10.	Copper sulphate	B[135]	x	
11.	Processed sulphur for agricultural use	B[139]	x	
12.	*Imported* Chile nitrates	LC[15]	x	
13.	Nitrogenous fertilizers	x (2)	x	(2) or B[147]
14.	Phosphatic fertilizers, slag	— x	x	
15.	Simple superphosphate	B[149]	x	
16.	Other phosphatic fertilizers	B[150]	x	
17.	Potassic fertilizers, calcium chloride	B[151]	x	
18.	Compound fertilizers made in Metropolitan France	x	x	
19.	*Imported* fertilizers	x		
20.	Pharmaceutical products	x (3)	x	(3) or B[165]
21.	Remedies dispensed non-industrially by pharmacists	x	x	
22.	Oilseeds	x (4)		(4) market organisation
23.	Groundnuts	x (5)		(5) direct sale to the consumer
24.	Colza, rape, sunflower oil, cardamum	x (5)		

Serial Number	Product	Stage		Remarks
		Production	Distribution	
25.	Leather goods included in the inter-Ministerial list of health services, especially orthopaedic footwear	x	-----	
26.	French or imported furniture of all materials	cdp	x (4)	(5) exceptions under Art. 2A of ME 24931
27.	Deliveries of cellulose to the Press free of VAT	x	-----	
28.	Newsprint, Afnor 1/1	x		
29.	Daily newspapers	x	tdm51	
	Agricultural products			
30.	Turnips	x	-----	
31.	Fresh and dry chicory roots	x	-----	
32.	Rice	x	x	
33.	Bananas, oranges, apples, pears		x	
34.	Milk other than high grade pasteurised milk	Target price	x	Competence of Prefects
35.	Table poultry		x	
36.	Unfilleted beef	Interven-tion price	x	
37.	Spare-ribs, neck and breast of mutton		x	
38.	Fresh pork and ordinary cooked ham		x	In Corsica: competence of Prefect
39.	Rindless and fatless cooked ham; cooked shoulder		x	
40.	Dry sausages		x	
41.	Skate		x	Competence of Prefects
42.	Mackerel and whiting		x	
43.	Salt cod fillets		x	
44.	Semolina	x		
45.	Specially prepared wheat flour	cdp	x	
46.	Methylated spirits	cdp	x	
47.	Sugar	x	x	

Serial Number	Product	Stage		Remarks
		Production	Distribution	
48.	Baking yeast	x	B[234]	
49.	Mineral waters and table waters	B[241]	x (6)	(6) retail trade only: for wholesale trade; B[241]
50.	Cooking and eating chocolate	B[247]	x	
51.	Wine vinegar	B[250]	x	
52.	Roast coffee	B[252]	x	
53.	Laundering (sheets and working clothes by weight)	x	-----	Competence of Prefects
54.	Dyeing and cleaning of men's and boys' coats, waistcoats and trousers (other than formal dress)	x	-----	Competence of Prefects
55.	Non-approved tourist hotels and furnished accommodation, with certain exceptions	x	-----	
56.	Seasonal furnished lettings	x	-----	Competence of Prefects
57.	Property management	x	-----	Competence of Prefects
58.	Medical analysis	x	-----	
59.	Private nursing homes, not under contract with social Security	x	-----	
60.	Hospitals, public assistance	x	-----	
61.	Camp sites	x	-----	Competence of Prefects
62.	Renting bungalows and other group holiday and leisure services	x x	----- -----	Competence of Prefects
63.	Holiday centres	x	-----	Competence of Prefects
64.	Men's hairdressing	x	-----	
65.	Tug and towage charges and inland water freight	x	-----	
66.	Handling charges in seaports and river ports; loading and unloading in seaports	x	-----	Competence of Prefects
67.	Public port facilities	x	-----	
68.	Taxis and ambulances	x	-----	Competence of Prefects
69.	Fees of Customs agents	x	-----	

b) Selling price frozen for each enterprise

Serial Number	Product	Stage: Production	Stage: Distribution	Remarks
1.	Steam	x	-----	
2.	Gas coke	x	LC[11]	
3.	Alumina bauxite	x	-----	
4.	Other bauxite	x	-----	
5.	Non-ferrous base metal ores	x	-----	
6.	Ferro-alloy ores	x	-----	
7.	Precious metal ores	x	-----	
8.	Miscellaneous metal ores	x	-----	
9.	Asphalt blocks and products	x	-----	
10.	Barium and strontium ores	x	-----	
11.	Fluor-spar	x	-----	
12.	Fossil silicon	x		
13.	Felspar and quartz	x		
14.	Asbestos	x		
15.	Iron oxide and the like	x		
16.	Aluminium and alumina	x	LS[3]	
17.	Magnesium	x	-----	
18.	Electric furnace or thermit welded ferro-alloys	x	-----	
19.	Silicon, chrome, manganese, cobalt	x	-----	
20.	Remelted copper	x	-----	
21.	Electrolytic copper	x	-----	
22.	Zinc and lead	x	LS[4]	
23.	Cadmium, antimony, bismuth	x	-----	
24.	Gold, silver, platinum, platinous metals	x	-----	
25.	Remelted metal	x	-----	
26.	Graphite and amorphous carbon electrodes, Söderberg paste	x		
27.	Home produced non-ferrous metal semi-manufactures	x	x (1)	(1) nickel semi-manufactures
28.	Steel wire drawing, drawing and cold rolling	x	rs[23]	
29.	Steel tubes	x	tdm[38]	
30.	Custom foundry	x		Except: ES; sanitary castings, central heating boilers and radiators CP: domestic cooking and heating appliances

Serial Number	Product	Stage		Remarks
		Production	Distribution	
31.	Pressure foundry: non-ferrous metal foundry other than copper	x		
32.	Hydraulic ironfoundry	x		
33.	Listed coppersmith sheet metal and welding products	x		
34.	Brassfoundry, joints and fittings, greasing appliances	x		
35.	Listed equipment for combustion, air-conditioning and heating plants	x		
36.	Engines	x		
37.	Air and gas compressors	x	rs[10]	
38.	Fire-fighting equipment	x		
39.	Lifting and handling equipment	x		or estimate 9
40.	Apparatus for the mechanical preparation of ores and material	x		or estimate 10
41.	Equipment for the ceramics and glassware industries	x		or estimate 11
42.	Special equipment for metallurgical factories	x		
43.	Foundry equipment	x		or estimate 12
44.	Special equipment for mines and for oil prospecting, drilling and operation	x		
45.	Permanent railway installations	x		
46.	Machine tools	x		
47.	Welding machinery and equipment	x		
48.	Welding products	x		
49.	Machine accessories	x		
50.	Testing machines, cabling machines	x		
51.	Reapers and binders	ES[13]	x	
52.	Milking machines and skimmers	ES[15]	x	
53.	Tractors and farm vehicles	x		
54.	Other agricultural transport	x		
55.	Machinery for food and chemical industries, flour milling, packing and baling machines, moulds and surfacing equipment	x		
56.	Footwear machinery	x		
57.	Listed textile machinery	x		
58.	Listed paper, paperboard and printing machinery	x		
59.	Sporting weapons, shotguns and defensive weapons	x		
60.	Cutting, drawing and embossing of metal foil, metal cutting, flans	x (1)		(1) Listed products only

Serial Number	Product	Stage		Remarks
		Production	Distribution	
61.	Screw cutting, turning, nuts and bolts, threaded screws	x (1)		(1) Listed products only
62.	Forge stamping and diecutting	x	-----	or estimate 15
63.	Fittings for electric lines	x		
64.	Forged nuts and bolts	x	x (2)	(2) For sleeper-screws only
65.	Horseshoe nails, crampons	x		
66.	Springs	x		
67.	Mechanical chains	x		
68.	Tinsmith's work, sheet metal	x		
69.	Household and kitchen articles in steel, wrought iron, nickel, tin and wire	x x		
70.	Enamelware	x		
71.	Household articles in aluminium	x		
72.	Razorblades	x	x	
73.	Metal barrels and drums	x	x	
74.	Metal boxes and packaging	x	x	
75.	Metal stoppers and containers	x		
76.	Milk churns and dairy equipment in tinplate	x		
77.	Metal tubes	x		
78.	Metal smallware	x		
79.	Powder metallurgy products, magnets	x		
80.	Motor vehicles and engines therefore	x		For sale to the authorities T[8]
81.	Coachwork, tractors and tip-lorries	x		or estimate 17
82.	Spare parts and accessories for motor vehicles	ES[28]	x	
83.	Motor cycles and cycles	x		
84.	Listed apparatus for electricity distribution and industrial applications	x		
85.	Listed small and medium power electrical machinery (rotors, transformers, converters)	x		
86.	Railway signalling equipment, light electrical road or rail traction equipment	x	-----	or estimate 22
87.	Listed electrical insulated wire and cables	x	rs[25]	
88.	Radio and electronic appliances and their listed spare parts	x		Subject to special
89.	Electrical installation fixtures and fittings	x		
90.	Electric lighting equipment	x		
91.	Listed telegraph and telephone installation equipment and the like	x		or estimate 25

Serial Number	Product	Stage		Remarks
		Production	Distribution	
92.	Insulating tubes	x		
93.	Fixed condensers	x		
94.	Ceramic electrical insulators	x	(2)	(2) Insulators in electrotechnica porcelain v. LC[13]
95.	Listed electric and electronic measuring appliances and devices	x		
96.	Electric meters	x	-----	
97.	Medical electrical and radiological apparatus	x		
98.	Miscellaneous electrical equipment	x		
99.	Accumulators	x		
100.	Electric batteries	x	x	
101.	Electric lamp sockets and accessories	x	x	
102.	Clockwork except: large clockwork watches chronometers	 ES[32] ES[33]	 x	
103.	Metal pressure gauges and thermometers, pyrometers	x		
104.	Water and gas meters	x		
105.	Taximeters	x		
106.	Automatic regulators or controls for industrial plant	x		
107.	Fuel distributors	x		
108.	Weighing machines	x		
109.	Non-optical precision instruments	x		
110.	Optical precision instruments	x		
111.	Optical glass	x		
112.	Spectacle frames	x		
113.	Laboratory equipment	x		
114.	Photographic and cinematographic equipment	x		
115.	Bearings, precision controls	x	(1)	(1) Bearings cf. rS[26]
116.	Office machinery	x		
117.	Orthopaedic and prosthetic appliances	x	-----	
118.	Surgical equipment and furniture sterilisation equipment	x		
119.	Dentists equipment	x		
120.	Ocular prosthesis	x	(2)	(2) For prosthesis for insured persons under Social Security cf. LC[14]
121.	Plate glass	x	— LS[6]	

Serial Number	Product	Stage		Remarks
		Production	Distribution	
122.	Working plate glass	x		
123.	Mechanical and technical glass hollow-ware	x		
124.	Pharmaceutical flasks and ampoules	x		
125.	Blown glass	x		
126.	Fibreglass	x		
127.	Small mirrorware	x		
128.	Medical optical treatment other than that listed in the inter-Ministerial scale	x		
129.	Bricks, roughcast, builders' pottery	x		
130.	Tiles	x		
131.	Refractory products, with exceptions	x		
132.	Porcelain articles	x		
133.	Water binders (cement)	x		
134.	Fat lime	x		
135.	Copper sulphate	x	— T[10]	
136.	Crude sulphur, produced in Metropolitan France from natural gas or residual petroleum gases	x	x	
137.	Imported crude sulphur	cdp[2]	x	
138.	Processed sulphur for industrial use	x		
139.	Processed sulphur for agricultural use	x	— T[11]	
140.	Sodium products	x (3)		(3) For caustic soda ES[46]
141.	Compressed gases	x		
142.	Calcium chloride and calcium carbide	x		
143.	Hydrogen peroxide and salts thereof	x		
144.	Boric acid and salts thereof, other boracic compounds	x		
145.	Ammonia	x		
146.	Nitric acid	x		
147.	Nitrogenous fertilizers	x (1)		(1) or T[13]
148.	Nitrogenous products for industrial use	x		
149.	Simple superphosphates	x	— T[15]	
150.	Other phosphatic fertilizers	x	— T[16]	
151.	Potassic fertilizers (potassium chloride)	x	— T[17]	
152.	Industrial potassium salts, except nitrate ES[48]	x		
153.	Home produced pyrites	x		

Serial Number	Product	Stage		Remarks
		Production	Distribution	
154.	Pure and compound mineral colours	x		
155.	Plastics and synthetic resins	x		
156.	Resin distillation products (turpentine, picth, rosins)	x	tdm[43]	
157.	Tanning extracts	x		
158.	Household cleansing products	x	x	
159.	Gelatine and dextrine glues, of any origin	x		
160.	Vegetable oils, processed, cooked, blown and oxidised	x		
161.	Essential oils, floral oils and compounds thereof, with natural or synthetic aromatic products	x		
162.	Tar and its derivatives	x		
163.	Benzene products	x		
164.	Explosives	x		
165.	Medicaments	x (2)	= T[20]	(2) or T[20]
166.	Advertised pharmaceutical specialties	x	— LS[8]	
167.	Abrasives other than grindstones and compound abrasives	x		
168.	Paints and varnishes	x	tdm[45]	
169.	Artist's colours	x		
170.	Special mastics	x		
171.	Printers' ink	x	x (3)	(3) printers' ink for the Press only
172.	Plant health products	x		
173.	Wine-growing products	x		
174.	Photographic and cinematographic products	x		
175.	Luxury perfumery	x		
176.	Certain eau de cologne and lavender waters	x		
177.	Shampoos	x	tdm[46]	
178.	Toothpaste, shaving soaps	x	tdm[47]	
179.	Rubber industry products	x		
180.	Asbestos products	x		
181.	Unmedicated sticking plaster	x	tdm[48]	
182.	Refined edible vegetable oils	x	x (1)	(1) other than olive oil, cornseed oil and health oils
183.	Oils of copra, palmetto, karite, castor oil	x		
184.	Household soap and various cleansing products	x		
185.	Toilet soaps	x		

Serial Number	Product	Stage		Remarks
		Production	Distribution	
186.	Candles, tapers	x		
187.	Margarine	x		
188.	Vegetable fats	x		
189.	Cattlecake	x		
190.	Leather and unworked hides and skins	x	x	
191.	Leather industry products	x (2)		(2) For orthopaedic footwear v. T25
192.	Industrial timber (pit-props, poles, sleepers)	x	-----	
193.	Unworked hardwood	x		
194.	Unworked softwood	x		
195.	Softwood in logs	x	-----	
196.	Sawnwood, all species	x		
197.	Parquet flooring (all species)	x		
198.	Mosaic floors	x		
199.	Reinforced latticework	x		
200.	Fibreboard	x		
201.	Plywood and laths, particle board	x		
202.	Structural timber and builders joinery	x		
203.	Wooden packaging	x		
204.	Cooperage	x		
205.	Furniture, beds	x	tdm49	
206.	Paper pulp other than that delivered to the Press T27	x		
207.	Newsprint Afnor 1/1 other than for the Press	x		
208.	Wallpaper	x	tdm50	
209.	Unworked paper and paperboard other than newsprint 1/1	x		
210.	Waste paper	x	x	
211.	Daily newspapers	x	tdm52	
212.	Paper and paperboard products	x	x	
213.	Exercise books and the like	x	tdm53	
214.	School books and technical textbooks (first and subsequent editions)	x	— LC16	
215.	Stencilled lecture courses	x	-----	
216.	Other book publishing, miscellaneous printing, other than the Press	x		
217.	Jewellery, goldsmiths' and silversmiths' work	x		

Serial Number	Product	Stage		Remarks
		Production	Distribution	
218.	Sporting and juvenile goods, baby carriages	x		
219.	Musical instruments	x		
220.	Brushware	x		
221.	Fancy goods	x	x	
222.	Office requisites	x		
223.	Raw materials, products and services of the textile and clothing industries with certain exceptions	x (1)		(1) Except *imported* materials
224.	Textiles included in the inter-Ministerial scale for certain health benefits	x	x (2)	(2) or LC17
225.	Official contracts for textiles, ready-made clothing, bespoke tailoring and the like services	x (3)	x	Subject to a margin for revision clauses (wages)
	Agricultural products			
226.	Dried vegetables	LC19	x	
227.	Sterilised milk	x (4)	x	
228.	Concentrated milk, powdered milk for children or special purposes	x		(4) Except powdered milk in bulk or large packs
229.	Cream cheese and yoghurts	x		
230.	Semolina	x		
231.	Pasta	x	rS14	
232.	Biscuits, rusks and health foods	x		
233.	Flour	x		
234.	Bakers' yeast	T48	x	
235.	Bock beer	x	x	
236.	Luxury beer	x	-----	
237.	Brewers' malt	x		
238.	Spirits	x		
239.	Fruit and vegetable juice, syrups	x		
240.	Aerated beverages	x		
241.	Mineral waters and table waters	x	x (1)	(1) Only for retail trade, T49; in Corsica, Prefect
242.	Preserved fruit	x	rS15	
243.	Preserved meat	x	rS17	

Serial Number	Product	Stage		Remarks
		Production	Distribution	
244.	Preserved foie gras, game, rabbit and poultry	x		
245.	Jams, jellies, marmalades, fruit mash and pastes	x (2)	rS[19]	(2) Power to pass on the absolute value of any rise in raw materials
246.	Confectionery	x		
247.	Cooking and eating chocolate	x	T[50]	
248.	Other chocolate, including powder and cocoa butter	x		
249.	Condiments	x		
250.	Vinegar of wines and spirits	x	T[51] (3)	(3) for wine vinegar
251.	Liquid coffee extracts	x		
252.	Roast coffee	x (4)	T[52]	(4) at roasting stage
253.	Coffee powder	x	rS[20]	
254.	Roast chicory	x (2)	rS[21]	
255.	Tea	x	rS[22]	
256.	Soups and broths	x		
257.	Animal feeding stuffs	x		
258.	Water ice	x		
259.	Red wines		x	
260.	Public garages	x	-----	
261.	Woodworking	x	-----	
262.	Marking up and handling in the woodworking industries; printing and graphic industries	x	-----	
263.	Bookbinding	x	-----	
264.	Billposting and advertising rates	x	-----	
265.	Press agency rates	x	-----	
266.	Development of films and photographic work	x	-----	
267.	Hire of linen	x	-----	
268.	Meals in hotels and restaurants	x	-----	Prefects also empowered to fix prices
269.	Analysis, research and tests in industrial laboratories	x	-----	
270.	Driving school charges	x	-----	
271.	Self-drive private car hire	x	-----	
272.	Cinemas	x	-----	
273.	Furniture removals and repositories	x	-----	
274.	Forwarding agents' commission	x	-----	

II – Control of mark-up

Serial Number	Product	Stage: Production	Stage: Distribution	Remarks
	1. *Absolute value of mark-up*			
	a) *Unit price fixed by authorities*			
1.	Fuels (motor spirit and high octane, gas-oil, paraffin oil)	LC[2]	x (1)	Also: cdp[1] (1) price reporting
	Agricultural products			
2.	New potatoes and high season potatoes		x	
3.	Home-produced and *imported* butter, except butter in tubes or individual portions	Interven-tion price		
4.	Table poultry, with some exceptions		x	also: rS
5.	Fresh fruit and vegetables		x	
6.	Eggs		x	occasionally only
	b) *Freezing of individual mark-up*			
7.	Leather and unworked hides and skins		x	
8.	Bakers' yeast		x	
	2. *Relative value of mark-up*			
	a) *Percentage mark-up*			
9.	Iron and steel industry products		x	
10.	Water and gas condensers	B[37]	x (2)	(2) corresponding, tax included to the absolute value of the mark-up in force at 15 June 1956 (tax included) for retail trade only
11.	Linseed oil for industrial use	cdp[5]	x (2)	
12.	Exercise books and the like	B[213]	x (3)	(3) wholesale trade only; corresponding to the permitted absolute value of mark-up at 31 July 1957; for retail trade tdm[53]
13.	Cauliflowers, endive, broad-leaf chicory, lettuce, onions, leeks and carrots		x	
14.	Pasta	B[231]	x	
15.	Preserved fruit other than *imports*	B[242]	x (2)	
16.	Preserved vegetables other than *imports*	ES[57]	x (2)	
17.	Preserved meat	B[243]	x (2)	
18.	Preserved fish	ES[58]	x (2)	
19.	Jams, jellies, marmalade, fruit mash and paste	B[245]	x (2)	
20.	Coffee powder	B[253]	x (2)	
21.	Roast chicory	B[254]	x (2)	
22.	Tea	B[255]	x (2)	

Serial Number	Product	Stage		Remarks
		Production	Distribution	
	b) *Freezing individual mark-up*			
23.	Steel wire-drawing, drawing and cold rolling:	B[28]	x (2)	
	— drawn wires			
	— certain products derived from steel wire or turned and pressed drawn steel			
	— cold rolled strip in tempered steel			
24.	Galvanised and tinned products	ES[20]	x (2)	
25.	Listed insulated electrical wire and cables	B[87]	x (2)	
26.	Roller bearings	B[115]	x	
27.	Sulphuric acid	ES[43]	x (2)	
28.	Meatmeal and fishmeal		x	
29.	Razorblades		x	
30.	Safety razors		x	
31.	Electrical batteries		x	
32.	Electric lamp sockets		x	
33.	Equipment, spare parts and accessories for motor cars		x	
34.	Accumulators		x	
35.	Bearings		x	
36.	Watches and chronometers		x	
37.	Cleansing products		x	
	c) *Rate of mark-up*			
38.	Steel tubes, except jointed and riveted tubes, seamless bottles	B[29]	x	
39.	Metal beds and mattresses	ES[24]	x	
40.	Metal kitchen furniture	ES[26]	x	
41.	Radio and television receivers, record players and tape recorders	ES[30]	x (3)	(3) limited rate of mark-up
42.	25 and 40 W electric lamps	ES[31]	x	
43.	Resin distillation products (turpentine, pitch and rosins)	B[156]	x	
44.	Unadvertised pharmaceutical specialties	ddp[4]	x	
45.	Paints and varnishes	B[168]	x	
46.	Shampoos	B[177]	x	
47.	Toothpaste and shaving soaps	B[178]	x	
48.	Unmedicated sticking plaster	B[181]	x	
49.	Articles in wood	B[205]	x	
50.	Wallpaper	B[208]	x (4)	(4) aggregate mark-up
51.	Daily newspapers	T[29]	x	
52.	Periodicals	B[211]	x	
53.	Exercise books and the like	B[213]	x (5)	(5) retail trade only
	C) *Minimum Prices*			
	Statutory minimum wage indexed to cost-of-living index	x	x	Act of 11 February 1950 (*Journal Officiel*, 1950 p. 9,059)

SOURCES

1. Champaud, C. *op. cit.* Part III, pp. 76 and foll.
2. Letters from:
   Presidenza del Consiglio dei Ministri, Comitato Interministeriale dei Prezzi, Il Segretario Generale of 7 June 1967, No. 2511 and 30 June 1967, No. 4764.

A. *ENACTMENTS GOVERNING PRICE FORMATION*

I. Enactments on price fixing

1. —
2. —
3. —
4. —
5. —

II. General price controls

1. —
2. —
3. —

III. Rules of publicity and supervision

1. Compulsory publication of the prices of products subject to direct price controls
2. —

B – Direct Price Controls

Serial Number	Product	Stage		Remarks
		Production	Distribution	
	I. *Maximum price controls*			
1.	Electricity	x	-----	
2.	Gas	x	-----	
3.	Water	x	-----	
4.	Coal from the ECSC and third countries	-----	x	
5.	Petrol, mineral oil and gas-oil	x	-----	
6.	Naphtha	x	x	
7.	Steel tubes	x		
8.	Pyrites	x		
9.	Aluminium	x		
10.	Calcium carbide	x		
11.	Cements	x		
12.	Sodium	x		
13.	White spirit	x		
14.	Chemical fertilizers		x	
15.	Anti-cryptogamic products	x		
16.	Sugar	x	x	Also three price Equalisation Funds
17.	Molasses	x		
18.	Milk		x	Price fixed by the Communes
19.	Hotels and pensions	x	-----	
20.	Radio and television licences	x	-----	
21.	Goods and passenger rail transport	x	-----	
22.	Motorway tolls	x	-----	Only provisions already introduced before 1942
23.	Newspapers	x	x	
24.	Insertions in Provincial Official Gazettes	x	-----	
	II. *Minimum price controls*			
1.	Olive-cakes (*sanse*)	x		
	III. *Fixed price controls*			
1.	Pharmaceutical specialties	x		

PRICE CONTROLS IN LUXEMBOURG

SOURCES

1. Champaud, C. *op. cit.* Part III, pp. 80 and foll.
2. Letter from Ministère de l'Économie Nationale et de l'Énergie, Directeur du Service des Prix, 23 May 1967 (Sch/PR No. 23514).

A. *ENACTMENTS GOVERNING PRICE FORMATION*

I. Enactments on price fixing

1. Prohibition of resale price maintenance under Decree of 9 December 1965.
2. —
3. —
4. Prohibition of price discrimination in two specific cases:
   (a) prohibition of discounts to members of associations and societies.
   (b) prohibition of price discriminations to circumvent the prohibition of resale price maintenance.
5. Rebate control under Decrees of 23 February 1963 and 23 December 1963.

II. General price controls

1. Costing rules for public contracts: decision of 29 December 1956.
2. Normal price rule under Outline Law of 30 June 1961.
3. —

III. Rules of publicity and supervision

1. Compulsory price ticketing at retail stage.
2. Compulsory price reporting, accompanied by right of veto: Ministerial Order of 13 November 1956.

B – List of products or groups of products subject to direct price control in Luxembourg (according to a communication from the Luxembourg Price Department, this list is incomplete)

Serial Number	Product	Stage		Remarks
		Production	Distribution	
	I. *Maximum price controls*			
1.	Livestock on the hoof		x	
2.	Beef and veal			
3.	Breadmaking cereals		x	
4.	Butter			
5.	Milk		x	
6.	Fruit and vegetables			
7.	Sugar			
8.	Fuel			
9.	Pharmaceutical products	x	x	
10.	Renting of cinema films	x	-----	
11.	Cinema entrance	-----	x	
	II. *Minimum price controls*			
1.	Statutory minimum wage (a) indexed on the cost-of-living index	x	x	

(a) Pursuant to the Grand-Ducal Order of 22 April 1963, this wage was fixed on 25 June 1965 at Fr. 28 per hour or F. 5,600 per month, with a reduction of 20 % for workers under 20 and an increase of 20 % for skilled workers. The Order does not apply to domestic service, agriculture, wine-growing or horticulture.

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1. Champaud, C. *op. cit.* Part I, pp. 43 and foll.
2. Hartog, F. Markteconomie in Nederland; beperkingen, opvattingen en vorintzichten, substantially reproduced in: Zijlstra, J.: *Politique économique et problèmes de la concurrence dans la CEE et dans les pays membres de la CEE*, Collection Études, Séries Concurrence, No. 2, Brussels, pp. 25 and foll.
3. Van Meerhaeghe, M.A.G. Prior Notification... *op. cit.* pp. 36 and foll.

A. *ENACTMENTS GOVERNING PRICE FORMATION*

I. Enactments on price fixing

1. Declaration of the invalidity of resale price maintenance for certain durables and for collective agreements, under Decrees of 31 August 1964 and 1 April 1964.
2. —
3. —
4. —
5. —

II. General price controls

1. —
2. —
3. —

III. Rules of publicity and supervision

1. —
2. Spontaneous reporting of price increases and supervision of wage increases.

B – Direct Price Controls

Serial Number	Product	Stage		Remarks
		Production	Distribution	
	I. *Maximum Price Controls*			
1.	Leases of agricultural land	x	-----	
2.	Residential rents	x	-----	
3.	Milk			
4.	Employment agencies	x	-----	Price freeze
5.	Family doctors	x	-----	Price freeze
6.	Rooms, meals, food and drink in hotels and restaurants	x	-----	Price freeze
7.	Gas water heaters and boilers, other than sales to building contractors		x	Mark-up control
	II. *Minimum Price Controls*			

	III. *Fixed Prices*			
1.	Construction of workers' housing	x	-----	
2.	Agricultural products			

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LIST OF ABBREVIATIONS

AER	The American Economic Review
BA	Bundesanzeiger (FR. Germany)
BGBl.	Bundesgesetzblatt (FR. Germany)
BGH	Bundesgerichtshof
BRD	Bundesrepublik Deutschland
EJ	The Economic Journal, London
EEC	European Economic Community
FA	Finanzarchiv
FAZ	Frankfurter Allgemeine zeitung
HdB	Handwörterbuch der Betriebswirtschaft
HdSt	Handwörterbuch der Staatswissenschaften
HdSW	Handwörterbuch der Sozialwissenschaften
HJB	Hamburger Jahrbuch für Wirtschafts- und Gesellschaftspolitik
JfS	Jahrbuch für Sozialwissenschaft
JPE	Journal of Political Economy
NBER	National Bureau of Economic Research
NJW	Neue Juristische Wochenschrift
QJE	The Quarterly Journal of Economics
RGBl.	Reichsgesetzblatt
SchwZfVuSt	Schweizerische Zeitschrift für Volkswirtschaft und Statistik
SdVfS	Schriften des Vereins für Sozialpolitik
VO	Verordnung [ordinance]
WA	Weltwirtschaftliches Archiv
WD	Wirtschaftsdienst
WuW	Wirtschaft und Wettbewerb
ZfB	Zeitschrift für Betriebswirtschaft
ZfN	Zeitschrift für Nationalökonomie

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