

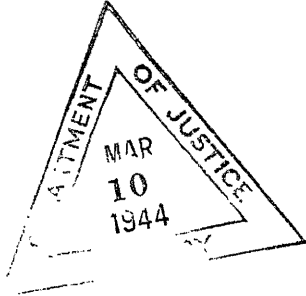
CARTELS: AN APPROACH TO THE PROBLEM

An Address

by

FRANCIS BIDDLE

Attorney General of the United States



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CARTELS: AN APPROACH TO THE PROBLEM

In days of war, we are conscious of tasks to be accomplished if peace and security are to be obtained. We know this is true in the field of our economic relations. In recognition of problems we must solve, our lend-lease agreements contain a standard provision, reading as follows:

"In the final determination of the benefits to be provided to the United States of America by (the foreign government) in return for the aid furnished under the Act of Congress of March 11, 1941, the terms and conditions thereof shall be such as not to burden commerce between the two countries, but to promote mutually advantageous economic relations between them and the betterment of the world-wide economic relations. To that end, they shall include provision for agreed action by the United States of America and (the foreign government), open to participation by all other countries of like mind, directed to the expansion, by appropriate international and domestic measures, of production, employment, and the exchange and consumption of goods, which are the material foundations of the liberty and welfare of all peoples; to the elimination of all forms of discriminatory treatment in international commerce, and to the reduction of tariffs and other trade barriers . . ."

We realize that the separate economic systems of the world will be drawn much more closely together after this war, because industrial progress and new forms of transportation have made the world smaller. The contrast between our own competitive system and the cartelized system of Europe will raise many

(OVER)

problems if we are to expand production, employment and the exchange and consumption of goods--the material foundations of the liberty and welfare of all peoples.

This is a new world. The industrial revolution of the 19th century was marked by the rise of cities as manufacturing centers and the growing importance of colonies as raw material sources. The dominant features of this pre-war world economy were twofold: a great concentration of economic wealth in a few metropolitan centers and a highly developed interdependence between these industrial centers and the outlying "colonial" regions. The keys to this industrial revolution were: coal, iron, cotton, steam and railroads. Natural raw materials, generally of highly localized occurrence or cultivation, were transformed into finished products by mechanical processes using steam power, and had to be collected and in their finished form distributed largely by rail transport. The advantages of large scale manufacture in the vicinity of the "hubs" or "ganglia" of the transportation network tended to bring about a high degree of industrial concentration. And this concentration did not stop with metropolitan growth. It led, with the development and abuses of various legal devices, to the concentration of economic power. An economic pattern of extreme specialization emerged, not only in the huge factories but also among the various localities, in accordance with their distinctive resources, of the industrialized countries, and among countries of widely separate regions. Specialized functions were then tied together through fixed trade routes and intricate market connections.

Today, the trend of the 19th century is being reversed. Centers of manufacture are being dispersed, both within the industrialized countries and among the different regions of the earth. The possession of colonial

dependencies has become of diminishing importance. Oil (which now can be made from coal), light metals, plastics, electricity, and automotive transportation (including and especially aviation) are the keys to this new phase. The difficulties of procuring raw materials and of reaching markets have been signally diminished. Synthetic processes make new use of common raw materials. Seawater, weeds, wood, limestone, clay, coal, and even the air are now used in the manufacture of metals, textiles, soap, airplanes and medicines. Long distance communication via radio is now possible. The transmission of electricity on high tension lines as much as 500 miles is not an uncommon occurrence. Factories no longer need to cluster in the cities where the rail lines converge; the new sources of power and the new means of transport permit them to move out into the countryside. The industrialization of South America, Africa, India and Australia--all the former colonial regions--is well under way.

This new world, therefore, is at once smaller and offers greater opportunities. Distances have been overcome. Markets are larger. New industries have been created. Enterprises at the far ends of the earth will compete for the same customers. Natural quinine, rubber, and Chilean nitrate will have to compete with synthetic atabrine, synthetic rubber, and factory-made nitrate of soda. Flowers grown in Holland may be regularly sold in the streets of New York. The people of the world are becoming neighbors. Now, more than ever, poverty, unemployment or industrial unrest in any part of the world will affect us. And now, really for the first time, we shall be doing business in a world economy.

We have been given no choice in the matter. We must recognize that the radio, air transport, new sources of power and new industrial processes have changed the world. Our political and social institutions must meet these new

(OVER)

demands, however, and if they are to serve us, they must preserve for us those values which we prize. Among the values which we have always prized is the free competitive system. Agitation against economic power in the hands of a few is something very real and genuine in American history. We did more than to inherit a common law tradition against monopolies; we enriched this tradition with the American distaste for power in the hands of any private group beyond the reach of the electorate. The opposition to the first and the second bank of the United States, the Granger Movement, and later the Progressive Movement all had their roots in a deep-seated popular distrust of concentrations of economic power. This distrust was made manifest in the face of the 19th century trend towards concentration. The groups which have participated in these movements have not all embraced the same economic theories, but they were in agreement on the political issue that a country controlled by a few companies cannot long be a democracy. The Sherman Antitrust Act is a reflection of this political belief.

The situation has been far different in Europe. With governmental encouragement, and in some spheres under governmental compulsion, the amalgamation and cartelization of European industry has proceeded at a rapid rate ever since the First World War. The period between the First and Second World Wars was a period of extreme rationalization of industry. The entrance of newcomers into an industry, the markets in which one might sell, and the prices to be charged all become subject to the will of private groups, each operating within a defined industrial jurisdiction.

The rationalization of industry achieved its most complete form in Germany and was followed by the Hitler regime. When the industrial life of a country passes into the hands of relatively a few individuals, their power over the direction of public affairs exceeds the power confided by the people to

their elected representatives in the government itself. An attempt may then be made either to discipline the power wielded by the great business enterprises commanding the resources of the community, or to use the power of the large companies in the interests of the state. It was the latter strategy which the Nazi government of Germany pursued, and the regimentation of industry which had been developed to an advanced stage by the cartels, was carried forward by compulsory measures to an extreme unsurpassed in modern times. But whichever strategy is pursued, as long as the centralized channels of industrial control are maintained intact, any government which seeks to curb or to use these controls is of necessity a totalitarian government.

All this is not to say that the Hitler regime was conceived and deliberately promoted by the German dye trust, I. G. Farbenindustrie, or the German steel trust, Vereinigte Stahlwerke. Nor is it necessary to comment upon the drastic effects on the standard of living and the domestic economic life of a country which are produced by monopolistic prices following from this kind of an industrial pattern, although conditions of unrest and despair are always propitious for the emergence of a dictator. It is only necessary to point out that the control of a national economy by a few large companies, if it persists, is likely to result in a political structure as totalitarian as the economic. One might observe in this connection that the Fascist regime in Italy modeled its so-called corporative state on an industrial hierarchy which it found already at hand.

The concentration of economic power into the hands of a few within Germany had its effect upon the whole of Europe. It was not only Germany that was cartelized but the rest of Europe as well. The fear of German large scale industry and the desire to share its profits lead the principal non-German companies to make numerous "offensive and defensive" alliances with German

industry. The terms for industrial peace weakened non-German industry. The reason for this is not hard to find. As it was the fear of competition with the monopolized and often subsidized German producers which drove non-German companies into these agreements, so their terms, reflecting these circumstances, always restricted non-German production to an agreed share of the market. The consideration for the acceptance by enterprises in other European countries of these limitations upon output and markets consisted, in part, of mutual undertakings by the Germans to restrict the scope of their operations. It consisted in part, also, of the licenses which were doled out to these non-German companies to employ some, but seldom all, of the achievements of German research and invention.

The spurious security of these cartel agreements was repeatedly revealed. German productive capacity continued to increase, as the non-German companies, resting on the security of these agreements, continued to restrict their own capacity and output, to limit their technical research and to neglect generally the development of new processes. The result was a progressive weakening of the comparative industrial efficiency and strength of the rest of Europe. As the rest of Europe grew weaker, the industrial treaties were renegotiated, and each successive cartel agreement recognized the increasing disadvantage of the non-German members. The integration of the European industrial economy under German leadership and control was well advanced, accordingly, even before the war began.

The German government has sought, however, under the guise of every known legal device to gain even greater control over non-German European industry during the period of conquest and to lay the foundations for its perpetuation. On the day of victory, we shall find that the pretended legal

ownership of all important European industrial property is effectively centralized in the hands of a few German companies.

Some examples can be given of this increasing German domination over the rest of Europe. The Hermann Goering holding company has acquired control of the iron deposits and manufacturing subsidiaries of Alpine Montan Gesellschaft in Austria. It has taken over the giant Skoda Armament Works and automobile and aircraft plants in Czechoslovakia. It has absorbed the Vitkovice Iron Mines and the Petschek lignite mines, together with some 9000 industrial enterprises in Poland. With the invasion of Yugoslavia, it has added the Bor Mines, the largest copper producer in Europe, to its holdings. It is now a partner with the Roumanian government in the ownership and operation of the Malaxa Steel Works and the Brunn Gun Works.

The European oil industry outside of Germany has been placed under the control of Kontinentale Oel, a company formed in 1941 by the Hermann Goering Company, the Deutsche Bank, the Dresdener Bank, and I. G. Farben. The French, Belgian, Polish, Norwegian and Danish rayon and artificial fibre plants have been placed under two German holding companies. The European synthetic nitrogen industry has been brought under further German control through the acquisition of plants in Norway, Poland, Austria, and Czechoslovakia.

The unhappy history of the French Kuhlmann company illustrates the general trend. During the First World War the French government seized the plants of the German dyestuffs industry in France and attempted, after the conclusion of peace, to create a domestic dyestuffs industry, realizing that dependence upon German industry in this strategic field would jeopardize national security. The seized German properties were finally transferred to Etablissements Kuhlmann in 1924. Within three years, however, Kuhlmann had

(OVER)

entered into an agreement with the I. G. Farbenindustrie, which in effect restricted Kuhlmann to the production of dyes of low quality. A sizable portion of the French dyestuffs market was then brought back into the German orbit. In 1941, the German government merged three of the French dyestuffs companies, among them Kuhlmann, into a new company known as Francolor. The French companies contributed their plants, patents, and trademarks in exchange for 48.51% of the stock of this new company. But I. G. Farbenindustrie received 51.49% of the Francolor stock in return for an issue amounting to 2-1/2% of its own stock. Thus, Kuhlmann, which prior to 1939 was one of the four largest chemical concerns in Europe, is now controlled, under cover of legal title, by I.G. Farbenindustrie.

At the end of the war, therefore, there will be a striking contrast between the free enterprise system we value and a cartelized Europe. It is true that some factors in Europe will tend to create more competition. It is hardly conceivable for instance that German industry will be permitted to retain the colorable legal titles acquired to a major part of the basic industries of the European continent during the war period. Next, the manufacturing plants of the great German combines will have been hit severely by air attack. Further, the domination by German industry will be offset to some extent at least by the development of new industry in Russia. Finally, European industry, no less than American industry, will find the development of new processes, products and markets can provide a basis for the reassertion of industrial independence.

And it is also true that American industry has not been completely competitive. We have our own monopolies and our own companies which have made international agreements, dividing territories and allocating production. The exigencies of the war have forced us to adopt regulatory measures, and

we know that we must be careful in the reconversion period to come not to foster any further concentration of industrial power--a concentration which was so far advanced in 1938 that the President could declare in a message to Congress that "of all the corporations reporting, . . . one-tenth of one per cent of them owned fifty-two per cent of the assets of all of them and . . . of all the manufacturing corporations reporting, less than four per cent earned eighty-four per cent of all the net profits of all of them."

But despite these mitigating factors, the contrast between cartelized Europe and the United States with a competitive system remains. Even if the seized industrial property is returned to the former owners this will only restore Europe to its pre-war cartel system. The concerns which felt they could not operate without the protective umbrella of a cartel agreement with German industry cannot be expected to behave differently when their property is restored to them. The history of European industry after the First World War, as indicated by the history of the French Kuhlmann company, at least requires skepticism. The broadening of markets and the increase in the number of producers, actual and potential, will make voluntary cartel agreements more difficult, if only because more people will have to agree. The European system of industrial control, however, does not depend upon voluntary agreements, but is implemented by governmental sanctions. Technological developments, improvements in transportation and communication facilities, radically change the outlook for European industry. These changed conditions mean new opportunities for the believer in free enterprise, but for the cartelist they spell new risks, and the very purpose of a rationalized and planned economy is to eliminate risk. The advocates of a rationalized economic system are already coming forward to urge that "the present is not

(OVER)

the time for Europe to give up its rigid, stratified, hierarchical system of industrial control. They see in the unsettled conditions which will confront both European industry and our own economy after the war, a special occasion for undertaking cooperative schemes of controlled production and distribution. They would have us join them.

There is a great difference between their kind of world and ours.

It is not that we have a perfectly competitive system; we know that no nation has ever had a perfectly competitive economic order. The enforcers of the Sherman Act sometimes agree with Adam Smith when he said, "People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, and in some contrivance to raise prices." But there is an incisive difference between a society which seeks to give to every man an opportunity to engage in business and to direct it in accordance with his own judgment and at his own risk, and a society which is ready to place in the hands of private groups or of public officials the authority to determine who may engage in business, the output quotas of those who are permitted to produce at all, and the market areas within which, and the terms upon which, each may sell. This contrast between an economic order based upon free enterprise and free markets, and one based upon authoritative regimentation is sharply accentuated. We in this country have gone beyond a broad commitment to an abstract principle of economic opportunity. We have implemented it with a statute which prohibits the private use of industrial power by groups beyond the reach of the electorate, either to fix the terms upon which production and marketing may proceed, or to close the avenues of enterprise.

If there is this broad contrast between our way and that of Europe, why should we be concerned? We recognize that we cannot and should not wish

to impose a foreign way of life, even though it be our own, upon other peoples. Yet, we have good reason to dread the reconstruction in Europe, after this war, of a strong centralized economic empire run on totalitarian lines. We shall have fought two wars with that empire within a single generation. We cannot fail to recognize that if the centralized channels of industrial control within that empire are to be maintained or recreated, then the political government will be totalitarian. We know that this type of centralized economic power tends to take a colonizing view of the rest of Europe and of the world. We cannot fail to be concerned about the consequences.

We know that something like political control can be achieved through economic colonization. We have seen how German industry, through restrictive agreements made with the other producers of the world, in effect reserved a large portion of the Latin American market for itself. This type of economic penetration can be almost as effective as the foreign political penetration historically banned from this hemisphere. The results of economic colonization are widespread. The colony is banned from having industries of its own; it is only permitted to have distributing agencies. American producers discover that these agencies of distribution are closed to them. If the economic colony should be permitted to have some local manufacture, it is not permitted to export. The American producer loses a market and the American consumer loses an opportunity to purchase. An area of the world is artificially restricted in its chance for development. With the advent of new forms of transportation, new processes and new uses for raw materials, these artificial restrictions will not make for the peace or security of the world.

We are singularly fortunate in that we do not have to purchase raw materials or products from most of the foreign monopolies. In the past,

(OVER)

however, we have been dependent for certain items; as for example, diamonds, tin, and rubber. This is an international problem which may be mitigated considerably by the new industrial trend. Nevertheless, the American consumer has been required to pay high monopolistic prices on important items imported into this country. We can recognize the plight of the consumer in the small countries not blessed with our resources. If we are permitted to sell to these consumers, our market is diminished by the exorbitant prices he pays these monopolies. More important, we know that the imposition of these prices leads to political agitation and to economic warfare.

The division of world markets cannot fail to affect us. Private agreements, even agreements sanctioned by governments, allocating foreign markets cannot be consummated without reference to the American producer. Our trade and commerce is affected when the American producer is banned from a foreign market or given a restrictive quota. It is common for these agreements to pretend to bypass the United States. Implicit in many of these agreements is the understanding that if the American producer will accept the world arrangement with its quotas and limitations, then the foreign producer will keep his goods from the American consumer. This is an arrangement for a private tariff which has the advantage to the private parties that it need not conform to any law of Congress. It is also an arrangement to cut down American production. Beyond that, it is treaty making, allocating territories as dependent upon a particular foreign power for its economic life. We do not have to argue today about the importance of private agreements which provide that, for instance, the Philippine consumer is to look to Germany or to Japan for certain goods, or that Germany is to have as its economic territory Poland, Czechoslovakia, or France.

We have an interest in these agreements which exceeds our enforcement of our own domestic laws. Nevertheless, it is important to note that many of these agreements do violate the Sherman Act. The Antitrust Act is applicable not only to restraints of trade or commerce among the several states, but also with foreign nations. The Department of Justice has uncovered many such agreements over the past two years which have violated our domestic laws, and as a result, prosecutions have been brought for these violations in the magnesium, pharmaceutical, chemical, electrical, optical glass, and aircraft equipment industries. Product limitations frequently accompany the territorial allocations. One Philadelphia concern was prohibited by its agreement with a German company from selling in Latin America and from using certain processes to make synthetic rubber. A series of agreements between three American companies turned out to have been drawn up in Europe, and provided for all types of territorial and product restrictions, with the requirement in one of the contracts that "the existence, the content and the details of operation of this agreement have to be kept secret by both parties notwithstanding the possible obligation of disclosing it to public officials."

In the past we have had every reason to be concerned about European cartel practices. At the end of the war, however, with the reversal of the 19th century trend, --with the world a smaller economic unit--our difficulties will be magnified many times if Government-sanctioned cartel practices in Europe are to persist. It has been difficult enough for American concerns to engage in trade and commerce in a partially rationalized economy. American concerns doing business with Germany before the war discovered, as one of the German companies put it, that to every private agreement there was a "third

(OVER)

silent partner"--the German government. An American company is necessarily handicapped if it is to deal with a government sponsored foreign monopoly or cartel. Yet we cannot and certainly we should not either withdraw from world commerce or desert our own domestic economy.

A world problem of this order is not to be solved by any series of theoretical solutions. There are many forces at work, not the least of which may be the increased industrialization which has come to the world and which has not known colonial boundaries. Increased markets and dispersed producers will do much to eradicate cartel lines; their reintroduction will not be simple. We can join with many in our concern for freedom of economic opportunity. The trend is the important thing. We will have accomplished a good deal if we can reverse the pre-war drift toward monopolization and the concentration of industrial control.

There are some suggestions which can be made. First, there is no reason why private agreements concerning the foreign trade or commerce of this country should not, with the exception of trade secrets, be made public. At the very least, they should be made known to the Government. Beyond that, there would appear to be no reason why a workable plan for having the foreign agreements of all foreign concerns, surely those which allocate territories or products, made public through some agreed mechanism. We have a well-founded distaste for secret political treaties or commitments. These economic agreements are of the same order. Without some international mechanism, however, there appears to be no reason why the agreements which affect our own foreign trade and commerce and which are made by concerns engaging in business in this country should not be subject to disclosure. And agreements with foreign companies which restrict American production should be included.

Second, the fruits of Axis research over the last ten years should be made available to the industry of the world. This research was in reality Government financed and is now being used against us. The people of the world have, in effect, paid for this research by their own war contributions in order to produce weapons and material to meet it. This research should not be either lost or find its way into the hands of a few private companies which may have had restrictive and exclusive arrangements with the Axis firms. These arrangements are at the very least suspended, and possibly abrogated by the war. Their resumption, if they are resumed, should not operate to deprive all of American industry, for example, from making use of the new processes. This research can be put to work in the reconversion period.

Third, German industry should not be allowed to retain the domination over European industry which it has acquired during the war. More than that, however, measures should be explored to see if it is not possible to establish German industry itself on a less monopolistic basis. I. G. Farbenindustrie, itself, was formed by the merger and consolidation of many companies. Even when stripped of the foreign holdings it has acquired during the war, it will remain a powerful and dangerous economic concentration. Some of its component parts could operate independently; the separation of other parts may be more difficult because of the integration which has gone on. This is a problem of sufficient importance to the peace of the world that it should not be passed over lightly. And every effort should be made to see to it that companies in occupied countries, when separated from German industry, are put, if possible in a position where independence and competition may be expected.

(OVER)

Fourth, we should be interested in any program which may assist the thawing out of productive capacity which is no longer economically useful and the development in its place of enterprise which can compete. We must recognize that producers throughout the world will want to restrict production, if necessary, in order to protect capital values. They will not wish to convert their plants to other operations if the conversion would require an acceptance of the fact that their present capital values are inflated. This may be particularly true in countries which have come to rely on the production of commodities for which new substitutes have been developed. It may be natural for them to tend to resist recognizing the changed economic circumstances and to seek to restrict the production of the synthetic material. We may feel that such a position is to deny both man's ingenuity and the richness of the earth. Yet, we must recognize that it is not an easy thing to go through the transition period so necessary if the economic resources of the world are to be better used. At the end of this war, the development of new synthetic products will change enormously the value of both raw materials and other synthetic products. Undoubtedly these new developments will increase opportunities for enterprise, but there will be a time during the reconversion process, when people will be timid or unable to make the readjustment. As it is important to us that the readjustment be made, we may have to stand ready to help. Otherwise, we should not be surprised to discover that the choice has been made in favor of what appears to be security--the choice which will preserve capital values by restricting production and the development of new processes.

The British have an interest in the cartel problem not too dissimilar from ours. To some extent, it is probably unfortunate that the history of

cartel activities in Great Britain has not been as well documented or analyzed as has been the case here because of the enforcement of the Sherman Act and the operation of able Congressional committees. Possibly we may be forgiven for believing that the British have not fully seen what the cartels have done to them. We know that through private arrangements with German companies, British production often has been held back. We know that in one instance, for example, the prices of an important drug sold on the British market were raised by the order of a German firm, transmitted through an American intermediary, and this occurred after the entrance of Great Britain into this war. We know that American shipments of vital materials to Great Britain were restricted prior to our entrance into the war by these private agreements. We know that British firms have given private commitments to German cartels to restore markets to them and that while the British government has adhered to a policy of preferential trade within the Commonwealth, the cartels have pursued a policy of restricting dominion production. The foreign cartel problem is common to both this country and to Great Britain. Our attempts to remove the restrictive influence of cartels is in no sense anti-British. Our efforts to solve this problem can be complementary and mutually helpful.

Fifth, if we recognize that consumers may have a just complaint when they are forced to pay monopoly prices for goods or products sold them by a foreign producer, we should explore the possibilities of creating some forum in which these complaints could be heard. To a great extent we can deal under our own laws with the foreign monopolies which do business within our territory, and we ought not to set up any machinery which would tend to legalize their conduct. The mere existence of such a forum, however, might

(OVER)

be helpful to small countries dependent upon the outside world for raw materials or products.

Finally, this Government should stand ready to assist American producers, if necessary, to gain access to foreign markets. Our program should be that any American company, and not just a few, can sell in a foreign market if consumers will buy. We have no wish to remove German monopolistic control over vast areas in order to substitute our own monopolies, but the opening of trade to American companies, free of cartel restraints, should not be just a wartime project but the basis for trade in peace. This is not to say that we will engage in economic warfare, but rather that as the world is molded and changed, we will see to it that the competitive system of economic opportunity has its chance.

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