1 Introduction

> as a general principle of organisation I prefer the diffused initiative and quasi-automatism which go, or can be made to go, with private property and the market ... This does not imply ... any blind belief in the existence of economic harmonies. I have argued already that, within the present framework of law and institutions, I see no guarantee of good results from the free play of private interest. It does imply, however, the belief that, rather than to proceed by destroying the market and enterprise system, it is better to proceed by trying to improve it. It implies that, rather than stake all on the dubious prospects of overall collectivism, it is better to retain existing mechanisms, but to erect around them, so to speak, a system of laws and institutions within which they may be made to work the right way. It implies, that is to say, a belief, not in a spontaneously harmonious free enterprise, but rather in a deliberately constructed competitive order.
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> This idea of a competitive order is by no means a simple notion. It is not just trust-busting – although there are many 'trusts' which I would like to see bust. It involves the systematic revision of the whole apparatus of law and order – the law relating to patents, the law relating to restraint of trade, the law relating to limited liability and corporations, and many other branches of the law – with a view to creating conditions which tend to maintain effective competition, where it is technically possible, and to control monopoly in the public interest where technical conditions make monopoly inevitable. It involves the search for new methods of fiscal control, not only for the purpose of stabilising aggregate demand, but also for the purpose of correcting and supplementing the operation of the incentive of relative prices, where analysis discloses that this incentive works badly
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> L. Robbins *The Economic Problem in Peace and War* (1947) pp. 81–4.

From the end of the nineteenth century in advanced capitalist economies large firms, cartels, 'trusts' and all manner of collusive organisations were supplanting the 'invisible hand' of the market by regulation of markets. The 'rise of the corporate economy' had an impact on economic thought and policy which cannot be understated. Joan Robinson has summarised its significance:

> Generally, in the orthodox scheme, monopoly is a Bad Thing. For most economists

> competition is absolutely essential to the justification of laisser faire; it is competition which equates the margins, distributes resources so as to maximise utility, and generally makes the whole scheme work.[1]

If the market could no longer be relied upon to harmonise private and public interests, the state, many economists argued, had a responsibility to do so. Hermann Levy, an early pioneer of research into the 'trust movement', stated: 'a revolution has broken out in the most important areas of industrial organisation and ... this revolution calls for new departures in economic and political thought and policy.'[2]

But what direction was policy to take? Since the 'trust movement' emerged in Britain, governments have been sympathetic to 'bigness' in economic organisation, to the economies of scale, amalgamations, rationalisation and the concentration of production.[3] In the interests of competing on a world market dominated by the industrial giants which arose in Germany and the United States British governments have encouraged the opportunities which the integrated corporation was seen to open to the reduction of costs, increased efficiency, export competitiveness and extended research and development: a highly sanguine view.[4]

British policy has had marked preference for self-regulation by business, while state supervision or regulation of monopoly has proceeded along two principal lines: nationalisation or competition policies. Nationalisation was arguably the British form of antitrust: the manifesto of the Labour Party in 1945 argued that this was the solution to inefficient private monopoly in the industries concerned. One American regulation theorist points out that all regulation of private industry by government involves some interference with and limitation of the full exercise of the rights of private property.[5] Nationalisation simply carries the intervention in private property to an extreme. Also, since the 1940s, Britain has developed a corpus of competition legislation designed to regulate the behaviour of private firms and to promise safeguards to the public from monopoly abuse through encouraging competition. It is this which is the subject of this book.

The ideological justification for competition policies owes much to neo-classical and liberal economic thought. By the 1940s many such economists viewed the world with alarm: economic man was born free, but everywhere he was in chains. Soviet collectivism was knocking on the gates of Western Europe, socialists in Europe proposed wide-scale nationalisation, the nazi economic system had enthroned monopoly and cartels with state support. To oppose the Scylla and Charybdis of socialism and fascism liberal economists like Lionel Robbins, Friedrich Hayek, John Jewkes and George Stigler began to develop and disseminate the notion of 'a deliberately constructed competitive order'. The state was to provide the legal and institutional framework within which the competitive forces could best proceed. Robbins, for instance outlined a Keynesian but laissez-faire state which would not usurp the field of private enterprise, but would define the rules and limits of the game.

But there is something very odd in the notion of a 'competitive order', indeed in the idea that the state should create competitive conditions which are supposed to occur naturally. The whole idea raises two key questions. First, what is the likely outcome of trying to create competition? Why greater monopoly? As Joan Robinson again asserts:

> But competition, surely, is the main cause of monopoly? How can it be that to lower prices, expand markets, undersell rivals, is a Good Thing, but that the firm that succeeds in overcoming these difficulties and remains in possession of the field is a wicked monopolist? The objection to restrictive practices, and the main justification for the present campaign against them, is that they restrain competition and keep inefficient producers going. If the campaign succeeds, competition, driving out the inefficient, will create more monopolies. Is that what we want? And if not, what do we want? What are the rules of the game?[6]

Nor does monopoly suppress competition: it may stimulate still more intensive oligopolistic competition.[7] The conscious attempt to encourage competition in one area has prompted monopolistic tendencies elsewhere. In both Britain and America the effective outlawing of cartels in 1956 and 1890 respectively became one element in the subsequent merger waves in those countries.[8] Indeed, antitrust policies in Britain and elsewhere have generally been aimed primarily at certain forms of collusion.

It has not infrequently been remarked that the word 'antitrust' is a misnomer. In the USA the Sherman Act of 1890, although responsible for spectacularly busting a few trusts, was actually anti-cartel.[9] In Britain, similarly 'antitrust' policies have never been motivated by hostility to large-scale industry or monopoly itself, only to such practices which may be judged against the 'public interest'.

The second problem in the notion that the state should construct a competitive order lies in the fact that, for those liberal economists espousing the idea, the involvement of the state to regulate business, even in the interests of competition, must be like calling on Beelzebub to drive out Lucifer. Summarising the classical liberal view of the state Galbraith writes: 'Any union between public and private organisation ... means that public power has been captured for private advantage and profit.'[10] Indeed the trend towards monopolistic forms of economic organisation has prompted calls for state regulation, while at the same time endowing those very organisations with the power to control and direct the nature of that intervention. In a 'market-oriented system', as Charles Lindblom says, business stands in a privileged position in government and politics by reason of the dependence which government has on successful business activities.[11] Accretions of business and economic power carry with them greater political power.[12] Thus the government intervenes when the very forces it seeks to control are in a position to influence the nature of that intervention.

These two considerations are at the core of this book. It therefore takes issue with existing accounts of the evolution of competition policies in Britain. These, operating with a belief that competition policies have been introduced in the 'public interest', have presented a 'whig' image of the gradual and progressive development of improved and enlightened perceptions of the problem of monopoly since the 1930s.[13] To them progress is manifest, not in the extent of competition or efficiency now present in the British economy, nor in the ability of past and present legislation to develop competition, but in the change of outlook which they identify between the 1930s and 1950s. Thus they tend to see the dynamic of the history of competition policy as one of outlook, of changing and improving perceptions of the problem. Although not all are Keynesians, they possess Keynes' faith in the power of economists to influence governments, at least in the fullness of time. As Keynes said, 'I am sure that the power of vested interests is vastly exaggerated compared with the gradual encroachment of ideas'.[14] They therefore approach the subject with the standpoint of the reformer: until recently most accounts of the evolution of policy were preludes to recommendations on future policy.

The key element in their understanding of events is an emphasis on the role of 'public opinion' or 'the climate of opinion' in forcing policy developments. For instance the Monopolies and Restrictive Practices Act of 1948, following a period of government support for cartels and rationalisation in the inter-war period, was introduced because, 'the climate of opinion had changed.'[15] John Jewkes found the change baffling: 'The post-war disposition in Britain to place greater reliance upon competition must rank among those mysterious and unpredictable switches in broad economic thinking, so numerous in history, in which irrationality has played at least as great a part as rationality.'[16] For others it was the Civil Service and the 'liberal-minded bureaucracy' which carried the 'banner of free competition', or the role of economists in government.[17] A similar approach is adopted towards the subsequent Restrictive Trade Practices Act, passed in 1956, although here accounts recognise that legislation accommodated the demands which organised industry made.[18]

British analyses of the evolution of antitrust policies continue, therefore, to be at a similar stage to that of American writers of the Progressive Era who believed that 'public interest was the raison d'etre of economic regulation'. Since then, however, American economists and historians have established that businessmen agitated for and benefited from regulation.[19]

This book challenges orthodox interpretations of events in Britain. It argues that the potential strength of 'public opinion' is actually greater than competition theorists admit. Popular views of the trusts may be illustrated by the rash of fiction on the theme at the turn of the century. Writers like H.G. Wells foresaw a social and political nightmare, often leading to revolution.[20] For most of this century the most coherent critique of private monopoly by a wider 'public' has been articulated by the labour movement – the Labour Party, the trade unions and the Co-ops. Accounts of German and American antitrust have already developed this point. Britain, in common with Germany, has a strong labour movement which, as in Germany tended to criticise not monopoly per se, but private ownership of monopoly. Such movements channelled much popular anti-monopoly feeling away from the solution of antitrust and towards that of nationalisation.[21] Contrariwise in the United States, antitrust enforcement was used to deflect calls for socialist reform.[22]

Thus to the extent that antitrust embodied a 'public interest' it was to preserve the legitimacy and dynamism of the capitalist system. Leslie Hannah describes competition policy as 'a means of strengthening the case for private enterprise by increasing the competitive pressures within the capitalist system'.[23] Hans Thorelli's study of American antitrust argues that it 'was intended to safeguard the freedom of enterprise in general; to achieve this purpose it was found necessary to limit in some degree the freedom of action of the individual businessman or firm'.[24] Competition policy promises that, should there be evidence that the 'public interest' has been harmed by monopolistic organisations the matter will be investigated and appropriate action taken. The issue is removed from the hands of popular campaigning bodies and transferred to 'independent' tribunals operating with the consent of at least a section of the business world. Competition policy is, in part, an alternative to more drastic solutions to the 'monopoly problem', which would interfere with and challenge private ownership of production.

This book also applies to Britain the conclusions of American writers who see regulatory bodies as a forum for settling disputes among businessmen. A study of the vigorous enforcement of antitrust legislation under the 'pro-business' Eisenhower administration argues: 'The Antitrust laws protected the American businessman: he could carry on his endeavours without being subjected to organised group pressures or monopoly power, but if he was injured by violation of one of the laws, the Antitrust corpus afforded him a chance for redress.'[25]

A vast American literature details the power of business interests to influence the nature of their own regulation. At a general level Lindblom again argues: 'even the unspoken possibility of adversity for business operates as an all-pervasive constraint on government authority.'[26] More specifically a left-liberal school of historians and a right-liberal school of economists conclude that vested interests have 'captured' the bodies set up to regulate them, either while the machinery of regulation is in the process of enactment or after a period of operation by the regulatory body.[27]

This book sees business pressure as fundamental in determining the nature and timing of British competition legislation. The study of government–industry relations in Britain has been influenced by the concept of a 'corporate bias': a continuous contract between government, industry and the unions, with no one group possessing a preponderance of power.[28] This book, however, balancing the influence of industrialists and the various groups composing the labour movement in Britain, demonstrates the predominance of the former. The very form of monopoly, and ensuing business strategies, in Britain was the key influence on the type of competition policy enacted.

In addition it places the evolution of policy in an international context. It was not only domestic businessmen who sought safeguards against monopoly powers – so did overseas businessmen especially, in the key period of the 1940s and the 1950s, those in the United States. We know that in Germany and Japan, occupied and administered by the United States, the 'American-style free enterprise system' found legislative expression in the 1947 anti-cartel ordinance in Germany and the Deconcentration and Anti-Monopoly Laws in Japan of the same year. (In fact in neither country did these laws survive the opposition of indigenous business leaders, nor the impact of the Cold War on American plans for these countries.)[29]

The evolution of British antitrust policy was part of the process of welding Britain into the new world order which the Americans were trying to establish from the 1940s onwards. This was neither a smooth, nor a necessarily successful process, nor was America the only international player with which Britain had to deal. In fact the debates about competition policy, especially after the Second World War reflect also deep ponderings about Britain's future world role, caught between America, Europe, the Empire, and the Dominions.

It is not only ideas but forms of economic organisation and economic interests which are the focus of study and through which I hope to lay bare the real dynamic of British competition policy and in so doing to controvert some present free market myths.

Outline of the book

The main weight of the material concentrates on the period between 1940 and 1964. This was a formative period for Britain's current competition legislation, and is also a time when there is a wealth of government, business and personal records available to paint a detailed picture. Chapter 4 is devoted to war-time Reconstruction discussions, and chapter 5 to their culmination in the 1948 Monopolies and Restrictive Practices Act passed under a Labour government. Chapter 6 looks at the interpretation of policy under the first Monopolies Commission and chapter 7 analyses the passage of the 1956 Restrictive Trade Practices Act in the context of changing business strategies in Britain. Finally chapter 8 examines legislative moves against resale price maintenance from the inter-war period to 1964 when it was abolished.

Two chapters set the scene. Chapter 2 indicates the actual extent and nature of the British cartel system between 1880 and 1956. The thrust of British competition policy up to 1965 was directed against cartels rather than large firms, and hence some idea of the problems which policy-makers felt they were tackling is needed, and cannot be gained elsewhere as the historical evolution of British cartels has been a neglected area of study. Chapter 3 indicates the main outlines of British policy on 'monopoly' up to 1939 when the main story begins.

2 The British cartel system, 1880–1964

People of the same trade seldom meet together, even for merriment or diversion, but the conversation ends in a conspiracy against the Publick or in some contrivance to raise prices.

Adam Smith *An enquiry into the Nature and Causes of the Wealth of Nations, 1776* edited by R.H. Campbell and A.S. Skinner (Oxford, 1976) I.x.c.27 p. 145.

Some definitions of cartels:
'Planned Trading: the unwilling tribute paid by Capitalism to Socialism.'
'Social Security for Shareholders'.

Dalton Papers 7/6 unsigned memorandum by an official at the Board of Trade, 30/9/1944 giving Dalton definitions of a cartel in preparation for parliamentary questions.

Recent accounts of the historical evolution of the 'corporate economy' in Britain have focussed primarily on the development of the large firm. The history of cartels has received only cursory attention, although recently the significance of price-fixing in the 1930s has been re-assessed.[1] Yet cartels, international and domestic, were arguably the dominant form of market control from the 1930s to the early 1950s, and together with a critical level of concentration of ownership and technical development created a culture of collusion. It was against this widespread cartelisation that the Acts of 1948 and 1956 were directed.

This chapter traces the interwoven development of cartels and concentration in British manufacturing from the 1880s to the 1950s. It looks at the development of the British trade association system before commenting briefly on some views of the causes and consequences of restrictionism in British manufacturing especially in the middle years of the twentieth century.[2]

A cartel[3] is a collusive strategy which, because the associated firms remain nominally independent, does not end the competition among them, 'rather is the arena changed'.[4] It differs therefore from the amalgamation (formed by merger or takeover) which, while part of a competitive strategy, does end, more or less permanently, the competition among the firms who amalgamate. This combination of collusion and competition among the firms in the cartel is its unique feature. A secondary feature is its extreme flexibility. Each cartel agreement can choose from a wide range of restrictive activities – restrictions on sales attached to patent licences, price-fixing, division of markets, regulation of capacity and output to name but a few. This 'pick 'n' mix' element in the cartel and its specific choice of restrictive practices makes it a vertitable weather-vane, not only of the economic climate generally, but of market conditions in specific trades.

As the terms of the cartel are relatively impermanent and unstable, cartels require a specific set of conditions to secure the loyalty of as wide a section of the trade as possible in order to reap what may be short-term benefits. They are more successful where the organisation *of the trade or product as a whole* is possible, and hence in conditions where the number of firms is manageable.[5] Whereas in the 1950s it was unusual for a large firm to control 70% of the production of a commodity in Britain (though some did) it is rare to know of a cartel that did not. Cartels may thus appear more monopolistic, but their success and longevity will frequently depend on the existence of large firms, willing and able to regulate the trade. The definition adopted here is intended to emphasise the development of large firms and cartels as a unity of collusive behaviour, or as Hannah has expressed it, cartels as the complements to mergers.[6]

Much evidence on cartels gathered for this survey concerns the development of trade associations. The terms 'cartel' and 'trade association' came to be used almost interchangeably in British economic literature of the 1930s.[7] Domestic cartels were generally organised through trade associations which combined two roles: as private market-regulating bodies and as representatives of their trade with the government. If the Association wished for government recognition it had to claim to be as representative of the firms in a trade as possible. Most estimates of the extent to which a trade association 'controlled' a particular market are therefore based on the trade association's own, possibly bloated, account. However, measurement of these trade associations is useful. They proved to be long-lived, and between the 1930s and 1950s moved to an integration horizontally and vertically of all stages of production and retailing in a given trade. There thus emerged a recognisable system, which combined economic control with political influence. Hence description of the growth of this system means that an idea of the *potential* extent of market regulation by private industry can be obtained. Most importantly, the politico-economic character of the trade association system is crucial in understanding the evolution of British competition policy in the 1940s and 1950s.

Table 2.1. *Calculations of the share of the largest 100 firms in manufacturing net output, 1907–78*

Dates	Share according to Hannah (%)	Share according to Prais (%)
1907	15	
1909		16
1919	17	
1924	21	22
1930	26	
1935	23	24
1939	23	
1948	22	
1949		22
1953	26	27
1958	33	32
1963	38	37
1968		41
1970	40	40/41
1978	41	

Source: L. Hannah *The Rise of the Corporate Economy* (1983) pp. 180–81; J.S. Prais *The Evolution of Giant Firms in Britain* (Cambridge, 1980) p. 4.

Cartels and concentration in Britain in the twentieth century

Compared with Germany and the United States, Britain was a late developer in the moves towards concentration and collusion at the end of the nineteenth century. In the United States, the largest 100 enterprises already accounted for 22% of net manufacturing output in 1909, a position not reached in Britain until the 1920s (see table 2.1). In Germany the 'trust' movement became noteworthy from the 1870s, and the great Rhenish–Westphalian coal cartel began around 1876–7. The German Kartell-Commission estimated in 1905, in the first official investigation into cartels, that there were 353 associations.[8]

It is, of course, possible to cite early developments in Britain. The United Kingdom Soapmakers' Association was founded in 1867, the National Association of British and Irish Millers was formed in 1878, and there were several attempts at price-fixing in the iron industry in the 1880s and early 1890s. However, these were generally short-lived, and local to overcome a recession in the market, especially that of 1885. The Royal Commission on the Depression in Trade and Industry of that year gave only a small hint of