

A Single National Federation?

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I have, of course, no vested interest in the outcome of the deliberations of the National Federation Special Committee but make the following submissions on one particular aspect of the matter which is based upon 40 years' experience in the Co-operative Movement, with Government Departments and with national distributive trade associations.

Example of Other Countries

In seeking to determine where the balance of advantage lies in setting up a Single National (Co-operative) Federation for the United Kingdom, appeals to experience in other countries are of little value. If the highly centralised system in Sweden has been a major factor in the success of the Co-operative Movement there, how does one explain the situation in the Netherlands where Co-op. Nederland collapsed and the Movement was virtually extinguished overnight? What conclusion is to be reached about the structure of the Finnish Co-operative Movement with its two separate Unions and Wholesale Societies?

In attempting to assess the feasibility and effectiveness of any particular federal structure for consumer co-operative societies, it is necessary to take into consideration the historical, social, economic and legal environment, as no two countries are alike in these respects. The thesis of this paper is that within the United Kingdom there are powerful reasons why a SNCF would encounter exceptionally difficult problems concerned with the dual

functions of a commercial enterprise and a trade association.

Functions of Union and CWS

Both the Co-operative Wholesale Society and the Co-operative Union are registered under the Industrial and Provident Societies Acts, but whereas the functions of the CWS are primarily those of the production, wholesaling and (marginally) retailing of consumer goods, allied to supporting financial institutions, the functions of the CU are those of a trade association, and do not differ substantially from those of other national trade associations (with the exception of its direct involvement in party politics). The trades and businesses carried on by the CU (which enable it to register under the Industrial and Provident Societies Acts, rather than under the Companies Act as a company limited by guarantee and not having a share capital) are those of "accountants, booksellers, commercial and general advisers, publishers, and arbiters in matters of dispute arising between societies which cannot be settled locally, and of propagating co-operative principles and ideas, and the organising of co-operative work in all its branches ... with a view to the ultimate establishment of a Co-operative Commonwealth." There is clearly a fundamental difference between the CU, and the great commercial enterprise of the CWS with its extensive farms, a major insurance business, a bank, a finance house, factories, overseas depots, and the largest wholesale business in the country.

Nevertheless, the CWS and the CU are alike in one respect - they both came within the definition of a "trade association" for the purposes of the Restrictive Trade Practices Act, 1956, which is as follows:-

"In this section (i.e. Section 6(8)) "trade association" means a body of persons (whether

incorporated or not) which is formed for the purpose of furthering the trade interests of its members, or of persons represented by its members ..."

The Act provides that any agreement made by a trade association (concerning prices to be charged, terms or conditions on which goods are to be supplied or acquired, the quantities or descriptions of goods to be produced, supplied or acquired, the processes of manufacture to be applied to any goods, the persons or classes of persons, or the areas or places in or from which goods are to be supplied or acquired, etc.) is treated as if the agreement were made between all the members of the association, and where any restriction is accepted thereunder by the association, it is assumed that the like restriction is accepted by each of the members. Any agreement relating to the matters listed above must be registered and will in due course appear before the Restrictive Practices Court. It is so difficult for a party to a restrictive trade agreement to justify it before the Court that resale price maintenance, the sharing of markets (and boundary agreements among co-operative societies) have been virtually abandoned.

Operation under the Restrictive Trade Practices Act

If the legal effect of the Act upon the CWS and the CU was similar, the practical effect was vastly different. The Co-operative Union is inhibited from making recommendations to its members on matters of trade, and its recommendation to societies about trading stamps had to be registered and then withdrawn as it was impossible to justify it in the public interest as defined by the Act. If, however, the CWS were unable to make recommendations on innumerable trading matters to retail societies, its business affairs would be seriously hampered. In 1968 the Restrictive Trade Practices Act was amended and

extended. Section 7 of the Act introduced heavy penalties for failure to register agreements coming within the scope of Part I of the 1956 Act. In general, failure to register an agreement within the time allowed meant that the agreement was void, and that it would be unlawful for any party to the agreement to give effect to it, or attempt to enforce it!

The Co-operative Union did not experience any great difficulty in conforming to the requirements of the 1968 Act, as it was in a similar position to other national trade associations. The implications for the CWS were so serious, however, that representations had to be made to the Government for appropriate relief, which was duly provided in the Fair Trading Act, 1973. Sections 97 and 98 of the Act deal with the matter by stipulating that the definition of a "trade association" in the Restrictive Trade Practices Act, 1956 is not to include certain approved societies. The societies concerned (named in the margin of the Act as "Wholesale Co-operative Societies") are Industrial and Provident Societies which fulfil the following conditions, that is to say -

- (a) that they carry on business in the production or supply of goods or in the supply of services or in the application to goods of any process of manufacture;
- (b) that their shares are wholly or mainly held by industrial and provident societies; and
- (c) that those societies are retail societies or societies whose shares are wholly or mainly held by retail societies.

It must be emphasised that this relief is not permanent, but is granted by the Secretary of State at his discretion for a period of two years, and may be extended

or withdrawn. The CWS has taken full advantage of Sections 97 and 98 of the Act, but can continue to do so only as long as it can be shown that it is not a trade association.

Relation of SNCF to the Act -

It is submitted that if the CWS and the CU were amalgamated, in whatever form (either by absorption of the CU by the CWS, or by the formation of an entirely new federation) it would not be possible for the unified organisation to obtain relief from the onerous terms of the Restrictive Trade Practices Acts, if it carried out the functions of a trade association. It should not be supposed that this is merely an academic point. The voluntary groups and chains continue to experience serious difficulties by virtue of the restrictive trade practices legislation, and although the Bolton Committee on Small Firms in its report of 1971 expressed much sympathy with such organisations, and recommended changes in the legislation, no relief has been afforded to them similar to that provided for "Co-operative Wholesale Societies".

It might be suggested that the problem could be solved by forming a subsidiary of the SNCF to undertake trade association services, in a similar manner to the Co-operative Employers' Association which was set up to overcome the legal restrictions imposed upon the Co-operative Union by the Industrial Relations Act. It is likely that this would be seen to be a subterfuge which would put the CWS at risk. In any event a new body of this kind would be the Co-operative Union under a different name, and with a measure of independence similar to that presently enjoyed by the Co-operative Employers' Association. Would such a result be acceptable to the Co-operative Congress?

- And to Government Departments, etc.

Consideration should also be given to the relationship of a SNCF with Government Departments, other national trade associations, and with consumer bodies. Government Departments consult representative trade organisations, but not individual firms, however important they may be. It is unlikely that the SNCF would qualify for membership of the Retail Consortium (Marks & Spencer and Sainsbury are represented through the Multiple Shops Federation, and the House of Fraser through the Retail Distributors' Association). Perhaps the SNCF would become a member of the Confederation of British Industry for purposes of representation. What would be the implications of such a move? The CWS had its own Parliamentary Committee up to the first world war, but thereafter found it more advantageous to join with the CU and the SCWS to form the Joint Parliamentary Committee of the Co-operative Congress. It is suggested that any claim of a SNCF to be a consumer organisation would not have any measure of credibility, and the Movement would be likely to suffer a further eclipse in this important area.

It is difficult to visualise how the Co-operative Party would function under a SNCF, but this is no doubt a matter upon which the political wing of the Co-operative Union will comment. It is abundantly clear, however, that in any form of merger between the CWS and the CU it is the CWS that would be dominant, and unless it is intended that many of the present functions of the CU in representing Co-operative interests should be abandoned, careful thought needs to be given to the problem of how such functions can be undertaken by an organisation that is likely to be so different in constitution, function and experience.