

Licensing in Arab Countries

When dealing with Arab nations, it is important to recognize how each differs from the other

BY E. G. COULON*

The extraordinary change in economic relations which followed the 1973 oil crisis is still present in everybody's mind. Within a few months the world became conscious of the importance of these raw materials which no one hesitated to squander, considering their extremely low price. At the same time, the increase in price of these materials brought the countries producing them affluence of unprecedented magnitude. Everybody began reckoning. Computations were repeated rather than agreed to straight away, as the downright astronomical amounts flowing into the cash boxes of the Arab — and a certain



number of other — countries made it difficult to envisage the actual position. Assumptions were made concerning the use the oil-producing Arab countries might make of the wealth (in foreign currencies) accruing to them.

Let us remark in passing that, strangely enough, far less consideration was given the use of the increase in revenues of other oil-producing countries, the attention of the Western world being mostly centered on the Arabs. The verdict fell: "They (the Arabs) will use these funds for the purchase of arms and solid-gold Cadillacs".

I am not going to say there has not been and there will not be large-scale purchase of arms, as well as consumer goods of all kinds. The armaments race is, unfortunately, one of the evils of our times. As regards the society of consumption, this is not, as far as I am aware, an exclusive privilege of Arab countries. But actual conditions are quite different from this oversimplified and, let us be frank, biased opinion. The Arabs are well aware of the fact that the oil reserves are liable to exhaustion and that it is of paramount importance for countries having this sole natural wealth to prepare for the future by giving their people tools so they can enhance the value of their work. The rulers of many oil-producing countries have therefore given precedence to drawing up industrialization plans generally meeting three main motivations:

1. Enhance the value of available raw materials.
2. Enhance the value of the working capacity of the local populations.
3. Local production of usual consumer goods.

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During the years of the so-called colonization era, the industrialized countries were chiefly concerned with purchasing raw materials at the lowest possible price. The same materials were subsequently submitted to the whole of the industrial process in the consumer country. Thus, even under present conditions it is noted that the share of the raw material in the country of origin provides only a negligible portion of the finished product consumed by the final recipient. This is valid for the wool, shipped in the grease from the country of origin, when compared with the price of the finished garment; for tropical timber processed into pieces of furniture; for petroleum when it has become plastics or synthetic fiber, as for all the other products we consume every day.

It is therefore of paramount importance for countries producing raw materials to attempt to enhance the value of their products, thus reducing the repercussion of transport and other supplementary charges, while affording the possibility of developing processing industries and service rendering establishments in the country.

Employment policy

The second motivation which has to be considered is the policy of setting to work the idle labor capacities available in several Arab countries. The position varies considerably as between one country and another. We shall refer to this question later, but it must be remembered that some countries, such as Saudi Arabia, experience a lack of labor force, while others, and particularly those of the Maghreb, are obliged to let their work-people emigrate in order to accomplish in foreign countries tasks which are of no interest to their own workers. It is therefore necessary to find work for a large number of people and establish industries to that effect according to specific criteria.

The educational level of available workers must be taken into account, as well as the possibilities of improving such level. (Assimilated to this type of investments can be those relating to the actual vocational training.)

This type of investment often relates to manufacturing under license entrusted by an industrialized country to an Arab country for reasons of lower labor costs.

Local production of consumer goods

Lastly, we shall mention as a third type of motivation the desire to produce locally specific consumer goods in order to reduce the dependence on foreign imports. This type of investment relates mostly to light industries and often raises commercial problems of importance which might be solved by granting licenses.

The best kind of investment

It goes without saying that these three kinds of investments are sometimes combined in one able to meet the

three motivations. It is possible to imagine the establishment of industries making use of local raw materials, producing consumer goods meeting the needs of the local population, and making use of available labor forces without having to spend disproportionate efforts on training them. It will, however, be appreciated that such establishments are very rare and that in practice it is virtually impossible to combine all the optimal conditions in a single project.

It will therefore prove necessary in the majority of cases to find solutions making use, to the fullest possible extent, of the local resources and meeting the needs of the country. But, on penalty of having to give up financial returns, development projects will have to take account of world market economic conditions. Indeed, there have been far too many industries, which seemed so wonderful on paper, but they were very soon in jeopardy for purely commercial reasons.

Guidelines

So, the mandatory conditions which became guidelines for Western industrialists setting up a commercial cooperation with the Arabic-speaking world within the framework of their development plans are:

- be as much as possible aware of the economic conditions ruling the Arab countries.
- draw up commercial programs reconciling the possibilities available in Arab countries with the conditions of competition on world markets.

Features of Arab countries

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Countries making up the Arab world differ considerably from one another in historic and geographic characteristics as well as in economic conditions, but they are easily lumped together in the West. The developments of the oil crisis have drawn excessive attention to the countries producing the black gold and the reaction to consider all Arab countries as swathed in luxury is natural for many people. Let us, however, recall that many Arab countries possess neither the valuable hydrocarbons nor, natural resources other than the beauty of their landscapes or ancient monuments and the physical force of their inhabitants.

Another essential difference worthy of note is that of the governmental systems. The monarchies of Morocco, Saudi Arabia, Jordan, and the Gulf emirates differ from commonwealths in other Arab countries. To this has to be added the fact that the forms of government are independent of natural wealth. Among oil-producing countries are to be found democratic republics, such as Iraq and Algeria, as well as absolute monarchies barely evolved from the Middle Ages.

Mosaic of States

The educational levels of the populations, their densities, the fertility of soils, and many other characteristics vary from one country to another.

We are thus faced with a mosaic of states, from the Atlantic Ocean to the Persian Gulf, to be considered separately with their individual assets and handicaps, needs and prospects. Despite their differences, however, all of the states have a sense of fellowship that cannot be ig-

nored. United by a single language, dialectal and speech differences notwithstanding, right through from Rabat to Bagdad, they also feel as belonging to one and the same people. Despite disagreements and feuds among themselves, matters usually settle down, and, when two nationals of different Arab countries find themselves in conflict with a non-Arab national they will form a united front against him.

It has often been stated that only the opposition to Israel kept the unity between the Arab countries, and that peace would show up their dissensions. This may be, but I do not consider it likely. The existence of the conflict with Israel did not prevent other conflicts between Algeria and Morocco, or between Saudi Arabia and Egypt, for example. Nevertheless, these conflicts were settled and reconciliations were witnessed. This could have been considered impossible. Evidently the interest of our businessmen was first drawn to the oil-producing countries. They would, however, be wrong to neglect other Arab countries. To start with, they have their own business potentials. Let us remember, for instance, mineral wealth other than petroleum and the resources of the tourist industries. Also, Arab solidarity is well established between the rich countries with low population density and the countries not disposing of the wealth derived from black gold but who possess large human resources.

The development funds of the oil-producing countries have established the following priority planning:

1. The producing country itself
2. Other Arab countries
3. Other Third World countries
4. The rest of the world

It is therefore a matter of interest to pursue the study of ways and means of economic cooperation with all Arab countries, even poor ones, such as Sudan, Somalia, Mauritania, or Yemen.

Drawing up commercial planning

The aforementioned development plans have the general property of being fairly flexible and providing for the insertion of new projects which might be submitted by a Western partner. In the majority of specifications drawn up by Arab countries with planned economies, a wide scope is left to the initiative of the firms submitting bids or tenders. Thus, the Iraqi specifications, for instance, often comprise provisions inviting intending bidders to set forth their exclusive processes and the specific characteristics of the equipment offered. But it is particularly in the field of industries proposed by Western partners that will be found the best opportunities for making the most of patents and manufacturing processes.

Esteemed Form

The most esteemed form of cooperation in this field is the grant of a license combined with technical and commercial assistance. The mere assignment of know-how is definitely inadequate, because it covers but one definite aspect of economic life. The continuous evolution of the market requirements, the fashions relating to packing and presenting the products, and the obligation to improve quality and productivity call for a cooperation of some duration between the Western firm in continuous contact

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achieving its principles by carefully trained labor and simple but suitable equipment. The extent to which we will have to work backwards is a question of the degree of development, of the technological ambience and of the socioeconomic conditions at the receiving end.

In developing economies you might frequently meet with more understanding for the need for details in engineering and administration as you go down the hierarchic ladder. This has historical and psychological reasons.

In the traditionally industrial countries, industries developed out of craftsmanship and inventiveness; the technological aspects came first, administration and financing complemented it later. In developing countries, however, industries started to develop primarily out of a desire to put money and people to work, resorting to administration and technology as the means to do so. Furthermore, dedication to detail is not a strong element in the idiosyncrasies of most developing nations. Appreciation of detail can only be developed by encouraging detail effort; people normally are more involved with details the closer they are to the lower end of the ladder.

We really are facing a vicious circle: engineering developments are the result of tedious fights with a great number of details. The better the solution, the simpler and more self-evident it will appear. When selling technology, we present self-evident solutions and when implementing them, we have to move back into problem spheres.

We must be aware of another fallacy — to mistake administrative overburdening for reasonable administrative detail work. This fallacy has killed and is killing daily the well-meant objectives of many mergers and assistance efforts.

In view of the fact that the final success of our technology transfer efforts may depend on bridging many gaps in ambience between the providing and the receiving end, it appears advisable to start preparing for ambience adaption in an early phase of our transfer efforts. We might be able to achieve a lot of good for all parties concerned if we succeed in including in the basic agreement provisions for mutual ambience exposure, a thorough ambience analysis, and ambience-adapted training and education. I feel it would be helpful if the negotiating parties and/or the mediator complement their teams with a liaison engineer capable of understanding and bridging the technological ambience gap between both sides.

Changing Aspects of Licensing

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the European concept of "exhaustion of rights" to Canada. The following exceptions were proposed, nevertheless:

1. Where the imported goods have significantly different qualities from the goods sold under the authorization of the Canadian trademark owner in Canada.

2. Where the importer is not setting up the quality or kind of service (for example, in respect of "warranty") that Canadian consumers expect for goods sold in relation to the trademark.

3. Where the importer is taking a "free ride" on the advertising and other marketing expenditures of the Canadian trademark owner or his authorized trademark user.

Other recommendations go to the certification mark, a

mark which is never used by its owner and always licensed to others. The significant recommendations cover the concept of filing information as required by regulations and presumably to assist the consumer; the addition of the license-of-right notion, whereby any person can be licensed who is willing to conform to the standards established under the license and a tribunal would be established to monitor unreasonably discriminatory terms in such licenses and, finally, the quality standards would generally be of an improved nature.

None of this has come to pass as yet and so there must always be a degree of uncertainty about the precise direction of the law for the future. Its general drift is eminently clear, however, and I reiterate the forecast which I stated at the beginning: that in matters of industrial property, the concept of exclusiveness will gradually be reduced to the point where, for all practical purposes in commerce, it will no longer exist at all. Another thing is also certain — our legislators are doing their utmost to ensure the longevity and prosperity of the legal profession in Canada.

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with the world markets and the public or private Arab enterprise.

Rather than license agreements of standard type, complicated contracts are often necessary covering the grant of manufacturing or utilization licenses, as well as a technical and commercial cooperation.

I consider it necessary to underline the importance of the commercial aspect of the relationship between the partners. In order to be profitable, production calls for a command of the markets, which is rarely achieved by new establishments in developing countries. Trained executives are scarce in those countries and it is understandable that managers prefer devoting time and effort to production rather than to marketing. The partner of the industrialized countries, therefore, often will be called upon to direct production toward the goods or qualities most in demand in the international markets. If the establishment concerned works mainly for export on behalf of a Western principal, this goes without saying and it will be readily appreciated that the purchaser insist on a quality, a finish, and a presentation corresponding to the demands of his market.

If, however, the establishments work a license for goods to be delivered to the Arab home market or jointly to the Arab markets and re-exportation of part of the production, the matter will not be so obvious. Unfortunately failures have been recorded when, on account of an inadequate commercial cooperation, the product did not or no longer did meet the requirements resulting from the evolution of the markets.

Arab markets, at present in full development, provide a choice target for the industrialists and merchants of industrialized countries who wish to participate in the current interchange movement.

This offers a very large field for possible cooperation. No one will deny that such cooperation may be beset with risks, but does not this provide one of the characteristics of free enterprise?

In order to reduce such risks, be as fully aware as possible of the conditions existing in the country with which it is considered to cooperate.