Not for Release before Wednesday p.m.
July 19, 1967

Presentation by

EVERETTE MACINTYRE, COMMISSIONER

Federal Trade Commission

Before

Summer School

CONFERENCE ON SOCIAL STUDIES

on

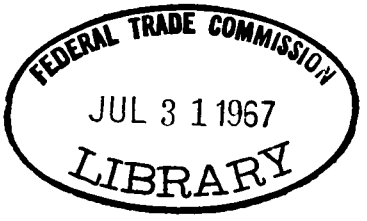
The Role of Big Business in America

and more particularly

Government Regulation of Business -

The Role of the Federal Trade Commission

University of Rhode Island
Kingston, Rhode Island
July 19, 1967



University of Rhode Island
Conference on Social Studies
Summer School 1967

GOVERNMENT REGULATION OF BUSINESS - THE ROLE OF THE FEDERAL TRADE COMMISSION

". . . There is no long-range, hostility between business and the Government. There cannot be. We cannot succeed unless they succeed. But that doesn't mean that we should not meet our responsibilities under antitrust. . . ."

The President's News Conference of November 8, 1961; John F. Kennedy, Public Papers of the Presidents 708 (1962).

The relationship in any country of business to government is deeply rooted in that nation's political, legal, social and economic traditions. 1/ The unique contribution of the United States in this area has been the development of the antitrust laws, with which the Federal Trade Commission has been intimately involved since 1914. The importance of this development cannot be overstated, for it is the practical expression of the American commitment to the free enterprise system. Indeed, the American experience has not been confined to these shores alone. After World War II, the desire to emulate the performance of U. S. industry influenced a number of foreign governments--particularly in Europe--to apply the free enterprise concept to their own economies in the light of American antitrust. This is naturally a source of gratification, and it should spur us to seek the reasons for its success.

1/ Edward, Trade Regulation Overseas iii, Oceana Publications, Inc. (1966).

Historically, the tenet fundamental to the American free enterprise system has been faith in competition, 2/ both as a guarantee of the most effective economic performance and to effectuate the country's social and political goals. In terms of economic objectives, public policy rests on the assumption that competition rather than public or private regulation will most effectively allocate the nation's resources, further efficiency, stimulate innovation and, in general, satisfy the needs of the consumer. 3/ Over and above purely economic objectives the political goal of assuring freedom of opportunity in the economic sphere has been expressed by Congress on numerous occasions. For example, the Small Business Act of 1958 states:

> "The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and judgment be assured. . . ." 4/

In line with the legislative will that there be freedom of opportunity for all, the national economic policy requires that competition be fair. The insistence that there be rules

---

2/ Blaisdell, The Federal Trade Commission 1 (Columbia University Press, 1932).

3/ Report of the Joint Economic Committee on the January 1965 Economic Report of the President, H.R. Rep. No. 175, 89th Cong., 1st Sess. 19 (1965).

4/ Small Business Act, Public Law 85-536, July 18, 1959; 15 U.S.C.A. 631a.

of the game in the rivalry for trade is largely responsible for the rise of the Federal Trade Commission. Woodrow Wilson, who sponsored this Agency, voiced the temper of the times, stating:

> "I have been told by a great many men that . . . it is just free competition that has made it possible for the big to crush the little. I reply that it is not free competition which has done that; it is illicit competition." 5/

Such views led directly to the enactment of the basic statute administered by this Agency--the Federal Trade Commission Act, which declares: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful." In short, it is fair to say that the Federal Trade Commission arose from "[a vision of] economic liberty--the freedom to compete, with the profits to those who rendered the best service to the nation." 6/

To bring this objective within reach, the Federal Trade Commission was given two main functions-the first, to prevent unfair methods of competition; the second, to inform Congress of developments which threatened the maintenance of competition. 7/ It is the purpose of my talk today to outline

---

5/ Cited in Blaisdell, supra note 2 at 5.

6/ Ibid.

7/ Blaisdell, supra note 2 at 13.

briefly how the Commission has met those tasks.

Significant to the evaluation of the Commission's role is the fact that Congress in 1914 deliberately set up an administrative agency to parallel to an important extent the work of the Department of Justice in the courts. That decision was rooted in disenchantment with judicial interpretation of the basic antitrust statute--the Sherman Act. That law, enacted in 1890, prohibits every contract, conspiracy or combination in restraint of trade and condemns monopolies and attempts to monopolize trade in interstate or foreign commerce. Two Supreme Court decisions, the Standard Oil and the American Tobacco cases of 1911, holding illegal only those restraints of trade which are "unreasonable",brought Congressional dissatisfaction to a head. Clearly, the "rule of reason" enunicated in those decisions left the courts with almost unlimited discretion. 8/ As Justice Harlan stated:". . . the injection of the rule of reasonableness or unreasonableness would lead to the greatest variableness and uncertainty in the enforcement of the law. The defense of reasonable restraint would be made in every case and there would be as many different rules of reasonableness as cases, courts, and juries." 9/ Liberal forces were alarmed by the rule because it seemed that so uncertain a standard might seriously diminish the opportunities for

---

8/ Votaw, Antitrust in 1914: The Climate of Opinion 24 A.B.A. Antitrust Section 14 (1964).

9/ Opinion of Justice Harlan concurring in part, and dissenting in part Standard Oil Co. v. United States 221 U.S. 1, 97 (1911).

successful antitrust prosecution. The business community, on the other hand, also objected to the latitude given judicial discretion under the rule, but for a different reason. It feared that that industry's antitrust exposure under so vague a test would become unduly hazardous. 10/ From both sides arose the ever recurring cry for greater clarity in antitrust enforcement. Woodrow Wilson undoubtedly expressed the general sentiment when he said:

> "It is of capital importance that the businessmen of this country should be relieved of all uncertainties of law with regard to their enterprises and investments and a clear path indicated which they can travel without anxiety. It is as important that they should be relieved of embarrassment and set free to prosper as that private monopoly should be destroyed. The ways of action should be thrown wide open." 11/

Congress, in turn, was aroused because it saw in the decision a seizure of legislative power by the judiciary. Congress, at any rate, decided it was imperative to enact additional legislation to deal with specific practices leading up to restraints of trade or monopoly but which did not meet Sherman Act standards, e.g., mergers between competitors. This was the genesis of the Clayton Act. Congress further felt, in view of the rule of reason enuniated by the Court, that enforcement procedures would require an agency with more knowledge of the business

---

10/ Votaw supra note.

11/ Messages and Papers of the President Vol. XVI Bureau of National Literature Inc. pp 7909-10.

world than that possessed by the Courts. This view led to the Federal Trade Commission Act. In contrast to the Sherman Act, in the case of both the Clayton and Federal Trade Commission Acts, Congress hoped to deal with anticompetitive practices in their incipiency before competition had actually been destroyed.

It is a paradox that the Federal Trade Commission, which was brought into being at least partly in response to demands for clarification of business's responsibility under the antitrust laws, should be given the broadest conceivable mandate under the Federal Trade Commission Act, namely the task of defining and preventing unfair trade practices. This was a massive grant of discretion to an administrative agency at a time when Congress apparently felt that the exercise of judicial discretion had vitiated the effectiveness of anti-trust. The reasons for this development must be sought in the exigencies facing Congress. While it was possible to legislate against a number of specific and obviously anticompetitive practices as in the Clayton Act--for example, mergers between competitors--the legislature simply could not foresee or provide against the myriad of anticompetitive practices which human ingenuity and business acumen could devise. Congress therefore gave the Commission a broad flexible mandate, to permit its application to changing business conditions. 12/

12/ Decker, Unfair Competition and the Federal Trade Commission 24 Fed. B.J. 513 (1964).

The demand for clarification of the law under so wide a directive, Congress obviously felt, could be met by the Commission's status as a body of experts on business practices. Further, it appears Congress was reconciled to giving the Commission this latitude because it was confident that this Agency as a creature of Congress would be more responsive to the legislative will than the courts had been. 13/

Returning to my main theme, the Commission's basic responsibility is to promote competition in the American economy. To accomplish that objective this Agency has been given a function essentially twofold in nature, the first, educational; the second, preventive. In this respect as in so many others concerning the Commission, Woodrow Wilson set the tone when he stated:

> ". . . We have created, in the Federal Trade Commission, a means of inquiry and of accommodation in the field of commerce . . . and to remove the barriers of misunderstanding and of a too technical interpretation of the law. . . . The Trade Commission substitutes counsel and accommodation for the harsher processes of legal restraint. . . ." 14/

13/ As one Senator stated: "I would rather take my chance with a commission at all times under the power of Congress, at all times under the eye of the people . . . than . . . upon the abstract propositions, even though they be full of importance, argued in the comparative seclusion of our courts." 51 Cong. Rec. 13047 (63d Cong. 2d Sess. (1914)).

14/ Messages and Papers of the Presidents, Bureau of National Literature, Inc., p. 8158.

Clearly the Commission's law enforcement function was not considered a punitive one. In this connection even when this Agency issues complaints against certain individuals and firms to prevent further violations of law on their part, the objective is not to punish, for the orders are prospective only. They merely tell the offender to cease and desist; they impose no sanction for past actions. Accordingly, even when the Commission acts to prevent individual law violations, the objective of spelling out and defining the law is also present, if not paramount.

In view of the broad educational task placed upon the Commission, the life blood of its work necessarily resides in its powers of investigation and economic inquiry. This is the source of the Commission's expertise justifying its mandate under the Federal Trade Commission Act to define for the business community those practices which are unfair, as well as its claim to forecast the economic impact of such activities.

The economic investigations of the Commission since its founding have covered a wide range of practices and industries. They have covered such diverse products as meats, cement and cigarettes. Numbering more than one hundred in number, they have been adjudged as having probably "the most substantial impact and enduring value" of all the Commission's activities. In many cases, the competitive and economic problems called to the attention of Congress have resulted in the passage

of major legislation such as the Securities Act of 1933, and the Public Utility Holding Company Act of 1935. 15/ The Commission's chain store investigation of 1934 is particularly notable. Focusing on the discriminatory prices secured by the chains to the disadvantage of their smaller competitors, it gave impetus to the enactment of the Robinson-Patman Act, which strengthened the existing Clayton Act provisions against anticompetitive price discriminations. 16/

A major objective of the Commission's economic reports is to achieve significant remedial results by publicity on important economic problems in the form of clear and unprejudiced reports after painstaking investigation. 17/ This, of course, is a reflection of the Wilsonian ideal that if only the law were clarified, business would comply with its mandate. Unfortunately, time and space dc not permit an extensive citation of examples to make my remarks on this point more meaningful. The Commission's statement on enforcement policy with respect to vertical mergers in the

---

15/ Task Force Report on Regulatory Commission [Appendix N] prepared for the Commission on Organization of the Executive Branch of the Government (1949), p. 127. See Generally Boyle, Economic Reports And The Federal Trade Commission: 50 Year's Experience, 24 Fed. B. J. 489 (1964).

16/ MacIntyre and Dixon, The Federal Trade Commission After 50 Years, 24 Fed. B.J. 377 (1964).

17/ Boyle supra note 15 at 492.

cement industry does however show what this Agency's industry-wide proceedings and economic inquiries can accomplish. 18/ In this industry the Commission was faced with a wave of mergers involving acquisitions of ready-mixed concrete companies by cement producers. The ready-mixed concrete companies are critical to the cement industry since they consume 60% of its product. As a result, if a number of the larger cement companies were able to tie up the more significant ready-mixed concerns by merger, their competitors would be frozen out of a crucial segment of this market. The anticompetitive consequences are obvious. The Commission's policy statement on vertical mergers in cement setting forth the standards by which such acquisitions will be evaluated and the preceding economic inquiry and staff report have apparently halted the trend towards such acquisitions on the part of cement manufacturers, seeking captive outlets. This is, therefore, a striking instance of the use of the Commission's powers of publicity and economic inquiry to clarify the law for industry and to keep an important segment of the economy competitive.

Similarly, the Commission's rule making procedures enable this Agency to flesh out the statutory requirements of the acts it enforces to make them more readily understandable

---

18/ Enforcement Policy with Respect to Vertical Mergers in the Cement Industry Jan. 3, 1967 (FTC News Release).

in the context of specific industries and a changing economy.

In the case of its trade regulation rule procedure the Commission gives expression to its experience based on past enforcement actions, investigations or other proceedings as to the substantive requirements of the laws it administers. It is an equitable way of enforcing the law on the broadest possible basis with the least expense to the public. 19/ A good, if homely, example of the Commission's use of the rule making procedure to adapt the concept of "unfair trade practices" to the unique problems of a particular industry is the Commission's Trade Regulation Rule on Dry Cell Batteries or the so-called leakproof battery rule. 20/ As a result of evidence adduced in the hearings preceding the promulgation of the rule ,the Commission found that despite the best efforts of the manufacturers no batteries currently produced are proof against such leakage. The finding on this point was based on the statements and statistics furnished by industry members, experts in the field of electric power, marketers of battery operated devices and ,of course, consumers. Each year there occurred literally thousands of incidents of damage from allegedly leakproof batteries. This justified the conclusion that such damage was apt to occur under conditions

---

19/ MacIntyre and Dixon, The Federal Trade Commission After 50 Years supra note 16.

20/ 2 Trade Reg. Rep. ¶ 7925 (1964).

of ordinary usage. Accordingly, the Commission determined that the use of such terms as "leakproof", "guaranteed leakproof" or similar representations had the capacity and tendency to mislead the consuming public and to divert business from competitors not misrepresenting their products in this manner. The rule as finally promulgated states:

> ". . . the use of the word leakproof . . . or any other word or term of similar import . . . in advertising, labeling or marking or otherwise, as descriptive of dry cell batteries constitutes an unfair method of competition and an unfair or deceptive act or practice."

Obviously, this rule is designed to protect the consumer, as basically are most Commission activities in the area of advertising and labeling. But in addition to stressing the deceptive nature of the claim, it is also noteworthy that the rule labels the practice an unfair method of competition holding further that it has the tendency to divert business from those competitors not engaged in misrepresenting their products. In short, even this rule which at first glance seems to be concerned almost solely with consumer protection also has a part to play in furthering the national policy of competition. In fact,requiring honesty on the part of sellers supports the competitive system. The insistence on truth in advertising makes the consumer the arbiter of the market. By enabling him to make intelligent choices on the basis of price and quality, competition is inevitably enhanced. 21/ This rule too has its modest part to play in that process.

21/ See Massel, Competition and Monopoly, Brookings Institution (1962) pp. 21, 49.

In addition to its broad educational function of clarifying trade regulation and antitrust on an industry wide basis, the Commission must on occasion sue competitors individually to secure compliance with the law. Generally industry wide proceedings in the form of rule making are preferable to singling out specific competitors in law enforcement proceedings on the grounds of both fairness and economy; the Commission's budget and manpower are limited. Such individual suits are unavoidable, however, if for no other reason than to give credibility to the Commission's law enforcement efforts.

These, however, are not the most important matters which I wish to discuss with you today. The significant characteristic of the Commission is that at least in the performance of its antitrust functions, it is among the least regulatory of the regulatory agencies. Committed to a policy of the free market regulated by the impersonal forces of competition, it does not in enforcing the law intervene in the internal management decisions of business. It merely orders that the unfair practices stop. For example, in the case of individuals or firms found to have engaged in a price fixing conspiracy, the Commission will not order them to charge "fair prices" on their products. Rather, it will prohibit further collusion on pricing between competitors and further resort to the mechanisms through which prices were fixed. The Commission, in short, in such circumstances depends upon competition rather than government fiat to bring prices down to a fair level.

Perhaps the citation of a number of specific instances will serve to make this point clear. For example, the Commission's Beech-Nut case 22/ held unfair a system whereby a manufacturer of chewing gum and other food products sought to maintain the resale prices of its products at standard levels. To compel adherence, Beech-Nut refused to sell its products to customers who declined to sell at the prices it desired, made it known that it would refuse to sell to such dealers and further made it known that it would in the future refuse to sell to those of its customers who distributed to other dealers not observing the resale price schedules in effect. To make effective its policy of cutting off non-complying customers, Beech-Nut enlisted its distributors in a scheme to ferret out and report those of its purchasers engaged in price cutting. Those customers found to have breached the resale prices promulgated by Beech-Nut could not resume their purchases until they promised future adherence. Clearly, this was a scheme designed to throttle competition between retailers of Beech-Nut's products. The Commission's order in this instance focused on the mechanisms through which the prices had been fixed. In order to restore competition, it prohibited the cooperative methods utilized by Beech-Nut, preventing others from obtaining merchandise at less than the designated resale prices,namely, the reporting and policing apparatus designed to discover price cutters and any similar measures devised to enforce higher prices

---

22/ 1 F.T.C. 516 (1919) rev'd. Beech-Nut Packing Co. v. F.T.C., 264 F2d. 885 (2d Cir 1920), rev'd. Federal Trade Commission v. Beech-Nut Packing Co., 257 U.S. 441 (1922).

to the consumers. In short, the order did no more than to remove the restraints on competition shackling the pricing freedom of Beech-Nut's customers and the retailers of its product. Characteristically, the Commission's order did not go further and give Beech-Nut a directive on how and to whom sales should be made.

In the price discrimination area too, the emphasis is on the removal of restraints on the interplay of market forces rather than the regulation of competitors. For example, in the Morton Salt case 23/ the Commission proceeded against a quantity discount on salt for which only five of Morton's customers operating large chains of retail stores could qualify. As a result of the lower price, the five favored retailers were able to sell salt at retail cheaper than wholesale customers of Morton could sell the same brand of salt to independently owned retail stores competing with the outlets of the favored chains. The order simply prohibited discriminatory prices where the differential is not justified by differing sales costs in the case of competing retailers and between retailers and wholesalers whose customers compete with retailers buying directly from Morton. It did not attempt to set an appropriate price for Morton's varying categories of customers, as might an administrative agency in the public utility area. Here again the emphasis was

---

23/ 39 F.T.C. 35 (1944) rev'd. 162 F2d 949 (7th Cir 1947) rev'd. 334 U.S. 37 (1948).

on ensuring for all the equal opportunity to compete on the basis of efficiency,not on how business should be run.

The Commission's Procter & Gamble case involving the merger of one of the largest soap manufacturers with the largest producer of bleach, Clorox, is equally instructive. The Supreme Court, among other findings, accepted the Commission's determination that "the substitution of Procter with its huge assets and advertising advantages for . . . Clorox [already dominant in the bleach market] . . . would dissuade new entrants [from coming into the bleach industry] and discourage active competition from the firms already in the industry due to fear of retaliation by Procter". 24/ In addition,the Court held that the merger was anticompetitive by removing from the scene Procter a potential competitor in the bleach industry which is closely related to the products sold by P & G prior to the acquisition of Clorox. The fact that Procter prior to the merger stood at the edge of the industry in a position to compete with Clorox, the Supreme Court held, had the tendency to foster better competitive performance on the part of firms already in the bleach market. The Court therefore directed affirmance and enforcement of the Commission's order requiring divestiture of Clorox by P & G. The divestiture order in this case and

---

24/ Federal Trade Commission v. The Procter & Gamble Company, 2 Trade Reg. Rep. ¶ 72,061 (1967) at 83,801.

other merger cases typifies the basic purpose common to all antitrust enforcement, namely, the restoration of competition with the least amount of business regulation. Certainly the divestiture requirement in this and other merger cases is far more likely to restore competition to the market than an attempt through government regulation to guide the combined firms to competitive behavior. Regulation of that nature is rarely likely to be effective and probably in no case would justify expenditure of the governmental resources necessary to achieve even a minimal result.

Finally, the Commission is unique among regulatory agencies in the broad spectrum of industry with which it is concerned. Unlike those administrative agencies dealing with the regulatory sector of the economy such as communications, power and transportation, the Commission is not concerned with a particular type of industrial activity but rather with a "general social and economic problem [competition] which cut[s] across a vast number of businesses and occupations". 25/ The Commission, in short, is not vested with supervision over the welfare of a definable line of business. Its function is not concerned with the promotion of any particular business or industry; rather, it has a general policing function to insure that the channels of competition remain free. 26/ As a result, because

---

25/ See Landis, The Administrative Process, Yale University Press (1938), p. 16.

26/ Id. at p. 17.

of the nature of its relationship to business, the Commission is in a better position to maintain its independence from those regulated than those agencies concerned with more narrow segments of the economy. This advantage, I must acknowledge, does not stem from superior virtue residing in the Commissioners or the Commission's staff; rather, it must be ascribed to the statutes under which this Agency operates defining its relation to the business community.

The Commission, of course, to some extent in its consumer protection function, is involved in a more direct form of regulation than its antitrust function. For example, the administration of the Flammable Fabrics Act and the new Fair Packaging and Labeling Act. Also, the Commission's activities to prevent consumer deception and fraud in advertising to some degree may be considered as more regulatory in nature. Even in this area, however, as a general rule, the Commission merely requires that the unfair and deceptive claims be stopped. It does not write advertising copy for the business community.

A classic example of the Commission's activities in the consumer protection area is the Holland Furnace case. 27/ A reference to this proceeding before moving on to other topics is justified if for no other reason than that it is archetypical

---

27/ Holland Furnace Company, 55 F.T.C. 55 (1958).

of this aspect of the Commission's activities. There the Commission's order among other matters prohibited a scheme whereunder a furnace manufacturer permitted its salesmen to pose as government utility inspectors or heating engineers to gain access to homes and dismantle furnaces without the owner's permission, followed by a refusal to reassemble on the false representation that this would involve great danger of fire, gas or explosion. Similar fraudulent practices also enjoined were misrepresentations to the effect that competitors of the furnace manufacturer were out of business and that parts of the homeowner's furnace were unobtainable.

A recitation of other Commission proceedings designed to protect the consumer from deception would be instructive and perhaps even entertaining. However, because of limitations of time and space, it is not possible to cover as much of the Commission's work in this area as I would like. My failure to do so does not arise from a feeling that these proceedings lack significance but rather from the desire to emphasize in the limited time available the Commission's antitrust activities since these are not as well understood by the public. And they deserve and require public support. Such encouragement at this time, I believe, is vital. To a considerable degree the enforcement of antitrust is discretionary with the enforcement agencies for the simple reason that the economic issues involved in initiating proceedings in this

area are difficult and complex, say in contrast to a decision to proceed for a violation of the Postal Fraud Statutes. For that reason alone, the climate of public opinion will always significantly influence the level of antitrust enforcement.

The debate on whether antitrust has a valid role to play has sharpened recently with the publication of "The New Industrial State", the latest book of John Galbraith, the economist who popularized economics for the millions. Briefly, it is his thesis that the large corporation has achieved such dominance of American industry that it is now immune to the forces of the competitive market. He concludes as a result antitrust is no longer a viable concept. According to one interpretation of this position, it is Galbraith's view that corporate size and resulting freedom from market discipline are not necessarily undesirable. 28/ By eliminating business risk and uncertainty these developments may enable the large corporation to plan for society by providing for the production, innovation and invention necessary to assure future economic progress. 29/ In short, the theory,if followed to its

---

28/ Opening Statement by Dr. Walter Adams, Professor Economics, Michigan State University, Before the U. S Senate Small Business Committee, Washington, D. C., June 29, 1967.

29/ On this point see also Comments of Dr. Willard F. Mueller, Director, Bureau of Economics, Federal Trade Commission on The New Industrial State, by Dr. John Kenneth Galbraith, Before the Select Committee on Small Business, U. S. Senate, Washington, D. C., June 29, 1967.

conclusion ,may well lead to acceptance of private regulation in place of our traditional reliance on the competitive market.

The empirical evidence available on this point does not necessarily support Galbraith's thesis. Economists more active in antitrust than the author of the "Affluent Society" assert that the available economic data in fact indicates that competition is still a force in the market. Dr. Mueller, Chief Economist of the Federal Trade Commission,has testified that even in those industries where concentration is highest, the market position of industry leaders is being eroded. 30/ According to Dr. Mueller, a study of post-war trends shows that concentration has in fact tended to decline across a broad front in the producer goods sector of manufacturing, which includes those manufacturers making items to be utilized by other business firms or producers as opposed to consumer goods manufacturers. Take, for example, the production of items to be utilized by the automobile industry as opposed to the manufacture of cereals for the breakfast table, or soap for the home washing-machine. On the other hand, concentration has been on the rise in the consumer goods manufacturing industries over the post war years 31/ even though the technological requirements of these industries do not demand enterprises on as large a scale as in the producer goods sector. 32/ This

---

30/ Mueller supra note 29 at 10.

31/ Id. at 11.

32/ Ibid.

development casts considerable doubt on the theory underlying "The New Industrial State". For if the theory had validity it is precisely in the producer goods sector where economies of scale (efficiency derived from size) might be expected to give further impetus to the growth of the large corporation leading in turn to additional concentration. It appears, therefore,that it is not economic determinism which will doom the competitive market. If the free enterprise system dies, it will perish rather from a lack of the will to preserve it.

It is my hope that this country will adhere to the national commitment to competition, for it has served the nation well. The choice facing us now is critical. If active steps are not taken to preserve a viable climate for competition, in a few years the opportunity may have passed us by. The decision made or not made in this area will have a crucial impact on both the country's private and public life. Unless the American people are willing to establish the conditions under which competition can regulate the economy, clearly they must accept some other method of regulating it. Absent competition, the economy will not regulate itself--in the public interest. 33/ The alternative, namely, shelving the antitrust laws and authorizing business groups to centralize the control of industry would legalize private monopoly. The second choice,all pervasive

---

33/ Stocking and Watkins, Monopoly and Free Enterprise, The Twentieth Century Fund (1951), p. 517.

government regulation is equally unattractive. 34/

Among the fundamental assumptions of antitrust is the view that all should have equal rights to engage in and conduct businesses in any manner that will not endanger the similar rights of others, and that consumers and producers should have equal access to markets and natural resources. This is not an aspiration to be lightly abandoned. It may be that the complexities of the modern society will prevent the pure application of this principle, but antitrust will prevent its wholesale obliteration. 35/

34/ Id. at p. 518.

35/ Thorelli, The Federal Antitrust Policy, The Johns Hopkins Press (1955), p. 608.