For Release Wednesday, May 4, 1966, 5 p.m.

ANTITRUST, REAL OR FANCIFUL

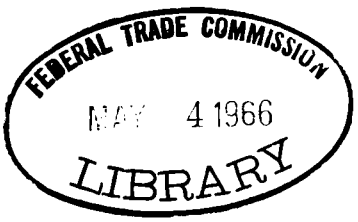
A STATEMENT BY

EVERETTE MACINTYRE, COMMISSIONER

FEDERAL TRADE COMMISSION

BEFORE THE

BUSINESS PUBLIC RELATIONS SEMINAR



Hot Springs, Virginia
p.m. May 4, 1966

ANTITRUST, REAL OR FANCIFUL

Introduction

Mr. Chairman, Ladies and Gentlemen:

It is a pleasure to visit with you and to discuss antitrust with you on this occasion of your seminar.

We at the Federal Trade Commission feel particularly fortunate when we have an opportunity to meet with representatives of a group such as yours because we know we should share a common interest in fostering a high level of business ethics and preventing unfair practices. We believe, as I am sure you do, that ethical practice is good for business and for the community as a whole, not only from the standpoint of morality, but also from the standpoint of the businessman's return on investment.

We at the Federal Trade Commission want to help you achieve a high level of consumer confidence in your business activities and in your advertising. We believe this can be done by keeping the channels of trade free from unfair acts and practices. The expressed national public policy has this objective. This public policy has been expressed from time to time since 1890 by the Congress, the President,

and others who have had responsibilities in effectuating the purposes of our antitrust laws. As recently as July 18, 1958, when President Eisenhower gave his approval to Public Law No. 85-536, it was declared that:

> "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 individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation."

The Federal Trade Commission has a substantial responsibility and duty to expend its resources, attention, and effort in aid of the effectuation of this national public policy. Therefore we request - indeed, we challenge - you to cooperate with us in the discharge of our responsibilities and duties in this respect.

FTC Authority Regarding Unfair Acts and Practices

The Federal Trade Commission's authority to protect businessmen, consumers and other members of the public from unfair acts and practices is derived from the Federal Trade Commission Act, as approved in 1914, and as amended in 1938. The most important part of the Act consists of only 19 words. Those words are: "Unfair methods

of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

False and Deceptive Acts and Practices

False advertising, as well as misbranding and other misrepresentation of consumer products, has always been one of the major concerns of the Commission. The first two cease and desist orders entered by the Commission after its establishment in 1915 prohibited claims that sewing thread and textile fabric were silk, when actually they were cotton. The first cease and desist order to be reviewed and affirmed by the courts prohibited misrepresentation of food products, sugar, coffee and tea, by one of the nation's largest retailers.

Realizing the tremendous impact of advertising as a competitive force and a persuader of the purchasing public, the Commission since 1929 has maintained a continuing surveillance to detect any claims which may be questionable. With radio advertising having been included in the surveys since 1934, and television advertising since 1948, this monitoring of advertising continues as an important part of the Commission's activity to protect businessmen and consumers from unfair acts and practices.

The Commission's jurisdiction to prevent unfair and

deceptive acts and practices extends to all types of products and practices excepting those which by specific legislation are the responsibility of some other agency. The Commission, of course, cooperates closely with other governmental agencies such as the Food and Drug Administration and the Post Office in cases involving labeling of foods, drugs and hazardous devices or in mail fraud matters in order to prevent needless duplication and to give the fullest possible protection to the public.

The Commission also cooperates closely with state authorities by referring to them matters which are found to be of intrastate character and involve potential violation of state laws against unfair acts and practices.

The Commission's authority extends only to transactions which cross state lines, in interstate commerce, and it proceeds only in matters which involve the public interest. It does not undertake to resolve matters of private controversy or to obtain refunds or adjustments on behalf of individual complainants.

FTC Antimonopoly Activities

About 60% of the total effort of the Federal Trade Commission is devoted toward curbing acts and practices which

have a dangerous tendency unduly to hinder competition or create a monopoly.

The Commission's general authority to prevent acts and practices with a tendency to hinder competition or create monopolies is derived from the prohibition against unfair methods of competition spelled out in the original Federal Trade Commission Act of 1914. In addition, Section 2 of the Clayton Act of 1914, as amended by the Robinson-Patman Act in 1936, specifically charges the Commission with proceeding against discriminatory pricing practices which may injure competition. Finally, under Section 7 of the Clayton Act, the Commission has the responsibility of proceeding against corporate mergers with the requisite anticompetitive tendencies.

Mergers

Antitrust activity in the merger area has always been an intriguing subject for the commentator. Of late, however, the volume of comment - much of it critical from the academic community, the press and business - has been increasing. The reasons for the current concern with application of antitrust to mergers are fairly obvious. On the one hand, there are those who have become ever more concerned with concentration and alleged super concentration

and the implications of these phenomena for our free enterprise system. 1/ On the other hand, there are those who view with alarm current developments under the merger law, which it is feared may freeze business into an obsolete pattern. In short, there is increasing concern about the relevance of antitrust to the economy of today. My remarks will be devoted to that topic and the further question of how should antitrust measures be applied to current problems. I do not intend to discuss the minutiae of the more recent decisions or to delve into some of the more arcane subjects of interest to the lawyer or economist in this field as, for example, the definition of the relevant market for the purpose of the merger act. These topics are admittedly important, but the more fundamental issue is whether at this time antitrust has a realistic role to play.

To begin, in any serious discussion of the validity of antitrust, two basic questions must be answered. Is the economy still sufficiently decentralized so that it is meaningful to speak of regulation of the market by the impersonal forces of competition? Secondly, is the optimum

---

1/ E.g., ". . . Sen. Philip Hart, the Michigan Democrat who chairs the Senate Antitrust and Monopoly Subcommittee, blasted government antitrusters last week for a 'laissez-faire' attitude in the face of 'the greatest merger tide in our history,'" Newsweek, Mergers: 'Everybody Wants to Get Bigger' April 25, 1966, p. 72.

approach for maintaining a free competitive economy one which focuses on the structure of the economy (e.g., prohibition of mergers) or one which emphasizes the restraint of anticompetitive behavior. Finally, one might also ask whether a rational antitrust approach should not give equal consideration to both alternatives.

A good point of departure for this debate may be two articles in the April and March issues of Fortune, devoted to the subject. These articles offer an advantageous springboard for our discussion for the simple reason that I assume that most of you have read them and, secondly, the articles, although iconoclastic in tone, frame the issues in such a way that at least we should know what we are talking about. Briefly, Fortune proposes, under the title of "Antitrust in an Era of Radical Change", that the antitrust statutes should be amended to make it clear that the national policy is to foster competition by punishing restraints of trade such as price fixing conspiracy, limitation of production, allocation of markets and suppression of innovation--but that it is not the national policy to prefer any particular size, shape or number of firms to any other structure of the market;

and that mergers, be they horizontal, vertical or conglomerate, are legal unless they spring from a "manifest attempt to restrain trade."

It is evident that the main preoccupation of the article in common with other critiques of antitrust from the business community is with the impact of current enforcement under Section 7 of the Clayton Act, which was enacted to deal with the question of mergers. In this connection, Fortune charges that in the last 15 years antitrust enforcement has become more and more subject to a reactionary enforcement philosophy, fearful of change, and which frowns on the growth of firms, especially by merger. It is Fortune's basic contention that the attempt to preserve a market structure of many competitors for the purpose of maintaining competition is groundless. The main thrust of the argument is apparently that a permissive policy as to mergers will foster the flexibility and encourage the innovation essential to a dynamic economy. As I understand this proposition, allowing firms to acquire by way of merger managerial skills or additional product lines for purposes of diversification will result

in competitors better able to withstand the vicissitudes of competition under modern conditions.

With this brief and perhaps oversimplified introduction to one approach to the current debate about the role of antitrust, I must preface my further remarks with the advice that I, of course, cannot on any of these issues give you a definite answer. One's point of view on such problems is necessarily personal and to a considerable degree conditioned by one's past associations and experience. Mine has been primarily with the Federal Trade Commission. In this connection, it is significant that the statute creating the Commission - the Federal Trade Commission Act - as enacted in 1914 declared "unfair methods of competition are hereby declared unlawful." 2/

The phraseology of this prohibition is important; it charges the Commission with proscribing those acts which have a tendency to hamper or lessen competition. In short, it emphasizes the antitrust concern with the behavior of firms in a market in order to keep that market viable for competition.

2/ Section 5 of the Federal Trade Commission Act, 38 Stat. 719. This provision was subsequently amended by the Wheeler-Lea Act of 1938, 52 Stat. 111, 15 U.S.C. 45, prohibiting unfair or deceptive acts or practices as well.

The Supreme Court in 1931 stated that Congress, in enacting the statute, was concerned with preventing "unfair competition [which it recognized as the] practice which destroys competition and establishes monopoly . . . ." 3/ The recognition by the Court, which was then of a conservative complexion, of the legislative intent to encourage an economic climate in which a large number of independent competitive firms can flourish is noteworthy. The question remains whether, in an era of growing concentration and technological innovation, it is still a realistic goal.

A consideration of this topic leads us to the burning antitrust issue of the day: What is the structure of the economy like at the present time and should the antitrust agencies concern themselves at all with the size and shape of economic markets?

3/ Federal Trade Commission v. Raladam Co., 283 U.S. 643, 650 (1931).

While economists may disagree as to whether concentration is accelerating, it is obvious that a good deal of concentration is now at hand in the economy as a whole and in specific industries and markets. It is further clear that overall concentration in the economy has, to a large degree, been a function of business's drive for diversification. 4/ As a result, one of the most pressing antitrust problems facing both the Antitrust Division and the Federal Trade Commission is what policy should be adopted towards mergers generally and, specifically, should the two agencies differentiate between pure conglomerate mergers on the one hand as opposed to vertical and horizontal acquisitions on the other? There is no unanimity on the point.

According to Dr. David G. Martin of the Graduate School of Business, Indiana University, ". . . Economists are generally agreed that workable competition requires many

---

4/ See testimony of Joel Dirlam, Hearings Before the Subcommittee on Antitrust and Monopoly, United States Senate, 1965, p. 748. These hearings will be referred to as "Concentration Hearings" in subsequent portions of this paper.

firms [none of which has sufficient control of a product] to greatly affect the price or terms of exchange that result from a bargaining process in the market. It is not sufficient that a firm have a competitor or even many competitors." In this connection, concentration has been singled out as a possible indicator of where significantly noncompetitive markets may be found.5/

Some economists examining the current scene, taking into consideration the phenomenon of concentration as well as diversification, have noted that certain firms have become more significant than the industries in which they operate and that the conventional economic analysis concentrating upon market power in the single market and assuming a single product has come to have little, if any, relevance to the behavior of such large firms.6/

A number of economists view current developments with alarm and call for action under the antitrust laws. Notable among these is Professor Corwin Edwards of Oregon University who has written a great deal on this topic. Dr. Edwards notes the power of a large conglomerate enterprise may be

---

5/ Testimony of Dr. Carl Kaysen, Professor of Political Economy, Harvard University, Concentration Hearings, p. 544.

6/ Testimony of Joel Dirlam, Concentration Hearings, p. 770 (1965).

significant and that such power is not measured by the size of its market share in particular markets but extends to markets in which a conglomerate's share is too small to constitute a monopoly or participation in oligopoly.

The problem of overall concentration due to conglomerate size is, however, a difficult one. Even Dr. Edwards, despite his suggestion that Section 7 proceedings should be brought whenever possible, does not seem certain that the present laws are applicable to concentration resulting from the growth of conglomerate firms. He concedes that it would be difficult to bring the present antitrust laws to bear upon such amalgamations. 7/ Dr. Edwards is not alone in expressing doubt that the antitrust laws now in force were designed to deal with this problem. In this connection it is interesting that Donald Turner, Assistant Attorney General in Charge of the Antitrust Division, recently suggested the possibility of dealing with overall concentration by legislation specifically designed to curb growth by way of acquisitions

---

7/ Testimony of Professor Corwin Edwards, Concentration Hearings, p. 44, 45 (1964).

in the case of certain of the largest corporations. 8/ I also question whether the Sherman and Clayton Acts were designed to cope with this problem. Conglomerate size is relatively new to American manufacturing and for that reason neither economic theory nor public policy has yet been devise which will effectively deal with this issue. There is merit to the suggestion that if government should concern itself at all with the problem of bigness, as such, then it should be done under a specialized statute designed expressly for that purpose. An attack on overall size without regard to the effect on competition in specific markets cannot be justified except on the basis of public policy clearly expressed by Congress in a new law. To attack bigness as such under the antitrust laws would, I fear, merely distort our antitrust statutory scheme without compensating benefits. In short, I do not believe that under the antitrust laws we have a mandate for planning the structure of the economy. The disadvantages of such an approach have been ably articulated by two economists,

---

8/ "U.S. Aide Hints at Trust Law to Bar, 'Super-Concentration'", The Evening Star, Washington, D. C., April 15, 1966. The article notes that Mr. Turner specifically disclaimed having reached the conviction that there is a trend to super-concentration and that he did not want to be understood as proposing a law against super-concentration but suggesting it "as a separate avenue if action is appropriate."

Messrs. Dirlam and Kahn, who state in this connection:

> "The antitrust laws cannot be turned into a statute for the structuring of all markets in the direction of purer competition. Apart from the economic objections to such a program, it would be politically impossible. It is questionable if it is worth devoting the bureaucratic resources necessary to achieve the reordered structure, and it is questionable too whether the resultant discord and confusion might not impair economic performance more than the final restructuring would improve it. Where giant firms have overstepped the bounds of antitrust, there is no sign their efficiency would in most cases be impaired by dissolving them; reduction of power by these means could be accomplished without much loss. But beyond this remedy, we must resign ourselves to the presence of substantial economic power in our community. General Motors, General Electric, AT & T, duPont, Sears Roebuck, Standard Oil of New Jersey--not to mention the United Mine Workers and the Teamsters Union--are all powerful organizations. But their power is held in check by a variety of forces and controls. It would be difficult to make a convincing economic case for their wholesale disintegration. 9/

However, although conglomerate mergers should not be attacked simply because of an increase in concentration in the overall economy, they should be dealt with if they manifest anticompetitive effects in specific markets or industries just as would be the case in a proceeding involving vertical or horizontal acquisitions. In short, if in a particular market it becomes apparent that a conglomerate

---

9 / Dirlam and Kahn, Fair Competition: The Law and Economics of Antitrust Policy, Cornell University Press (1954), p. 284.

merger results in the elimination of potential competition, the likelihood that reciprocity will be used, or the creation of extraordinary competitive advantages for the conglomerate enterprise, then a proceeding under the present antimerger act is justified.

In the case of vertical and horizontal mergers, however, the antitrust agencies, in my view, should take a fairly stringent stand. These acquisitions can readily be evaluated by the traditional antitrust standard of the actual or probable impact of the merger on competition in specific markets. Horizontal mergers in the majority of cases clearly diminish competition, at least to some degree, because the necessary consequence of such an amalgamation is the disappearance of a competitor or a number of competitors. The only question is whether the impact on competition in the particular case is sufficient to warrant action either by the Federal Trade Commission or the Department of Justice. Similarly, in the case of a merger involving vertical integration, either backwards to a supplier or forwards to a customer, these too can be fairly readily evaluated in terms of the impact on competition in a specific market, namely, are competitors frozen out of a significant source of supply or a substantial market for their products.

I would agree with Mr. Turner's rebuttal to Fortune's proposals that the best economic evidence indicates that a strong merger policy, at least insofar as horizontal mergers are concerned, is almost certainly right. 10/ In this connection it is interesting to note that certain studies indicate there is a relationship between price-cost margins in an industry and the degree of concentration in that industry. In the case of an economic study of 1958 data for 32 food manufacturing industries, one of the economists responsible for this inquiry stated:

> ". . . we have examined and accepted the hypothesis that average industry price-cost margins are positively related to the degree of concentration. We find the relationship between these two variables to be continuous . . . Although no systematic increases in price-cost margins appear to accompany increases in concentration in the lower ranges, equal increases in concentration above a certain level are associated with successively larger increases in price-cost margins. 11/

Data of this nature indicates that there is still validity to the economic theory underlying antitrust,

---

10/ Turner, "The Antitrust Chief Dissents," Fortune, April 1966.

11/ Testimony of Dr. Norman R Collins, Department of Agricultural Economics and School of Business Administration, University of California, Concentration Hearings (1965), p 719.

namely, that competition is more apt to flourish if selling and buying power is dispersed among numerous buyers and sellers. As Mr. Turner stated, an active merger policy intended to limit increases in market concentration is unlikely to result in lower efficiency nor will an antimerger policy conflict with efficiency. 12/ Accordingly, I believe that in terms of antitrust objectives such as lower prices, better services and more efficient allocation of economic resources, there is a great deal to be gained from application of the antitrust laws to preclude, if possible, further concentration in specific industries and markets as distinguished from indiscriminate attacks on mere size.

The concept of inter-industry or inter-product competition, to my mind, does not warrant a retreat towards a permissive policy in merger law leading to concentration or increased concentration in specific markets. A substitute product is simply not, as a practical matter, an adequate substitute for competition within a product line

Unfair Acts and Practices

In discussing concentration, the structure of market and policy towards mergers, I have, however digressed from

---

12/ Turner, "The Antitrust Chief Dissents," Fortune, April 1966.

what should be my prime concern, namely, the prohibition by the Federal Trade Commission Act of unfair methods of competition and unfair acts and practices. Clearly, antitrust and trade regulation, although there are those who will deny it, must be as concerned with behavior in a market as with the structure of a market. Certain competitive practices can be as destructive to competition as a wave of mergers; for example, some types of discriminatory pricing and sales below cost. 13/ The suggestion, however, has been made that a broadened attack on market power would not only reduce the frequency of anticompetitive behavior such as price discrimination but also the frequency of situations where unfair practices such as price discriminations would have a substantial competitive impact. It is further suggested in this connection that the values of fair competition could by this approach be protected at less sacrifice to competitive vigor

---

13/ "The practice of price discrimination is particularly destructive to small firms. When discriminatory price concessions are made they are seldom, if ever, granted to the small buyer. And, having to pay a higher price for his merchandise than his large competitor the small buyer is handicapped at the very beginning of the competitive race. Moreover, price discrimination is a handy and effective instrument by which small sellers are disciplined and brought into line by their larger rivals . . . ." (Staff Report to the Federal Trade Commission for the Subcommittee on Monopoly of the Select Committee on Small Business, United States Senate, March 31, 1952, p. 8.)

than by rigorous enforcement of certain provisions of our antitrust laws which prohibit destructive trade practices. 14/

The suggestion to this effect, although recently made, is not new. Similar suggestions have been made through different periods of antitrust activity. It seems to me that many of these suggestions in effect say "Let the tooth and claw of the jungle prevail." It is argued by some that this would allow for "vigorous competition." Of course some of these advocates claim that they would undertake to dissect "vigorous competition" and try to learn whether the tiger, upon sinking his tooth and claw in his victim, harbored predatory intent. Successful studies of mental gymnastics of tigers are few indeed. In any event, the result of the use of the tooth and the claw is the same, regardless of intent. The use of many unfair trade practices in business destroy competition, whether with or without intent. Also, I say any idea that healthy competitive conditions can be restored by breaking up heavy concentrations of economic power built up through the use of unfair practices is a false premise. After nearly 40 years of training and experience in

---

14/ See e.g., Kaysen & Turner, Antitrust Policy, Harvard Univ. Press (1959) p. 183.

antitrust I am not quite so confident as some others about what can and should be done to implement our antitrust public policy in a particular antitrust case. Much of my experience has come from firsthand observation and study of business problems and firsthand experience as a trial lawyer in antitrust cases. I have seen and experienced the difficulties involved in the objective marshalling of facts upon the basis of which fair decisions may be made in antitrust cases. Likewise, I have noted the difficulties for business and the government in antitrust actions where decrees and orders have been directed to the restoration of healthy competitive conditions in situations found to be monopolistic. In fairness to business and the public, many of those situations never should have been permitted to develop. Therefore I thoroughly disagree with any thought that it is either fair to business or to the public to proceed in antitrust with policies based upon a concept which would include a result of "build up and break up monopolies." I believe that an ounce of prevention is worth more than a pound of cure. Moreover, certain economic conditions may be somewhat like cancer for which we have no cure.

In my view, it would be unwise to de-emphasize enforcement of those antitrust statutes specifically designed to prohibit unfair methods of competition by primary or total reliance on a structural approach to antitrust. Enforcement of the antimerger law has an important role in the antitrust statutory scheme, but the structural approach, as I have already noted, has definite limitations which it would be folly to ignore. As a result, competition cannot be maintained by antitrust action directed to the structure of markets alone. This is particularly true in the case of highly concentrated markets where it may reasonably be expected that competition as an automatic regulatory force, has less vitality than in those industries and markets where economic power is more widely decentralized. As a practical matter, it is highly unlikely that steps will be taken to de-centralize already concentrated industries, although Section 7 of the Clayton Act is of critical importance in stemming further increases in concentration in such markets. Further, since an attack on bigness as such is neither politic nor practical, the enforcement agencies should be particularly alert to enforce the ban on anticompetitive behavior prohibited by the antitrust laws in the case of the large conglomerate firm.

Conclusions

The remaining and fundamental question is: Does antitrust still have a valid role to play in today's economy? I answer that question in the affirmative. Antitrust has provided valuable results over the years. Witness the simple fact that business, by and large, is still competitive. 15/ There is no reason why, if intelligently applied, antitrust cannot continue to provide worthwhile results for the present and in the years to come. It is to be hoped that antitrust will continue to receive public support, for without it enforcement is not likely to be effective. 16/ It seems to me the business community might well be in forefront of those supporting antitrust enforcement. It is well to keep in mind that under antitrust, in the free enterprise area of

---

15/ This seems to hold true even in certain industries subject to considerable concentration, as, for example, in the case of computers. In that industry the dominant company apparently holds 70% of the $2-1/2 billion annual market but some smaller firms with know-how and ingenuity evidently have the opportunity to carve a niche for themselves. See "Computers: How To Succeed . . . ", Newsweek, March 28, 1966, and "Control Data's Magnificent Fumble", Fortune, April 1966.

16/ Vernon A. Mund, Government and Business, Harper & Rowe, 4th ed. 1965, p. 107.

the economy, the law merely fixes the rules of the game but does not involve the government in business risks or management activity nor require detailed review of either basic investment commitments or run-of-the-mill business decisions. In short, the law need do no more than prevent the activity which results in substantial lessening of competition in order to protect both the public interest and the legitimate interests of business competitors. 17/ Antitrust may be irksome on occasion to those subjected to a proceeding under these laws. Nevertheless, its implementation is far less restrictive than a system of stringent, direct governmental control allegedly protecting the public interest. Such restrictive legislation would almost inevitably be enacted should Congress and the public become convinced that basic decisions on price, employment, quality and quantity of goods are no longer subject to effective control by the checks and balances of competition but rather are made on the basis of private fiat alone. 18/

We have been warned about these possibilities time after time. As recently as April 15, 1966 a prominent New York

---

17/ Dirlam and Kahn, Fair Competition: The Law and Economics of Antitrust Policy, Cornell Univ. Press (1954).

18/ See Orrick, "Antitrust in the Great Society", 27 A.B.A. Antitrust Section, 26, 30 (1965).

lawyer engaged in private antitrust practice, warned that if our national public policy for an economic system of private enterprise based on free and fair competition is not vigorously maintained, there can be no doubt but that controls of a public utility type would be imposed to socialize the powers, profits and property of business enterprises. 19/

Earlier on Pages 13 and 14 and in Footnote 9 of this presentation, I discussed a report which appeared in The Evening Star of Washington, D.C. on April 15, 1966 under the heading "U.S. Aide Hints at Trust Law to Bar 'Super-Concentration'." That report stated:

> "A new trust-busting law may be needed if the nation's biggest companies grow bigger by merger, the government's top antitrust prosecutor has suggested.
>
> * * * *
>
> "Such a new law, Turner suggested, might 'say to the top 50 to 100 companies that any time you make an acquisition of a specified size, you must peel off assets of a comparable size.'
>
> "Turner said that he did not want to be understood as proposing such a law, but only as suggesting it 'as a separate avenue if action is appropriate'."

According to that report, Hon. Donald F. Turner, the Assistant

---

19/ Address by Jerrold G. VanCise, Esq., Annual Spring Meeting, Section on the Antitrust Law, American Bar Association, Washington, D.C., April 15, 1966.

Attorney General in Charge of Antitrust, Department of Justice, indicated that he believes some antitrust action should be taken against some of the concentrated economic groups. The report said, "Yesterday, he talked of using a court case under the present antitrust laws or of asking Congress for new legislation." He indicated that the Justice Department has not made up its mind whether it is appropriate to start a new case trying out a new anti-oligopoly theory or going to Congress for a new law. I make these references at this time to point out that thoughtful prominent persons are suggesting the possibility that in the future drastic legislation may ensue.

I share the concern expressed by these prominent antitrust authorities about the possible future befalling our economic system of free enterprise. Also, I am concerned very much about what is suggested as possible remedies to relieve us from the dire consequences if anti-trust should fail. It is for this reason that I would give increasing attention to those acts and practices which threaten our economic system of competitive private enterprise. Moreover, it would be grossly unfair to the owners and managers of our corporate enterprises to permit further concentration in the economy as a result of unfair

acts and practices unchecked by either advice or injunction and then to say to them, "Big Boys, you are now too big; you must submit to surgery. We are going to undertake to cut you down to proper size."

In conclusion, it is my belief that although the economy may undergo many changes, antitrust is not apt to lose its relevance. Mr. Justice Holmes described the basic antitrust law, the Sherman Act, "as a charter of freedom, . . . [having] a generality and adaptability comparable to that found to be desirable in constitutional provisions." 20/ The same may be said with equal validity of the Federal Trade Commission Act's provisions against unfair acts and practices. In other words, Congress has fashioned instruments to develop the law in this area into what should be "a living process, responsive and responsible to changing human needs." 21/

20/ Appalachian Coals, Inc. v. United States, 288 U.S. 344, 359 (1933).

21/ Hon. William J. Brennan, Jr., Centennial Address, Centennial Convocation of the Geo. Wash. U. Law School, Oct. 12, 1965, 34 Geo. Wash. L. Rev. 189, 190 (1965).

This living process should be one that would approach the problems and needs of business and the public realistica and not fancifully. It should fulfill the dream of Woodrow Wilson in advising businessmen about these problems and solving them in their incipiency. We should help businessmen deal with these problems in the seed and not in the weed. The Federal Trade Commission was authorized by the terms of the Federal Trade Commission Act to do this. It has policies and programs which could do this if utilized. I urge that full use be made of these resources so that antitrust will become real and not merely fanciful.