

One factor affecting judgment would be the type of public surveillance and consideration which was contemplated. The width of inclusiveness might vary inversely with the weight of the requirement which was imposed on industry and on the Government. Creation of administrative power to refuse permission to increase prices or wages, in effect a utility type of control, would certainly not be considered for more than a few industries. Mere notice requirements might, on the other hand, be extended to a considerable number of industries, companies, or products. Hearing requirements, which would be followed only by publicity of findings or advisory opinions, might apply on an optional basis to a wide number of companies or products but would not appear to be administratively feasible on a mandatory basis for more than a very limited number of proposed price or wage increases.

It would be possible to have a rather broad category for inclusion under notice requirements. This category could be defined in terms of a concentration ratio, or by this in combination with other factors, or by other means. But a narrowing of the scope of the span of public attention would be required before factfinding, hearings, or advisory recommendations were undertaken.

Method of decision

There are a number of feasible means of reaching decisions on this matter of inclusion.

First, Congress could specifically name the industries or products which would be covered by requirements. It would presumably do this if one or a few industries were designated for utility-type control. It could also list those industries or lines of commerce (with exemptions of relatively small companies) to which notice, hearing, or other requirements would apply.

Second, Congress could lay down in legislation a clear set of criteria and delegate to an administrative agency the responsibility of applying these criteria to available statistics on industries and markets and of making a determination of which companies and products were included. This method might be regarded as more feasible for notice requirements than for hearings or factfinding requirements, for in the case of the latter executive or administrative judgment on the need for hearing or factfinding in the particular instance might be regarded as desirable.

Third, Congress could lay down in legislation a general set of guidelines for the agency, but leave to it discretion to determine, within these guidelines, which industries, companies, or products would be covered.

Fourth, Congress could outline only the broad policy objectives to be sought and leave to the agency or to the President the determination of the industries, companies, or products, and the occasions, to which the powers granted would be applied.

Fifth, Congress could vary the definiteness of its prescriptions and the limitations on discretion of the agency or the President with the type of function to be exercised. It could follow the second or third method described above in regard to the requirement for notice, and the third or fourth with respect to factfinding, hearing, or delay requirements.