

Let me first take a brief look at the work of the Antitrust Division of the Department of Justice. As you know, it is the principal enforcement agency in the field of antitrust, charged with the responsibility of enforcing the Sherman Act. Looking back over the last year and a half, one finds an extremely unsatisfactory performance. The cases initiated in number are many (60 cases were commenced in the calendar year 1961; in 1960, the comparable number was 90, but of these 39 involved the heavy electrical conspiracy). In character, however, they reflect little enforcement imagination and seem, by and large, unlikely to have any significant impact on reducing the level of prevailing concentration. I do not wish to imply that the work of the Division has been unimportant, certainly not. What I do suggest, however, is that the resources of this agency are not being employed to their fullest potential.

Of the 60 cases begun in 1961,*28 involved so-called per se violations (most notably price fixing, but also including allocations of territories, and bid rigging—the latter a variant of price fixing). Most of these were hard-core, overt conspiracies in which the Government usually possessed uncontradictable evidence of law violation. In many of these cases, the defendants did not dispute the charge, pleaded guilty or nolo contendere, and were fined. All too frequently, the fines constituted little more than a slap on the wrist. The firms were chastised, held up to modest public ridicule, and told to sin no more. Some of the major participants were fined, or jailed; and as the heavy electrical goods companies are learning, large money damages may be incurred. But even to the extent that prosecution of the per se offenses is a significant deterrent, we should not lose sight of the elementary fact that the most important problems stem from the highly concentrated industries, not those in which explicit collusion is usually found.

Let me again emphasize that I am not implying by the tone of these remarks that price fixing, bid rigging, and the rest of the offenses involved should go unpunished. The question I raise is whether more utility could not be obtained through the greater utilization of scarce enforcement resources in other kinds of cases.

The work of the Antitrust Division in suppressing corporate mergers is of much greater importance, although I think it deserves emphasis that this is essentially only preventive in nature: it does not usually reduce existing levels of concentration. In the calendar year 1961, the Department of Justice filed 19 cases, seeking to block or set aside corporate consolidations. Most of these were of consequence and involved firms of substantial size, whose affiliation promised reduced competition. Interestingly, however, two of the more important of these cases (one involving American Smelting & Refinery Co. and the other the Penn-Olin joint venture) were brought during the final days of the preceding administration. And actually as the year progressed one finds that the antimerger work of the Antitrust Division gradually slackened, a trend that persists to the present time (only six merger cases have been filed so far during 1962, well below the 1961 rate). What explains this curtailment in activity is not altogether clear. Nor is there any apparent explanation for the growing number of what strikes me as minor cases involving price fixing and other per se offenses. Among the "vital" product markets involved in recent cases alleging overt conspiratorial behavior, for instance, are ice show productions, venetian blinds, service station prices in Washington, and Kosher food products in New York City.

Increasingly it seems that the Justice Department, either for reasons of its own or because of larger political considerations, is confining its attention to less important issues and hence is contributing little to the achievement of a more competitive, less concentrated economy. In an interview in June with Anthony Lewis, a reporter for the New York Times, Assistant Attorney General Lee Loevinger admitted that his Antitrust Division was simply carrying on the enforcement policies of the preceding administration. He said "it just doesn't seem like the time to file any breathtaking, world-shaking cases—even if we were ready to." Another Department official was quoted in the same article as saying: "It is probably true that we are affected by business uncertainties to the point where we are holding up cases with a novel or uncertain character approach. We are sticking pretty much to the predictable, to the established lines."

Although I am aware, as we all are, of the criticism being leveled at the administration by business spokesmen, in part because of the recent steel price episode, I seriously question whether in shifting its policy emphasis and in disregarding major cases, the Department of Justice is living up to its legal and