

moral responsibility. If the Antitrust Division is to perform a truly useful role, it must launch cases which have as their objective divestiture and other kinds of basic structural reorganization and relief that will reduce prevailing levels of concentration in our most important industries.

Until the Government seeks aggressively to obtain a more competitive climate in key industries, there will be room for participants in the less highly concentrated industries to feel they are the victims of a double standard. The gasoline station operators who agree upon prices at which they will sell their products are speedily brought within the criminal reach of the law. But the major oil companies which are able to achieve coordination in price, because of the concentrated character of the industry, go free. Both should be brought within the law.

While the Department of Justice is beset by administrative problems (its staff is too small for the job, and at the moment the Antitrust Division is operating far beneath authorized manpower levels), and while the law as written and interpreted is not nearly so clear as one would like, the fact remains that there is considerable room for improved enforcement that will lead to a more competitive market tone.

The situation is similar when one turns to the Federal Trade Commission. While this agency is possessed of considerable expertise in business regulation and thus should be in a position to contribute substantially to the attainment of the competitive goals, it has long been noted for its ineffectiveness. Although it handles a large volume of work, it continues to be bogged down in insignificant cases. During the fiscal year 1961, the Commission issued 410 complaints, but nearly three-quarters of these involved deceptive practices (primarily technical violations of the wool, fur, and textile labeling laws); only five new merger complaints were filed. Since July 1960 only six antimerger cases have been initiated, and only three between January 1961 and the middle of August of this year. This sorry performance has prompted one member of the Commission, Philip Elman, to say that there is in effect here "a kind of Gresham's Law (where the) trivial and inconsequential cases leave little room for, and tend to drive out, the substantial and significant." If the Commission is to perform a useful function in reducing existing concentration levels, it must allocate its enforcement resources more wisely. Like the Justice Department, the Commission's talents must be more productively employed.

III. THE ROLE OF THE FEDERAL ADMINISTRATIVE AGENCIES

Over the years, a number of Federal administrative agencies have been created to regulate certain industries—most notably, transportation (including airlines, motor trucking, railroads, water carriers, pipelines), communications, and banking. The hope was that in this manner the behavior of these industries would be rendered compatible with the broader public interest in spite of their purportedly monopoly character. In actuality, however, the performance of the administrative agencies has been sorely disappointing. The agencies have not been able or willing to compensate for the lack of the inhibitions and rigors that competition imposes. Moreover, and of considerable importance, all too frequently the regulatory boards have begot monopoly, deliberately or through studied acquiescence, and curtailed what little competition typically reigns in these sectors.

Any effort to accommodate the antitrust policies of our country with the conduct of the various agencies is fraught with the utmost difficulty. Occasionally Congress will admonish these boards to consider the antitrust laws in reaching decisions, particularly those which involve mergers. More frequently, however, Congress has failed to indicate clearly whether, and if so and to what degree, the antitrust policies must be considered in resolving certain kinds of specific questions. In the approval of mergers involving motor carriers, for example, the pertinent statute declares that mergers may be approved if they are "consistent with the public interest." The Supreme Court has interpreted this phrase to mean that the Interstate Commerce Commission must weigh antitrust considerations in reaching its decisions, but that the antitrust features need not be given primary or exclusive weight; they are only factors to be considered along with all other relevant matters. The net result has been to leave antitrust policy in a very subordinate position, with the courts holding that the agencies' disposition of the antitrust issues is determinative. This places the administrative bodies on a pedestal and permits them, as they now so usually