

do, to reduce their treatment of antitrust issues to little more than a ritual.

This is true even where the law does not expressly vest the regulatory board with a final say in the matter. As an example, take the recent case involving the merger of the Philadelphia National Bank and the Girard Trust Corn Exchange Bank, the city's second and third largest banks which together have about 37 percent of commercial bank assets in the four-county metropolitan area. Under the Bank Merger Act, this consolidation required the approval of the Comptroller of the Currency. Pursuant to law he sought the opinions of the Attorney General and the Federal Reserve Board, both of whom advised that the merger would result in a substantial lessening of competition and a tendency toward monopoly. Nevertheless, the Comptroller approved the transaction. The Antitrust Division took the case to court and earlier this year District Judge Clary upheld the merger. While he did not feel bound by the Comptroller's finding, it is perfectly clear, from a close reading of his opinion, that he was strongly persuaded by the earlier determination. "The courts," he observed, "have uniformly held that once Congress has reposed its confidence in the expertise of a particular department, the courts (sic) should not substitute its judgment in the place and stead of the department involved."

More vivid illustrations will be provided if and when the ICC and CAB approve the various proposed airline and railroad mergers with which they are presently confronted. The consolidation of American Airlines and Eastern Airlines for instance, will bring together the second and fourth largest domestic trunk carriers and eliminate much competition, particularly in the northeastern part of the country. Nevertheless, and in spite of the Board's efforts in the years beginning in 1955 to open up new routes to competition from other, smaller lines, Chairman Alan Boyd has, during the past year, made several speeches encouraging mergers and suggesting strongly that the Board will be favorably disposed to consolidations that will substantially reduce competition in the industry. The point need not be developed at length in this context, but I offer the conclusion, based upon a rather close look at the evidence in the case, that if the American combination is approved, it will greatly inhibit airline competition and hamper the development of a more balanced airline industry.

It again deserves emphasis that if this merger is approved by the CAB (or if any of the pending railroad mergers are allowed by the ICC), the courts will not substitute their judgment, even though the CAB (and the ICC) is unlikely to give the antitrust factors very little more than a passing mention. I would be less disturbed if the evidence available indicated that the Board (and the other administrative agencies) could reasonably be expected to exercise its regulatory functions with dispatch and efficiency. But this cannot be anticipated. For another example, although the Federal Communications Commission has long had jurisdiction to regulate international carrier rates, it has never done so. This is why many people believe that the attempt to justify the Telstar proposal on the ground that the FCC will regulate its operation is humorous.

What emerges from this survey is that we have deeded to the control of a number of administrative agencies the authority to regulate large and vital sectors of the economy (together accounting for something like 15 percent of our national income) without imposing adequate safeguards. In the process, the competitive ideal has been frustrated; the agencies have been permitted to encourage monopoly; and all of this without substituting effective economic regulation for the kind of demands imposed by the enterprise system.

IV. GOVERNMENT PROCUREMENT, PARTICULARLY RESEARCH AND DEVELOPMENT

Any effort to assess the relationships between Federal Government activities and industrial concentration must incorporate a consideration of procurement policies and practices. As we know, Federal purchases of goods and services as a share of the gross national product have increased steadily over the years, rising from 1.2 percent in 1929, for example, to 5.7 percent in 1939 and then in the post-war years after declining for a brief period to 6.7 percent in 1947, rising once more until today it makes up about 11 percent of GNP (\$57.0 billion in 1961).

As a consequence, the way in which these large flows of Federal funds are allocated can have a very serious impact in (a) accentuating, or reducing, or maintaining any given level of industrial concentration; (b) fulfilling or frustrating the congressional policy which declares, as expressed in the Small Business Act, that "the Government should aid, counsel, assist, and protect insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise. * * *"