

on invested capital over the long run, at 70 percent of capacity, what happens when you get a recession? What happens when demand slackens?

Well, sales begin to fall. Employment declines, as do profits.

Under these conditions, one might normally expect that a firm would make some downward adjustment in prices to offset these unfavorable short-run factors.

But if you have a target formula, your response is: "Well, we expect this. There will be good years, which will offset our bad years, and we are not interested in maximizing our return over a year period, or even a 2-year period. We are interested in gaining a certain return on our investment over a long period time."

Consequently there is a sort of a built-in stability factor, insofar as price is concerned.

And I think another important thing to recognize is that the ability of companies to stick with this policy, once they have defined it, stems from the concentrated character of the industry.

Well, against this background of the structure of these concentrated industries, how does our public policy shape up?

First of all, we have to turn to the antitrust laws and see how they are being enforced. Here, as I indicate on the first page, and also in more detail within my prepared statement, I find a highly unsatisfactory performance.

I think the laws are being enforced at the present time in an extremely conservative and cautious fashion. And what activity that does take place is unlikely to have any significant impact on existing concentration levels.

I direct attention to the fact that in the calendar year 1961, of 60 cases that were begun by the Department of Justice's Antitrust Division, 28 involved so-called per se violations, most notably price fixing, bid rigging, and such. Of course, these are clearly unlawful arrangements; they should be punished; they violate the law.

But the question I have is whether we should be putting as much emphasis upon this sector as we are, to the great lack of interest we are displaying in other kinds of problems.

Note also that 19 cases were directed against mergers, an important area of activity, but one which does not usually have the effect of achieving any lower level of concentration. Antimerger litigation is essentially preventive in nature.

The predominant enforcement attention, therefore, is being devoted to kinds of cases that deal with new developments, like proposed mergers, or with manifestly improper kinds of activity, like price fixing. Such kinds of cases should be undertaken. But I ask whether it would not be wiser to devote relatively greater attention to other kinds of issues, those presenting more fundamental economic issues.

And as I look at the current year, I find that the number of cases and the volume of work that the Antitrust Division is doing is declining. Last year, as I noted, the Department of Justice filed 19 anti-merger cases. So far, during this year—and this includes to date—the Antitrust Division has filed six cases.

Examining the list of industries involved in offenses in the per se area, which includes such "vital" product markets as venetian blinds,