

Editorial

by

Jacques WERNER

DANGEROUS VACUUM

New tool of the international economic policy, the extraterritorial application of antitrust laws is presently used by U.S. authorities in a dangerous vacuum.

It was primarily out of domestic consideration that the American effort, presently under way, of breaking up various international cartels was started. After decades of close government regulation, it was felt in the United States that many key industries, such as motor carriers, airlines, ocean shipping and securities industries, lacked substantial competition, and this at high costs to the consumers. Short of doing away altogether with official regulation of these industries, the American government prompted the regulating bodies to promote competition from within, by removing strict regulatory controls. Most obvious success of such deregulation policy has up to now been achieved with the securities and airline industries. And much more is to come probably.

Attacking cartels of the magnitude of the airline or shipping industries implied, for U.S. antitrust authorities, attacking also non-U.S. members of such cartels, even if they were situated and would operate outside the United States. And consequently and unavoidably encountering hostility from the foreign governments involved.

Dealing with such foreign hostility may occasionally be tough for the Americans. As in the uranium cartel case, they may have to ultimately mollify their position out of fear of an international diplomatic furor. Or be faced with blocking or retaliatory legislation, as enacted by Canada and Australia, or as proposed under the well publicized recent U.K. bill. In such dealings however U.S. antitrust authorities enjoy the considerable advantage of meeting one by one totally disorganized opponents and confronting them with the strong American commitment to enforce their antitrust laws—expressing a quasi Amer-

ican constitutional principle—wherever they think their national interest warrants such enforcement. Whereas their opponents quite often have only to oppose their sheer displeasure, without any coherent view of their own on how to ensure competition in international markets.

This vacuum is dangerous. In the sense that American pressure—either in bilateral discussions or in multilateral negotiations or forums, as OECD and UNCTAD—produces much irritation, but few real fruitful debates due to the absence of any alternative legal theory. Some way or another, a different school of thought should be developed by the major trading partners of the United States concerning international application of competition laws. Such development should originate with a major western industrialized country having a strong commitment to competition—as Germany—or a country smaller but having high stakes in this area—as the Netherlands or Switzerland. The important thing is to start a trend in that direction.