



# Department of Justice

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ADDRESS

BY

THE HONORABLE WILLIAM B. SAXBE  
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE NATIONAL ASSOCIATION OF MANUFACTURERS

8:20 P.M.  
FRIDAY, DECEMBER 6, 1974  
THE WALDORF-ASTORIA HOTEL  
NEW YORK, NEW YORK

I appreciate the opportunity to be here tonight. And I would like to discuss with you one of the most controversial law enforcement problems facing the Nation -- enforcement of the antitrust statutes.

Whenever the Department of Justice files a major antitrust case -- or sometimes one that isn't so major -- some segments of the business community make predictions that the sky is falling, that the government is a blind foe of bigness and an enemy of efficiency.

In response to such utterances, Department officials over the decades have repeatedly said two things when discussing antitrust enforcement policies before a business audience: First, that bigness is not necessarily bad, and second, that the Federal government will not use the antitrust laws to penalize efficiency. I agree with both of these points, but I don't believe in hedging on the need to uphold the law.

So I want to emphasize at the outset that I will neither apologize -- nor propagandize -- for any antitrust case, large or small, that has been brought while I have been Attorney General.

Antitrust cases, like all other enforcement matters, are decided by the Department strictly on the merits. I believe in the even-handed enforcement of all the laws -- and we bring the appropriate criminal or civil action any time we find solid evidence of illegal actions, no matter who committed them.

Now, I know that the vast majority of businessmen are honest and obey the laws. But, nevertheless, it is irrefutably evident that antitrust violations have occurred on a large scale in the past.

As I have said on other occasions, I do not believe that those who willfully scheme to fix prices and engage in other predatory practices are regarded by their peers as heroes in today's version of gray flannel suits operating at the adventuresome edge of the free enterprise system.

For by their actions they are plainly enemies of the free enterprise system and they are following courses that will contribute to its destruction. A stranglehold can be fatal, whether applied by government or by a ruthless competitor.

The businessman who violates the antitrust laws can claim thousands of victims at a single stroke -- and pile up millions in illicit profits as well.

Antitrust violations obviously then add to the dangerous and damaging spiral of inflation, and piled one on top of the other for years and years can have a serious impact on our entire economy.

And so, the orderly process of government must monitor and prosecute violations of these laws, or Congress must decide to change the laws. There is no other alternative.

I believe the law has served us well.

But since antitrust enforcement so often stirs emotions, I would like to discuss with you some of the priorities of the Department of Justice -- and disclose details of two of our major new efforts.

We are placing greater emphasis on criminal actions in our enforcement program -- and in Fiscal 1974 the number of criminal cases exceeded civil suits for the first time in many years. This is happening because we are mystified how in 1974 some businessmen can still engage in price-fixing and other predatory practices that have been clearly illegal for years.

But merely bringing criminal cases will not accomplish much unless adequate penalties are imposed by the court upon those who are convicted or who plead no contest. Things are not overly promising in that regard.

During the past fiscal year, there were 26 persons who could have been sentenced to prison for antitrust violations. But only five actually received jail terms -- and in each case the sentence was only 30 days. That situation must be changed, and more appropriate sentences must be imposed.

To achieve better sentencing patterns, we are urging jail terms in virtually all criminal cases involving hardcore price-fixing -- and will make special pleas to the judges.

At present, however, criminal antitrust violations such as these are only misdemeanors -- with a maximum penalty of one year in jail and a \$50,000 fine. We strongly support legislation that

has passed the House and is now before the Senate that would make such crimes a felony -- and punishable by three years in prison. We also support raising the maximum fine for companies to \$1 million, since the current \$50,000 often amounts to no more than a cheap license for violators to operate.

The most prevalent criminal violation is price-fixing, and these cases receive major attention in the Department. Well they should, for they can have a devastating effect on consumers and they fuel the worst inflationary tendencies in the economy.

I do not mean to suggest that penalties should be unjust or repressive. Some types of criminal antitrust violations are worse than others -- and deserve an appropriate punishment. In many instances, we do not even file criminal actions, but rather civil suits which propose civil remedies instead of jail terms. I do not believe that the penalties we seek are unjust. In some cases, such as price-fixing, crimes of great magnitude have been committed.

Let me comment briefly on why I consider price-fixing so serious.

In dollars, the impact of price-fixing is measured in the multimillions. During the past two years, the total value of the products involved in the price-fixing cases that we have brought was nearly \$11 billion. If we estimate that only one per cent of the total was the result of price-fixing, we have a figure of \$110 million -- and one per cent is a very conservative estimate.

In one case alone, the defendants were charged with conspiring to raise prices by 10 per cent -- or some \$30 million a year.

There are other yardsticks as well. It has been estimated that customers now save \$80 million a year as a result of changes in the fixing of fees in securities transactions. And damage suits brought in antitrust matters have resulted in awards of \$450 million in one case and \$120 million so far in another.

Price-fixing can affect relatively small segments of the economy -- or it can affect us all. You will have to decide which category they fall into, but we are now conducting investigations to determine if there has been price-fixing in such items as sugar, beef, eggs, dairy products, bakery products, seafood, beer, soft drinks, and a variety of wholesale groceries, as well as lawyers fees and real estate commissions.

It is more than a matter of curiosity to us, for instance, when bread in City A sells for six and one-half cents a loaf more than bread in nearby City B. It could be the result of unique market conditions -- or it could be price-fixing.

While an antitrust attack on price-fixing obviously will not solve our Nation's entire inflation problem, it can help.

Let me now turn from the discussion of hardcore price-fixing and such obvious criminal offenses to other areas of competition policy which may be of interest to you.

Consumers also can be hurt in other ways -- and substantial losses are inflicted today by officially sanctioned exceptions to the antitrust statutes. One is the Federal authorization for the so-called Fair Trade Laws that now exist in 38 states -- and we are preparing legislation to repeal it.

The Fair Trade concept lets manufacturers determine the minimum retail price of their products. There is no rational excuse for its continued existence -- if there ever was any -- for it impedes the free enterprise system and places staggering burdens on the consumer. Why on earth should a maker of a mousetrap -- whatever its quality -- be allowed to dictate the price to be paid in every corner of a state. That, to me, is unfair trade.

Surveys have shown that prices for Fair Trade items normally are higher than in non-Fair Trade areas. One survey several years ago estimated that there would be savings of up to \$1.5 billion annually for the consumers if Fair Trade laws were scrapped.

The regulatory agencies that now watch over industries that account for more than 10 per cent of the gross national product are yet another example of governmental exception to free competition. These industries include such large and vital components of the economy as surface and air transportation, the securities industry, banking, and electric power.

In a society as complex as ours, there probably is some justification for some regulation of some areas of the economy.

But evidence indicates today that the overall regulatory apparatus of the Federal government is both wasteful and counter-productive -- and imposes unbelievable costs on the country.

Accurate figures are hard to come by. One study submitted to a congressional committee said that the total cost of regulation -- including rates that were too high and a variety of lost benefits from forbidden incentives -- was somewhere between \$4 billion and \$9 billion in 1968. And by forbidden incentives I mean such things as requiring trucks to be empty on their return trip and forbidding carriers to cut rates in an effort to attract new business.

More recently, it was estimated that passage of the Transportation Regulatory Modernization Act -- which would have fostered competition by removing much of the regulatory power of the Interstate Commerce Commission -- would result in savings of \$2 billion a year alone. And others have said that ending motor carrier restrictions alone would save \$6 billion.

Whatever the ultimate figure might be, it is apparent that ill-considered regulatory structures and policies are costing us dearly -- and in a time when the country is hardly bullish.

The Administration has proposed taking a step long overdue, and that is creation of a National Commission on Regulatory Reform, which would conduct an intensive, year-long study and make detailed recommendations on changes in the regulatory system that would benefit the economy.

But regardless of whether it is created, the Department of Justice already has begun a program that will result in a series of recommendations to Congress to change existing regulatory laws.

We are taking a close look at the key industries now subject to Federal regulation -- and they include air transportation, surface transportation, pipelines, ocean transportation, electric power, banking and finance, common carrier communications, and the securities industry.

The regulatory machinery was created to make certain that the public interest was served. Over the years, this concept has undergone substantial change -- so much, in fact, that much of the machinery now exists to protect the interests of regulated industries. In fact, one might well say that any industry which wants to be regulated should not be regulated.

And yet today we are subjected to the spectacles of regulated companies going out of business or merging or being unable to produce what they are supposed to produce -- despite huge subsidies or blank checks in the form of ever-recurring rate increases.

It has to be time for a change.

A substantial change already has occurred in the way the Department of Justice keeps watch over key segments of the economy that may have eluded keen antitrust scrutiny in the past.

As you may know, the Department for some time has been conducting in-depth economic reviews of a number of concentrated industries.

Let me emphasize that these economic reviews are not antitrust investigations. They are studies by the economists of the Antitrust Division to accumulate information and insights into how these industries function.

The industries are selected for study for a number of reasons. First of all, each is an industry in which a relatively few firms hold a commanding share of the market. But in addition they may be industries in which there have been rapidly rising prices or exceptionally high profits. Or they may simply be industries that the Department hasn't looked at for a long time -- and we feel that it's about time there was another look.

As I said, these economic studies seek to find out a number of things. The studies will examine the structure of each industry. Special attention will be given to pricing practices and distribution practices. And we'll want to know why those things are happening. Finally, the economists will want to compare what is happening with what they feel might be or should be occurring. I am frank to say that there is much about these industries that we don't understand, but we believe we have a duty to find out.

While the fact of the economic review program has been disclosed publicly, the industries that are being studied have not been divulged previously. But I can announce tonight that the

scope of the studies is broad, and that the industries being examined include the following:

First of all, automobiles and steel and a number of primary metals -- including aluminum, zinc, and copper. We also are looking at the tobacco industry and the coal industry. A number of major chemical corporations are under study, as are the beef and earth-moving equipment industries. And finally there are newsprint and other paper products, plus heavy electrical equipment.

There is no way we can predict the outcome of these studies. They are time-consuming, and with our limited staff resources a single study can often take a year.

But I assure you that we are going into this business in deadly seriousness. Some of the studies, I am sure, will show no behavior that violates the antitrust laws. But I will also tell you bluntly that I expect that some of the studies will lead to antitrust investigations.

The investigations could be triggered by a number of findings -- ranging from evidence of price-fixing to evidence of monopoly behavior. We will in each instance be guided by the facts, and by whether those facts indicate a violation of the statutes. If the courts do not agree with us, we may in some cases need new legislation from the Congress.

But I stress again that we are going into this new program with the utmost seriousness -- and it will be a continuing effort. As the study of one industry is completed, the economists will move to a new one.

Another major effort being carried out by the Department is a review of the effect on the antitrust laws of actions by state agencies or agencies sanctioned by states. An example of our concern is seen in the civil antitrust suit filed earlier this year against the Oregon State Bar and its members for eliminating competition through adoption of uniform fee schedules for attorneys.

I don't have to tell you that this is a sensitive area for a number of reasons. In one corner we have those who have long assumed that professional groups acting under state sanction were immune from the antitrust laws. In the other corner, we have those who say that personal services represent one of the most rapidly-rising cost areas for consumers, and the professions cannot be exempt from antitrust -- especially since the state boards that supervise them are normally dominated by the very same professions.

My view is that no one should be immune from the law -- and no one should be allowed to break it to the detriment of others.

We are not limiting this inquiry to lawyers and real estate brokers, although they will clearly be included since we already have brought suits in both of these areas. I want to announce to you tonight that we also will look at other areas where there is some state regulation or self-regulation. These inquiries will, for example, include doctors, dentists, pharmacists, accountants, engineers, funeral directors, and veterinarians.

Let me emphasize that these inquiries are still underway and no conclusions have been reached concerning either the full scope of, or possible violation of, Federal antitrust statutes. But I mention them to again demonstrate our enormous concern over possible illegalities -- no matter where they occur.

Now, I must admit that in any area of antitrust inquiry, we face a substantial number of obstacles.

Our staff resources are very limited, and antitrust investigations are very time-consuming -- often taking two years or more. Unlike other kinds of cases, in antitrust we do not have either a body or a smoking gun -- and often not even footprints.

We have to determine not only who committed the crime -- but whether one in fact has been committed.

We frequently run into an abyss of silence. Business and professional men -- otherwise solid pillars of the community -- often begin to act like figures in organized crime cases -- either strangely forgetful or claiming the Fifth Amendment.

There also is a baffling lack of support on the part of some perfectly honest members of the business community for tough antitrust enforcement. Baffling because antitrust violations hurt the honest businessman. Baffling because antitrust violations harm the free enterprise system.

I believe that the free enterprise system must be given another chance to work in this country -- and enforcement of the antitrust laws will afford a good portion of that opportunity.

Business and industry should be dynamic and imaginative, providing quality goods and services at the lowest possible price. As a Nation, we have always prided ourselves on our ingenuity. And industry has used its know-how and scrappy competitiveness to help provide the bulk of the foundation for our material bounty. Jobs in private industry provide the backbone of our economy and the strength of our country. As long as I am Attorney General this great contribution by business will not be frivolously dealt with.

But sometimes, it seems to me, we seem to have lost sight of those healthy, productive traditions. Industry too often squabbles over how the existing melon will be carved up -- rather than getting off the seat of its pants and working to make a bigger melon that will provide more for everyone.

As things stand now, the free enterprise system in some ways isn't very free and in other ways isn't very enterprising.

There are some businessmen who properly condemn crime in the streets at the same time they improperly fix prices or violate the antitrust laws in other ways. What they refuse to understand is that they are eroding the system that makes possible the very existence of their businesses.

Other businessmen who condemn the so-called welfare state fight to get every possible public dollar in all the many ways they are handed out by the regulatory agencies.

The questions become very simple: Who wants free enterprise? Who wants competition? Who wants a system that promotes ingenuity and productivity? And really, who wants democracy?

We will not have a free enterprise system if our economy becomes dominated by a few robber barons who can dictate price and quality -- along with quite a few other things.

We will not have free enterprise if our economy becomes totally regulated by the government.

What is needed is a concerted effort by both government and industry to walk the fine line between a capitalistic system dominated by monopolies on the one hand and a capitalistic system ensnarled in government regulations on the other hand.

This can best be accomplished by the business community firmly supporting strict adherence to the antitrust statutes and a government that will enforce those statutes on a completely fair and impartial basis.

Thank you.