PRICE LEADERSHIP

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The Old Trust Problem

The old trust problem in broad outline is familiar to all of us. Forty or fifty years ago monopolistic activity became so bold and widespread that the whole country was alarmed about it. This was the heyday of the Standard Oil trust, the tobacco monopoly, steel rail pools, and railroad rate discriminations. There were real grounds for fear that a few large corporations would soon control all the major industries of the United States with the consuming public considered only to the extent of what the traffic would bear by way of price exactions. The oil trust at this time either absorbed competitors or put them out of business at will. Usually the line between the absorption process and complete extermination of competitors was vague and uncertain. It was a matter of routine, after deciding upon the fate of a competing oil company, to drop the price of oil products, largely kerosene at that time, to a level in the competitor's restricted locality which would quickly bring him to terms. If the local producer became stubborn, consumers in a limited area were given the kerosene either free or at a nominal sum until the price war was patched up.

When the tobacco trust wanted to annihilate or absorb a competitor it copied his leading brand and cut the price to the extent which and in the areas where it would do the most good. This was a great era of fighting brands, to the short-lived delight of the public.

Other activities of the old time trusts were less favorable to the public, even temporarily. Compulsory freight rate discrimination in their favor was a favorite weapon of the trusts both to stifle competition and to produce profits. Perhaps the darkest cloud during this era of business expansion was the corruption of public officials, especially the state legislators where special favors were demanded at a price by the large corporations.

It is noteworthy that the trust activities prevalent 40 years ago were usually frankly and crudely illegal as measured by today's standards. Black was black, with little neutral gray.

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The Modern Trust Problem

The modern trust problem consists of a multitude of business activities which as a rule are less crude and blundering than the old ones. Big corporations are gradually manifesting a little more sense. It is unnecessary to over-emphasize the inherent morality of the modern business man. One important reason for his improved morals is the fact that he has discovered that, as a rule, the "public be damned" attitude no longer pays good dividends. Furthermore, in a crude, awkward fashion, the public, through its law enforcement machinery, makes it clearer every year that it does not stand for the more obvious forms of piracy.

In studying the activities of modern business organizations in relation to the antitrust laws, it is unprofitable to approach the problem with a strong sentimental bias. We shall never get anywhere if we assume that big business is either all good or all bad and that its activities may be divided by a sharp line between those which are legal and those which are illegal.

As a practical matter, the assumption that most large business organizations are violating the antitrust laws and therefore antitrust suits should be instituted would swamp any prosecuting agency in the Government and therefore lead to no good result. On the other hand, the assumption that there are no antitrust problems except where clear evidence of secret conspiracies in restraint of trade is found is likely to lead to a "do nothing" policy by the prosecuting officers. To withhold the investigating forces of the Government and to defer prosecutions until the old-time, crude violations are discovered beyond the shadow of doubt, is but little more than a policy of hopeful and watchful waiting. Industrial and marketing mechanisms at the present time do not always require the crude tools of conspiracy to accomplish the major purposes of monopolies. Much finer instruments have been perfected in recent years and, to continue the figure of speech, they have recently been ground to a sharp edge by the intensive organizing efforts under the protection of NRA.

The main control devices exercised by modern business organizations are as follows:

1. Security manipulations and control of various kinds;
2. Patent control, especially by patent pools and cross-licensing systems;
3. Dominance by large industrial units through price and market leadership.

The creation of integrated combinations by the first device is treated in the preceding article; the second device is discussed in the article following. The present article will be directed to a consideration of the third device.

Price and Market Leadership

One of the most important parts of the new trust problem today is covered by the terms "price leadership" and "market leadership." These expressions refer to the fact that where there are a few important producers in an industry, not necessarily dominant from the point of view of volume of production, all the producers both large and small are likely to pattern after the leaders in price policies, price quotations, and marketing methods. Under price leadership price control of a particular industry may be as rigid as in the days of the old pools and later the trusts and still later the corporate form of consolidation.

Almost every form of marketing activity in many industries is dominated by the leadership principle. In its simplest form the market leader is a dominant concern which sets the price of its products, usually with the certainty that other producers will immediately follow the quotations whether the trend is upward or downward.

In an industry producing standardized products the practice of following the leader is an obvious necessity when an important producer announces a decrease in price. It is a mere waste of time to quote higher prices if lower ones are quoted elsewhere.

The situation is not obvious in the case of an increase in price but under some conditions the reasons are nearly as impelling. The market leader, usually a large, and probably a low-cost, producer, is in a position to defer announcements of increased prices because of increasing costs longer than the small competitors. Under the conditions prevailing in 1936 and the spring of 1937, rising cost, especially considering the low inventories of the small producers, provided an incentive for following the leader upward as soon as he announced an increase in prices. As someone has expressed it, under these conditions followers are usually over-ripe for an increase when the leader announces it. (The justification of the *amount* of the increase is another matter, of course.)

It may appear at first glance that the small manufacturer would get a larger share of the total business if he would refuse to follow the leader upward on price advances or, more positively, if he should cut his prices below the prevailing rate. This assumes, however, a more naive view of competition than is probably justified. In an industry making standardized products, when someone cuts the price the competitors respond by meeting the lower quotations, and all find themselves with the same percentage of the market as before, but at a lower level of prices. Under some conditions this lower level may be more profitable *in the long run* because of the increased total business but this result depends upon a volume-price equation which cannot be predicted with any certainty.

This over-simplified statement of the leadership principle makes the practice seem as innocent and inevitable as the old law of supply and demand itself. Perhaps this is true in some cases, but the very simplicity and apparent innocence of the leadership principle makes it a good sheep pelt for the wolf.

In the old days secret meetings to fix prices were often acrimonious and long drawn out. It is a much simpler matter and less disturbing to the nervous system to fix prices by the leadership principle. It is not even necessary to agree to follow the leader. Easy acquiescence in the leader's move is all that is required: "You go ahead and we'll follow if you are not too far out of line."

So prevalent is this attitude in some industries that the price problem has almost disappeared from the concern of the management. The rank and file of producers hope for higher prices and fear lower ones, but as a rule they can't do anything about it until the leader decides to move. True, they can force a reduction in prices but not to their own advantage when competitors promptly meet them.

Superficially, at least, the leader and follower principle accounts for a large part of what the ordinary man calls the trust problem. He sees uniform prices of products made by widely dispersed producers and concludes inevitably that the "trust" is fixing prices by conspiracy. So it may be in a particular industry, but in another one having the same symptoms popular opinion may be in error in assuming conspiracy, although basically right in condemning the results.

Market leadership with its serious implications in some industries is not necessarily the result of deliberation or design on the part of the leader nor will a disintegration of a particular leader solve the problem as a rule. Usually leadership grows out of a combination of circumstances which are broader than the activities of any one company.

The underlying conditions customarily found where market leadership operates successfully are: (1) standardization of product; (2) sales at delivered prices only; and (3) the presence of a few large, well-informed producers in the industry. It does not necessarily follow, of course, that market leadership will always develop when these conditions are present, but they are at least fertile soil for the growth of the system.

Standardization of Product in Relation to Price Leadership

It is obvious that before a price leader can be followed, there must be "standardization" of the products either actually in the engineering sense, or in the opinions of the consumers, in order that prices may be compared. Absolute uniformity of grades is not necessary, of course, because prices of different products may be scaled in relation to the scale of grades. Standardization of consumer products may be camouflaged by elaborate and expensive advertising. This advertising may take the form of creating in the minds of consumers the idea that each brand of the product is so different as to justify considerable price differences among competitors. For example, some brands of radios or of domestic refrigerators may be almost identical in their mechanical operations, but there may be a considerable difference in prices brought about by differences in price policies reinforced by advertising. Under such conditions, price leadership may be halting and slow in bringing about price changes because each producer's need for an immediate conformity to change in his competitor's prices may not be important.

On the other hand, advertising may take the form of trying to convince the public that each producer's product is greatly superior to competitors' at the same price. This is true for example in the case of major producers of cigarettes. The most important standard brands sell at identical prices all the way from the direct wholesaler through distributing jobbers, and retailers to the consumer, but, if we may believe the advertising copy, each brand of cigarettes has its own special qualities.

Although it may be true that the bulk of smokers would adhere, for a temporary period at least, to their favorite brand in spite of minor price differentials, yet the small percentage who would change their brands in response to price is probably so large in the aggregate that the major companies cannot afford to get out of line.

The most nearly instantaneous results from price leadership are found in products sold largely on the basis of engineering specifications. When the purchasing agents begin to take orders from the engineering department, advertising, prestige of companies, and personal relations recede in importance and prices for the same specifications from all producers are automatically identical and changes in price flash almost instantaneously through the trade.

Leadership as Applied to Marketing Practices

For the sake of simplicity, market leadership has been discussed in terms of price changes. As a matter of fact, the practice extends to the whole market structure and includes the grades and products supplied the customers, the credit terms, classification of customers by schedules of discounts (a favorite way for a "chiseler" to cut prices is to move a favored customer into a higher discount bracket, thereby giving him lower net prices); the treatment of freight rates, establishments of price zones, and even the use of the basing point system in quoting prices.

Some of the modern price and discount lists are matters of mystery to the ordinary man. In the power cable industry, for example, about 5,000 different quotations can be obtained from checker-board tables covering two or three pages and, in addition, so-called freight adders must be calculated from another even more complicated group of tables.

The fact that all producers in a particular industry may use the same complicated price, discount, and transportation tables may perhaps be *prima facie* evidence of collusive agreements, but such an inference is not always correct. During the NRA period, for example, when the record is comparatively clear, numerous cases may be found in which the marketing and delivery systems were almost revolutionized apparently, though not certainly, on the initiative of a single large producer in the industry. This is readily understandable if the net result of the change was favorable to the customers, because, like a decrease in prices, other producers must follow the leader in such cases. The reasoning is less clear if the new system should be less favorable to the purchasers than the old one, but, in general, the attitude that "it must be a good thing or the big fellow would not have tried it" may lead the small producers to fall in line. The point is again emphasized, however, that absence of "conspiracy" in the conventional sense does not divest market leadership of serious consequences.

The Basing Point System

The basing point system is such a prominent factor in market leadership in some industries that a brief discussion of it in this connection seems in order. Although the system has not been confined to the steel industry, it can best be explained by reference to its use in that industry. It is well known that for about 20 years prior to 1924 the United States Steel Corporation, and, therefore, practically all other steel companies, sold steel products at the Pittsburgh base price plus freight to destination. That is to say, no matter where the product originated, the prices quoted were the mill prices at Pittsburgh, plus freight from Pittsburgh. In extreme cases when the fabricating plant using steel products was located on property adjoining a steel mill in the Chicago area, for example, freight was charged from Pittsburgh, even though the product could be tossed over the fence to the consumer.

After a protracted proceeding by the Federal Trade Commission,[1] the steel industry abandoned the Pittsburgh Plus plan and adopted the multiple basing point system with arbitrary differentials among many of the price bases, such as $3 per ton over Pittsburgh at Birmingham and $1.50 at Chicago.[2]

The arithmetic of the multiple basing system with differentials is comparatively simple. At any given point of delivery the price shall be the lowest total of any basing point plus freight charges. That is to say, if the base price is $50 at Pittsburgh, $51.50 at Gary, and $53 at Birmingham, and if the freight to a particular destination is $8 from Pittsburgh, $6 from Gary, and $7 from Birmingham, then the lowest total of base plus freight is $57.50, *i.e.*, the Gary base plus the freight. The prices quoted, therefore, by all steel producers, assuming the system is working, will be $57.50 per ton delivered, no matter whether the product comes from Bethlehem with a freight rate of say $10 or from a plant next door to the consumer with a trucking charge of 50 cents.

It is apparent, therefore, that under these conditions the prices as such have nothing to do with who will get the order because they are all the same to the last penny on the delivered basis. Competition, if any, must be on a different basis from that of price, such as prestige, former business connections, and promptness of delivery.

Sales at Formula Prices and Their Effect on Price Competition

The backbone of the price leadership system is formula prices, usually involving quotations on a delivered basis. The formula may be quite simple, such as, "f.o.b. factory, freight allowed to destination," or it may assume the more complicated basing point system of pricing, or the still more involved zone system whereby prices are graduated upward from certain base points similar to parcel-post rates. Still more complicated formulae may use code symbols for grades, "freight adders" for transportation rates, and long tables of quality variables to be added to "standard" prices.

From the point of view of the individual producer the price formula is sacred. Any deviation from it threatens him with the "chaos" of competition. His haunting fear is that in some remote locality a competitor may be departing from the formula

[1] Matter of U. S. Steel Corporation, 8 F. T. C. Dec. 1 (1924).

[2] In June, 1938, the United States Steel Corporation suddenly announced the elimination of most of its basing-point differentials, establishing a uniform base price for most basing points. This move, the effects of which are as yet undetermined, did not touch the essential formula of the pricing system.

quotation or that some over-zealous salesman of his own may be tempting fate (competition) by quoting at less than formula prices.

Not only would most of the secret price agreements in industry (or perhaps we should call them "understandings") fall to pieces if formulae were not observed but the foundation stone of price leadership would probably crumble if formula prices were forbidden. How, for example, would a producer in Chicago know how to follow a Pittsburgh leader's price delivered in Kansas City if a formula were not available for calculating the minutiae of grades, sizes, finishes, freight classifications, and trucking charges at both ends, not to mention a formidable list of extras understood only by the initiate?

By reducing price quotations to a formula basis, we have at once achieved great simplicity of effort and great inflexibility of the price structure. If the office boy is good at arithmetic, he can quote prices to customers as glibly as the president of the concern. At the other end of the marketing channel, assuming the formula is to be uniform among the various producers, the consumer likewise knows what his delivered prices will be from all sources when the system is working. If his purchases are in the nature of raw materials for further fabrication, he has little interest, therefore, in the price level as such but his primary interest is in knowing that his competitor does not purchase his supplies below the formula price. The net result is that everybody is interested in preserving the integrity of the formula, the producer because he thinks he makes the greatest net profit by the prevailing schedule, and the intermediate consumer because his raw material is "stabilized." As one publisher has expressed it,

> Within reasonable limitations, I do not care what the price of paper is so long as I know that my competitor is not getting it at anything less than the zone price.

In most industries operating under a price formula, price stability is looked upon as a desirable end in itself. This is especially true on the downward side where any concessions from formula prices are looked upon as necessary evils. If a firm has a number of plants, they ordinarily will close some of them completely before making substantial price reductions or, if but a single plant is involved, it limps along on a small percentage of capacity operations. Producers are likely to take the point of view that it is nobody's business but their own if they want to close their plants rather than become "chiselers," as they are likely to call price cutters.

What about the consumers on the one hand and the labor force on the other when an industry is striving to hold up prices? In times of great economic strain, such as recurrent depression periods, the rigid or stable price advocates are likely to be damming up the rills while the flood is engulfing them. The blind forces of economics pay little attention to the games of arithmetic which those operating under formula prices are likely to indulge in. More simply stated, if prices under depression conditions are not allowed to fall, production will. At the very moment when revival meetings are being held among the industrial leaders to bolster the price lines with admonition to hold them firm against all odds, factory production is likely to be plunging downward in a precipitous decline because people won't and can't buy at the high price levels. The net result is that the brunt of the depression falls upon the factory labor force and indirectly upon the consumers through maladjustments of price and income.

Price leadership logically followed means the death of price competition. Under the conditions of leader and follower in an industry, it rarely pays to cut prices voluntarily in the *short-run* period visualized by the sales management. As soon as a producer cuts his price, all competitors meet it promptly and each finds himself with approximately the same percentage of the total business but at a lower price level.

This leads us back to the major premise, namely, that flexibility downward in prices is not the rule when an industry is dominated by a few large concerns because voluntary price reductions usually do not pay in the short run. The long-run advantages of lower prices involve broader questions than are covered in the day-to-day routine of the sales office.

Price Leadership and Control of Production

Normally in industries where price leadership is prevalent inventories overhanging the market are minimized because the production schedule of each of the few large producers is geared directly to the price level. Each producer would deny that "following the leader" on prices involves control of production for the industry as a whole, but his policy of producing and selling only the amount of goods which can be marketed at prevailing prices is production control in an obvious and practical form. Control of production by the followers of the leader is a necessary corollary of their acceptance of his price leadership.

Limitations on production under price leadership are closely related to the problem of sharing the market among producers. When all producers have the same price there is a strong incentive for the *status quo* of marketing percentages to be maintained. So long as the products are approximately uniform among the several producers and prices are the same, there is no reason why the demand should shift from one producer to the other and thereby change the relative position of the suppliers in the market. At any rate there is reason to believe that uniform prices and a tacit understanding to live and let live among producers go hand in hand. During the NRA period, for example, the relation between uniform prices and market allocations was so close that in some industries there were definite agreements on market allocations. In some branches of the paper industry, for example, much time was spent by various groups in working out allocation percentages among the producers based upon a five-year moving average. These allocations were probably never formally approved, but they were more or less necessary to preserve the price structure.

This leads to the difficult question as to what extent tacit or uniform market allocations may be practiced today in those industries where prices are uniform, either by the leader-follower rule or for other reasons. It is comparatively easy to determine the degree of uniformity of prices in many industries. Price lists, discount sheets, classification of customers and freight books are more or less public documents if the time and trouble are taken to look for them. However, if there are hidden companions of uniform prices, such as production control and allocation of the market, they may be extremely difficult to detect. In the attenuated form of "live and let live," restriction of production may or may not be legal, but in any case there will rarely be evidence of agreements. Each producer knows from long experience that the moment he expands his production and invades the others' territory, a price war is inevitable. Therefore he moves with great circumspection in self-defense regardless of the public interest.

Price Leadership Under the Sherman Act

The federal courts have treated price leadership in relation to the Sherman Act in a conventional manner. They seem to have assumed that following the leader in price policies is similar to following the leader in fashions or in industrial designs. In the *International Harvester* case, for example, decided in June, 1927, the Supreme Court said:[3]

> The most that can be said as to this, [regulation of prices] is that many of its competitors have been accustomed, independently and as a matter of business expediency, to follow approximately the prices at which it has sold its harvesting machines; . . . the fact that competitors may see proper, in the exercise of their own judgment, to follow the prices of another manufacturer, does not establish any suppression of competition or show any sinister domination.

It is submitted that the far-reaching problem of price leadership cannot be dis posed of in so simple and "reasonable" a manner. Like the Court's opinion in the *First United Shoe Machinery* case[4] in which it said that shoe manufacturers didn't have to buy United's products if they didn't want to, and Justice Holmes' opinion in the *Motion Picture Patents* case[5] that an owner of the patent on a teapot could dictate the kind of tea to be brewed in it, the *Harvester* opinion on price leadership proves entirely too much. Modern business relations are usually too complex to be solved by curbstone philosophy.

In the *Cement* case,[6] decided in June, 1925, the Court followed along the conventional lines of the *Harvester* case by implication. It said in part, "It appears to be undisputed that there were frequent changes in price [of cement], and uniformity has resulted not from maintaining the price at fixed levels but from the prompt meeting of changes in prices by competing sellers."[7]

The above quotation recognizes an important characteristic of price leadership which is often lost sight of, namely, that leadership does not necessarily result in maintaining prices at fixed levels but rather that price changes whether frequent or

[3] U. S. v. International Harvester Co., 274 U. S. 693, 708 (1927).
[4] U. S. v. United Shoe Machinery Co., 247 U. S. 32 (1918).
[5] Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U. S. 502 (1917).
[6] Manufacturers Protective Ass'n v. U. S., 268 U. S. 588 (1925).
[7] *Id.* at 605.

infrequent are almost instantaneous among the various producers of a standardized product throughout an industry. Stated in other terms, the fact that the price level is variable rather than rigid does not lay the suspicion that there may be something wrong with the leadership activity.

In the *Steel* case,[8] decided in March, 1920, the Government contended that the dominant position of the corporation and its relative size as compared with its competitors enabled it to dominate the whole industry and to fix any prices it saw fit for steel products. "Such composition and its resulting power constitute, in the view of the Government, the offense against the law, and yet it is admitted 'no competitor came forward and said he had to accept the Steel Corporation's prices.' . . . Competitors, it is said, followed the Corporation's prices because they made money by the imitation."[9]

In the *Steel* opinion the Court approached the core of the whole price leadership problem, namely, that competitors followed the corporation's prices because they made money by it. That is the whole point at issue, namely, that regardless of the public interest more money can be made by competitors' imitating the leader than otherwise. This machinery of price fixing is much simpler and creates much less friction than secret and often acrimonious meetings to agree upon prices.

A recent decision of the Supreme Court, namely, the *Interstate Circuit* case,[10] decided in February, 1939, introduces a point of view which may be useful in approaching the price leadership problem under the Sherman Act. Although this case, a motion picture case arising in the Northern District of Texas, had nothing to do with price leadership, the Court used phraseology which may have some significance in this connection.

The majority opinion of the Supreme Court said that:

> As is usual in cases of alleged unlawful agreements to restrain commerce, the government is without the aid of direct testimony that the distributors entered into any agreement with each other to impose the restrictions upon subsequent-run exhibitors. In order to establish agreement it is compelled to rely on inferences drawn from the course of conduct of the alleged conspirators.[11]

The defendants maintained that there was no concerted action of distributors but that each of them met the requirements of the distributors individually. The Court said, however:

> While the District Court's finding of an agreement of the distributors among themselves is supported by the evidence, we think that in the circumstances of this case, such agreement for the imposition of the restrictions upon subsequent-run exhibitors was not a prerequisite to an unlawful conspiracy. It was enough that, knowing that concerted action was contemplated and invited, the distributors gave their adherence to the scheme and participated in it. Each distributor was advised that the others were asked to par-

[8] U. S. v. U. S. Steel Corporation, 251 U. S. 417 (1920).
[9] *Id.* at 447.
[10] Interstate Circuit, Inc. v. U. S., 306 U. S. 208 (1939). [11] *Id.* at 221.

ticipate; each knew that cooperation was essential to successful operation of the plan. They knew that the plan, if carried out, would result in a restraint of commerce, which, we will presently point out, was unreasonable within the meaning of the Sherman Act, and, knowing it, all participated in the plan. The evidence is persuasive that each distributor early became aware that the others had joined. With that knowledge they renewed the arrangement and carried it into effect for the two successive years. . . .[12]

Many of the passages quoted above sound quite pertinent when applied to a good price-leadership case. "As is usual . . . the government is without the aid of direct testimony" of unlawful agreements. ". . . we think that in the circumstances of this case such agreement . . . was not a prerequisite to an unlawful conspiracy. It was enough that, knowing that concerted action was contemplated and invited, the distributors gave their adherence to the scheme and participated in it." ". . . each knew that cooperation was essential to successful operation of the plan."

As a practical matter for presentation in court, it might be desirable to present a price-leadership case not on the grounds that leader-follower activities are illegal as such, but that under certain conditions they are merely another form of conspiracy, without formal agreements, in restraint of trade.

One of the strongest cases against price leadership that comes readily to mind is that of the increase in prices of an important commodity in 1931. At a time when the economic structure was falling to pieces, when prices of all commodities were tobogganing downward, and especially when prices of raw material were reaching almost an all-time low, prices of this product suddenly went up nearly 10% to an all-time high.

Superficially this increase in price was a simple case of price leadership. The first price move came when one evening a large producer sent out several thousand telegrams to his distributors announcing an increase in price of his product. By 10 o'clock the next morning another producer had followed by announcing a similar increase, by 12 o'clock a third producer made the same announcement, and by one o'clock the fourth had joined the procession, making it unanimous among the large producers.

To paraphrase the *Interstate Circuit* opinion, each producer knew what the others were doing; each knew that cooperation was essential to the successful execution of the plan; and that each would stand to gain by following the leader. The fact that the increase was announced against the whole current of declining costs and prices would be an additional reason for questioning the necessity of such prompt and identical "follow the leader" tactics.

It becomes a matter of legal strategy whether in a case similar to that outlined above the prosecuting officer would use the leader-follower activity as an evidence of hidden conspiracy to increase prices, or whether he would insist that the procedure was merely another form of price fixing even more simple and effective than a formal agreement in restraint of trade.

[12] *Id.* at 226.

A Legislative Remedy for Price Leadership?

Since the opportunities of coping with the price leadership problem by prosecution under the existing law are subject to the uncertainties discussed above, it is desirable to explore the possibilities offered by remedial legislation. The one point vulnerable to legislation in most industries where price leadership exists is the practice of quoting only delivered prices.

Legislation to control this practice might take one of two forms. It might merely forbid the quoting of delivered prices exclusively, or it might compel the quotation of uniform f.o.b. mill prices exclusively. Under the first proposal, it would be open to producers to vary their f.o.b. mill prices, depending on the destination of the goods and thereby achieve uniform delivered prices, regardless of differences in transportation costs.[13] However, even though this were done, the opportunities for price leadership would be curtailed, for price comparison becomes difficult when differences in freight charges among the competitors have not been eliminated by the use of some common determinant as is provided by a zone, gateway or basing point system.

The more rigorous proposal is clearly the second: the requirement that only f.o.b. mill base prices be quoted and that these prices be uniform for each grade of product.[14] The requirement of uniformity would prevent the quoting of a lower f.o.b. price to a more distant community in order to meet the competition of a competitor located closer to that community. Under such circumstances, agreement among producers to fix uniform f.o.b. prices would lose much of its significance where freight charges were of sufficient consequence to introduce important price differentials at the point of delivery.

The second proposal would be fatal to the basing point system. If all steel quotations, for example, were changed to an f.o.b. mill basis, the steel basing point system would explode. Whether the debris would settle down into a pattern resembling the present system or whether a series of local monopolies would develop around mills within the areas of their freight advantages is a matter of speculation. It is a safe guess that something between the present system and scattered local monopolies would result.

That the benefits to be derived from extirpating price leadership in this manner would be unalloyed is open to question. Thus, it is a serious question whether, and to what extent, large companies in some industries would gain a competitive advantage over smaller companies in a change from a delivered to an f.o.b. price basis. The large steel companies, for example, such as the Steel Corporation, Bethlehem, and Republic, with their widely scattered plants, might be in a position to drive some of the smaller steel companies out of business under the f.o.b. system of pricing.

[13] To avoid risk of violation of the Robinson-Patman Act, 49 STAT. 1526 (1936), 15 U. S. C. §13, it would be necessary to show that the variations in mill prices were within the proviso to that act, permitting the reduction of local prices to meet competition.

[14] The requirement of uniformity would not prevent discounts based on quantity or on the buyers' trade status, within the limits allowed by the Robinson-Patman Act.

Even among the various plants of a single large company serious questions of public policy might arise. If the Steel Corporation, for example, should announce f.o.b. prices for Birmingham and for the Chicago area based upon cost plus a reasonable profit, the operations of the Corporation for some products in the Pittsburgh area might be seriously curtailed. The net effect of the change might be to the advantage of the Corporation as a whole, but the effect upon the labor force and upon some communities in the Pittsburgh area might be disastrous.

The extent of the disturbance of the business of fabricators now operating under base or zone prices in many industries and the effect upon the ultimate consumer, especially west of the Mississippi, where freight absorption may be heavy in shipments to some areas under a formula price system, should also be considered in connection with a compulsory change to f.o.b. prices.