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SHOULD PRODUCT DIFFERENTIATION BE RESTRICTED?

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by

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ABSTRACT

Leading firms in many consumer industries may soon be charged with acts of unfair competition in violation of Section 5 of the Federal Trade Commission Act. The charges will be based on the economic argument that product differentiation, achieved through advertising and/or styling changes, has transformed competitive industries into noncompetitive ones. The recommendation by the FTC to seek divestiture of General Mills and the Kellogg Company is designed to be the test case of this antitrust issue.

The purpose of this paper is to discuss the economic argument and the way in which it is presented in an advocacy style to apply pressure on government officials. The specific example used will be the recommendation to place a moratorium on style changes in the auto industry.

BACKGROUND OF THE PAPER

This paper is being prepared as part of a research program on Evolving Competitive Aspects in Major Industries. Comments would be appreciated and should be addressed to the author.

Many large manufacturers of consumer goods may soon face antitrust actions based on Section 5 of the Federal Trade Commission Act. The firms likely to be involved are those in concentrated industries that have achieved a high degree of product differentiation through the use of advertising and/or product styling. The basic issues they will be confronted with are whether (1) product differentiation has been too successful as a marketing strategy; and (2) consumers are unable to make rational purchase decisions because of excessive product differentiation. Since the resolution of these issues by the courts would affect many marketing professionals, those in the classroom as well as in the corporate office, it is important to understand both the substance of the charges and the way in which they are presented as acts of unfair competition.

If charges were to be filed by the Federal Trade Commission, and if the case were successfully prosecuted, the consequences would be serious for firms who make consumer appliances and durable goods. It is reported that the FTC is studying the feasibility of bringing formal charges against the auto industry and other firms that have product policies involving "style or nonfunctional" model changes.[1/]

1/ New York Times, March 28, 1971, p. 40, col. 2.

Whether antitrust cases will be forthcoming depends on the disposition of the recommendation by FTC staff lawyers to seek divestiture of General Mills and the Kellogg Company. The recommended action against these cereal companies is to be the test case for using Section 5 of the Federal Trade Commission Act rather than other antitrust laws. Although the specific complaints against General Mills and Kellogg's have not yet been made public, it seems reasonable to assume that the major issue is the amount spent on product differentiation, although the case of the cereal industry involves advertising expenditures rather than product styling expenditures.

The reason that cases may possibly be prosecuted under Section 5 of the Federal Trade Commission Act is that this antitrust law is designed to prevent unfair methods of competition that injure consumers and competitors. This law also provides an opportunity to press for changes in both the structure and conduct of an industry. That is, it is possible for the FTC to argue that the emphasis on product differentiation in an industry should be prevented by breaking up the leading firms (structure) and placing restrictions on advertising and/or product styling (conduct). This is a new approach to antitrust enforcement, since previous cases have generally involved only structure, such as charges of monopoly, or conduct, such as price-fixing agreements.

Since both structure and conduct are involved, it must be recognized that criticism is not directed at the whole area of product

differentiation but only at the emphasis in industries characterized by a few large firms. The more appropriate question thus becomes "Should product differentiation in some industries be restricted?" The attempt here is not to provide a conclusive answer to this question, but rather to show how and why the question is an issue in antitrust. Although there is a large body of marketing literature dealing with product differentiation, marketing professionals should be concerned that almost none of it has considered the implications for antitrust policy.

To illustrate the way in which an antitrust case might be developed, this discussion will consider a recommendation by Bradford Snell that the FTC initiate a suit against the auto industry because of style change policies; the charge Snell made in the Yale Law Review is that

> the three leading firms in the automobile industry have engaged in conduct--annual style change--which ultimately transformed a competitive structure to an anticompetitive oligopolistic one in violation of Section 5 of the Federal Trade Commission Act.[2/]

The charges of Snell, that product differentiation sets up artificial barriers to entry and manipulation of consumer preferences, are not new criticisms of marketing. But the way the charges are developed to justify using Section 5 of the FTC Act is a new approach.

2/ Bradford C. Snell, "Annual Style Change in the Automobile Industry as an Unfair Method of Competition," Yale Law Journal, VIII (1971), pp. 567-613, at p. 574.

Thus the Snell article serves a second useful purpose in that it illustrates the way in which the advocacy style of legal analysis may be used to argue for restrictions on product differentiation. Also important to consider is the effectiveness of advocacy arguments in generating public pressures on government officials. Although the "product" (attack on product differentiation) may not be new, it is being "packaged" and "promoted" in ways that should interest marketing professionals.

Economic Arguments and Legal Implications

If all economists were agreed on the conditions required to guarantee effective competition and ensure satisfactory economic performance of firms, then antitrust enforcement would be routine. But American economists have been divided on this topic since before the turn of the century. Their differences have important implications for the ways in which product differentiation must be approached in antitrust arguments.

Before examining these implications, it is helpful to remember that the goals of an economic system are generally agreed upon by economists. That is, the performance goals are to (1) ensure efficiency in operations, so that costs and prices will be as low as possible; and (2) ensure progressiveness so that new products and services will continually be brought forth. This is an oversimplified statement of performance goals, but a sufficient one for now. To

achieve these goals, it is also agreed that firms should be responsive to changing consumer preferences and changing technological conditions. This responsiveness will assure that firms do not waste resources and misdirect their efforts.

No one would question these goals, especially no one who adheres to the marketing concept. The arguments occur over the conditions that are necessary and sufficient to ensure the achievement of these goals. Some economists, generally called structuralists, argue that the primary determinant of performance is the number of firms in an industry. Other economists, generally called behavioralists, believe that the conduct (behavior) of firms is the primary determinant of industry performance.

The major assumption of structural economists is that the structure of an industry, number of firms, determines the conduct of the member firms, which in turn determines performance. For example, if there are only a few large firms in a market, then they will be able to conduct their business by emphasizing advertising and styling changes rather than competing on price. The result will be poor performance because of wasted resources and few innovations.

For many structural economists, the question of whether or not firms are responsive to consumer choices is pointless. They know that firms in concentrated industries possess market or monopoly power. They also know that market power, by definition, allows firms to make decisions based solely on self-interest, when they

would otherwise be subject to the discipline of consumer demand. Advertising is merely one example of the tools, according to this theory, which might be used by firms to make consumers think they are happy with what the firm has already made up its mind to sell. Since style changes supposedly lead to product obsolescence, and this ultimately leads to high profits, then it is maintained that style changes are one of the things the firms, not the market, have decided.

To the structuralist, the only way in which satisfactory performance can be guaranteed is to make sure there are a large number of small firms in an industry. The only justification for not insisting that every industry be composed of hundreds of small firms would be for reasons of economies of scale. Economies of scale in manufacturing are widely accepted, but all structuralists would not necessarily agree that there should be justifiable economies of scale in marketing due to product differentiation.

Thus, the structural antitrust argument must first show that there are fewer firms in an industry than can be justified on the grounds of economies of scale in manufacturing. Then it must be argued that there are artificial (i.e., noneconomic) barriers to entry for new firms. This approach will be illustrated by Snell's argument against auto style change.

If structural arguments were completely accepted in economic and legal theory, then antitrust enforcement could have proceeded some time ago by using the Sherman and Clayton Acts. Because of

the difficulties of using the antitrust laws dealing with monopoly and collusion, it was recommended that new legislation be enacted to force restructuring of major industries and to prevent any one firm from having more than a 15 per cent share of the market. This was the approach taken in a White House Task Force report chaired by Philip Neal.[3/]

The Concentrated Industries Act proposed in the Neal Report is unlikely to be passed by Congress, for the same reasons that the courts have not been receptive to arguments for divestiture of concentrated industries under present laws. The reason is that economists do not universally agree that just because an industry is concentrated its performance must necessarily be poor.

A second White House Task Force, this one reporting at the request of President Nixon, pointed out that there is not sufficient evidence to say that concentrated structures result in poor performance. This was the position taken in the Stigler Report,[4/] which urged that antitrust cases be prosecuted on the basis of conduct issues under existing antitrust laws.

3/ "Report of the White House Task Force on Antitrust Policy," The Journal of Reprints for Antitrust Law and Economics, Vol. I (Winter, 1969), pp. 633-826.

4/ "Report of the Task Force on Productivity and Competition," The Journal of Reprints for Antitrust Law and Economics, Vol. I (Winter, 1969), pp. 829-881.

Since we are confronted by two very different economic views, each supported by theoretical arguments and empirical analysis, it is helpful to be aware of Eugene Singer's warning that "the phrase 'economic theory suggests' can generally be used by either side of any argument in industrial organization."[5/] A summary of the two economic arguments has been provided by Jesse Markham. His remark that "whatever antitrust remedy may be called for, it clearly lies in the alteration of conduct, the cause, rather than structure, the effect,"[6/] is a good statement of the view of behavioral economists.

To prevent the endless arguments that might result if only a structural position is taken, the Commissioners of the FTC are reported to have requested staff lawyers to study industries that can be charged with both structure and conduct violations. This is the reason that Section 5 of the Federal Trade Commission Act is being given more serious consideration of late.

According to precedents that have been established in cases seeking changes in the conduct or marketing practices of firms, it would be necessary to show that a policy, such as annual style change or

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5/ Eugene M. Singer, "Industrial Organization: Price Models and Public Policy," Papers and Proceedings of the Eighty-Second Annual Meeting, American Economic Review, LX (May, 1970), pp. 90-99 at p. 90.

6/ Jesse W. Markham, "Structure Versus Conduct Criteria in Antitrust," in Antitrust Policy and Economic Welfare, ed. by Werner Sichel (Ann Arbor, Mich.: Bureau of Business Research, Graduate School of Business Administration, 1970), pp. 102-116, at p. 112.

large advertising expenditures, constitutes unfair competition because it has intentionally been used to force firms out of business and/or to prevent new firms from entering. In addition, it must generally be shown that customers have been injured because of high prices resulting from the misallocation of resources or restrictions on product choices. The argument used by Snell is that the effects of style changes have resulted in injury to competition and consumers because of the resultant industry structure. The issue is whether or not structural arguments may be sufficient to offset the lack of evidence to show intent.

Since both structure and conduct are being attacked, the recommended legal relief will involve both divestiture and restrictions on the amount of product differentiation. Snell, for example, feels that the political problems of divestiture of the auto firms may be too great to overcome. Thus, he urges placing a moratorium on styling changes and restrictions on advertising. In the recommended test case in cereals, it is probably unlikely that the FTC would expect to get divestiture of Kellogg and General Mills, but they may hope for restrictions on the amount and type of advertising.

The legal issues will not be considered further here, since the economic issues are important enough to be examined in somewhat greater detail. To consider the economic rationale of whether style change should be prohibited, it is helpful to discuss the arguments relating to style changes and structure, and to style changes and consumer choices.

Auto Style Changes and Industry Structure

Consider this historical note about the auto industry. In 1922, the sales leader in the industry was Ford's Model T. At that time, General Motors had only a 13 per cent share of the market. In 1923 GM initiated a marketing strategy of annual style changes and gained 43 per cent of the market by 1927. Chrysler quickly saw how successful the policy of style changes was and followed suit. Ford's market share dropped from 51 per cent in 1922 to 9 per cent in 1927, until it also adopted the strategy. In two years its share climbed back to 31 per cent. Over the years, other firms were either unable or unwilling to develop successful styling strategies and went out of business.

As a result, there are only four domestic firms in the industry today. Because this market structure is not considered to be competitive, and because the structure is attributed to the success of styling changes, it is argued that antitrust actions should be initiated.

Snell is careful to point out that in condemning product differentiation he is defining auto style changes as alterations solely affecting appearance, rather than modifications that have anything to do with performance. He claims the distinction can easily be made because the Bureau of Labor Statistics develops a net quality adjusted price index for new cars. There are obvious problems in making the

claim that fine differences can be observed between style changes that improve the product and those that only change its appearance, but this is not the point of the discussion here. Some people claim to be able to distinguish between ads that inform and those that persuade, so perhaps the same logic is applicable.

The central argument starts with references to the structural economic literature and then attempts to show that annual style changes created and maintain the present structure of the auto industry. According to Snell, because of style change the auto firms were required to: (1) increase vertical integration of manufacturing facilities; (2) establish franchised dealers; and (3) increase advertising expenditure. These in turn resulted in large capital requirements for any firm desiring to enter the auto industry today. Let us briefly examine these claims.

Vertical Integration

Snell's claim that styling changes caused these developments apparently rests on the fact that they all occurred after 1923 when styling changes started. For example, it is asserted that "an inevitable result of the drive to produce 'all-new' cars annually was an industry trend toward components integration."[7/]

7/ Same reference as footnote 2 at p. 580.

Is it possible that all make-or-buy decisions in industry are caused by the need to have style changes? Or might there be other considerations such as production scheduling, inventory control, quality control, dependable supply sources, and sheer cost savings due to economies of scale in manufacturing? If styling was the only factor, rather than economic considerations, they why would there be integration of engines, frames, transmissions, and so on? To claim that annual styling changes caused vertical integration of components manufacturing, simply because it took place after 1923, seems to ignore many important facts. Even though reasoning from cause and effect is sometimes tricky, one must still ask why economies of scale in body stamping operations would necessarily be reduced if independent firms did the work instead of departments in the auto firms.

Franchised Dealers

Snell continues his attack on style changes by observing that prior to 1923 there were no franchised dealers. That is, independent retailers were able to sell and service a vast array of cars. But, as he states, "The need to differentiate the appearance of automobiles annually and the consequent decline in the interchangeability of components required the establishment of unique nationwide service organizations."[8/] Were there no marketing justifications for wanting

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8/ Same reference as footnote 2, at p. 584.

franchised dealers? If not, perhaps we should assess the annual styling policy of McDonald's hamburgers.

Both marketing and economics have usually recognized differences between market segmentation and product differentiation. It seems likely that market segmentation and a host of other sales and service factors were important in decisions to establish auto dealers. There are, of course, economies of scale in retail operations that prohibit all firms from establishing individual outlets. Thus, the existence of auto dealerships and the absence of cereal dealerships does not mean that the former were caused by styling changes.

Advertising

The charge that annual styling changes created the need for more advertising is based on the fact that advertising expenditures rose from $5 million in 1922 to almost $25 million by 1930. This was, of course, a period when advertising expenditures were rapidly growing in several industries because of a variety of economic conditions. Certainly the automobile industry was undergoing a vast number of changes during this time. Thus, there were a number of topics that made good copy, including styling changes. But it seems difficult to believe that only styling changes created the need for advertising.

Opportunity for Entry

There are reasons why Snell finds it useful to argue that style

changes caused vertical integration, franchise distribution, and large advertising expenditures. He needs to be able to show that these factors have created barriers to entry in the auto industry.

That there should be economies of scale in manufacturing is widely accepted. But to lose a divestiture argument because of economies of scale in marketing is a major irritant to some critics.

The issue of economies of scale is not a completely convincing argument, however, unless it can be shown that product differentiation creates an artificial barrier to entry. On this point, Snell claims that the factors which "led to concentration seem also to have erected insurmountable barriers to potential entrants."[9/] He claims this is so because "in 1970, it would cost a company $779 million to enter the automobile industry. The costs of annual style change capability, it is estimated, account for fully $724 million, or more than 90% of this figure."[10/]

The $724-million estimate calculated by Snell is composed of: component integration requirements of $200 million; distribution requirements of $326 million; tooling requirements of $180 million, and advertising requirements of $18 million. Since a new entrant into the auto industry could buy all components from existing firms,

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9/ Same reference as footnote 2, at p. 586.

10/ Same reference as footnote 2, at p. 588.

as well as distribute cars through existing dealers, those estimates would appear to be initially overstated by at least $526 million. Advertising would be required for a new entrant, whether or not there are styling changes, so the $18 million here also seems beside the point.

The $180 million for tooling requirements deserves more comment. This is calculated by multiplying an annual production quantity of 300,000 autos, presumed to be an optimal production scale quantity, by $600 per car. The $600 figure is taken from the Fisher, Griliches, and Kaysen article.[11/] It is not exactly clear from the article where the $600 figure is obtained, but presumably it is based on the average retooling costs of $560 for vehicle during the decade of the 1950s. But the purpose of that article was to show that if the auto firms had made no product changes for ten years, and if they had continued to make cars identical to those made in 1949, tooling costs might be less. Since this analysis ignored the fact that tooling wears out and needs to be replaced, the estimates could have been made much larger by using the 1922 Model T as a reference point.

Lawrence White, in a more thorough analysis of the automobile industry, estimated tooling costs for styling changes to be about $130

11/ Franklin M. Fisher, Zwi Griliches, and Carl Kaysen, "The Costs of Automobile Model Changes Since 1949," Journal of Political Economy, LXX (October 1962), pp. 433-51.

per car.[12/] White pointed out that the estimated real costs of tooling per car have not changed since after World War II. He also emphasized that the tooling costs shown in the financial statements of the auto firms reflect the need for replacing tooling that wears out and would be replaced even without style changes. Although White stresses that the approach used by Fisher, Griliches, and Kaysen overestimates styling costs, he also acknowledges that it is difficult to determine the costs precisely.

The fact that actual costs of styling changes as well as other costs, such as advertising expenditures per car, are not known precisely raises the question of whether or not firms should be required to make these costs publicly available. This issue was raised by Senators Wayne Morse and Gaylord Nelson in a 1968 letter to James M. Roche, then Chairman of General Motors Corporation.[13/] The senators asked Roche to comment on previous testimony by Ralph Nader that the costs of annual styling changes were $700 per car.

12/ Lawrence J. White, The Automobile Industry Since 1945 (Cambridge, Mass.: Harvard University Press, 1971), p. 264.

13/ U.S., Congress, Senate, Select Committee on Small Business, Planning, Regulation, and Competition: Automobile Industry--1968. Hearings before subcommittee of the Select Committee on Small Business, Senate, 90th Cong., 2d sess., July, 1968, p. 593.

(Nader's estimate was based on the Fisher, Griliches, and Kaysen article.) Roche pointed out that, although the $700 figure was absurd, the actual costs were difficult to determine because style changes were only one kind of change made in autos to improve safety, comfort, and other product characteristics.[14/]

Even if the accounting and judgmental problems of separating costs might be satisfactorily resolved, there remains the important question of the possible interpretations of the costs. Consider the argument posed by Louis Stern when he pointed out that not enough data are available on economies of scale in marketing and cited the need for "highly scientific studies" in which "the major companies open their books to economists and the economists apply their techniques without encumbrance."[15/] With economic theories and analyses varying as widely as they do, depending on the philosophical orientation of the economist, it is understandable that firms are hesitant to provide complete access to their accounting records. Economists also want to know such things as how much of the money spent on advertising only informs compared to that expended to persuade consumers to buy. These, like style changes, require rather refined judgments.

14/ Same reference as footnote 13, at p. 736.

15/ Louis W. Stern, "Perspective on Public Policy: Comments on the 'Great Debate,' " Journal of Marketing, XXXIII (Jan. 1969), pp. 32-39, at p. 39.

Even if with full disclosure of the costs of annual styling changes, the question of whether or not these are excessive would still remain. Any attempt to resolve the controversy must consider consumer acceptance of style changes. After all, the whole issue of product differentiation through style changes would not be raised unless it had been a successful marketing strategy, in that some firms were unable to compete and went out of business.

Auto Style Changes and Consumer Choices

As mentioned earlier, some economists question the structure--conduct-performance relationships. These behavioralists are concerned less with the economic costs of a practice and more with consumer sovereignty. This does not mean they always agree with the ways in which consumers' decisions allocate economic resources, but they respect the right of consumers collectively to make those choices. Thus, if an antitrust case is to be made, one must at least consider whether or not style changes could possibly be induced by consumer demand. Snell quickly asserts his view on this point:

> This argument [that style changes are dictated by consumer preference] assumes implicitly, however, that consumer acquiescence in the Big Three's policy of planned obsolescence is equivalent to consumer preference for that policy. Upon closer examination, such an assumption appears to be wholly unwarranted.[16/]

16/ Same reference as footnote 2, at p. 591, footnote 124.

For some reason, Snell's "closer examination" leads him to reject the analysis of several economists on this particular point. Even Fisher, Griliches, and Kaysen considered this point and concluded: "There are thus grounds for believing that car owners (at the time of purchase) thought model changes worth most of the cost. The general presumption of consumer sovereignty thus implies that these model changes were worth the cost."[17/] White had stated: "This author believes that the market allocation, stressing model changes, probably reflects accurately consumer preferences."[18/] Menge[19/] is another economist cited by Snell to support part of his argument, but no reference is made to his recognition that apparently consumers do place a value on style changes. Thus Snell is very selective in his presentation of economic arguments to support his case.

Certainly the issue of whether style changes, or other means of product differentiation, are in keeping with consumer preferences is important, and it is stressed by marketing professionals. But

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17/ Same reference as footnote 11, at p.

18/ Same reference as footnote 12, at p. 210.

19/ John A. Menge, "Style Change Costs as a Market Weapon," Quarterly Journal of Economics, Vol. 76 (Nov. 1962), pp. 632-47.

too many people with a marketing orientation tend to gloss over this issue just as Snell does. Their conclusion is contrary to his, of course, since they point out that if consumers didn't want a particular feature, such as style change, they wouldn't buy the products. This is the very point that those spokesmen attack who propose a rigid structural approach to antitrust policy.

Two arguments are raised by structuralists to show that consumer preferences cannot be freely exercised. One is that consumers are given no choice. Donald Turner, former Assistant Attorney General for Antitrust, whom Snell cites in support of his position, has stated: "Buyers were never given a choice between purchasing the same model as last year's at a lower price and a new model at a higher price."[20/]

The other argument, and the one that underlies much of the consumerism movement, is that consumers are generally not capable of making the proper choices. One expression of this attitude is Douglas Dowd's comment in the 1968 Senate hearings on the automobile industry: "There is a blindness and deafness on the part of the average citizen to what his interest are. When we speak of the average consumer making choices, we are not speaking of him as making informed choices."[21/] The theme of consumers' ignorance appears

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20/ Donald Turner, "Conglomerate Mergers and Section 7 of the Clayton Act," Harvard Law Review, LXXVIII (1965), 1313-35, at

21/ Same reference as footnote 15, at p. 545.

repeatedly in the writings of such leading structural economists as Bain[22/] and Mason.[23/] Kaysen has gone so far as to propose that a group of professional critics be established to pass on such matters as whether a new car ought to be introduced.[24/]

The arguments that consumers have no real choices and that they do not know enough to make informed choices are age-old themes. But it is naive of marketing professionals to think that such arguments will go away or can be easily disproved. They have always had many supporters, and the indications are that public support is growing and is being recognized by politicians.

True, it is difficult to accept some of the views. For example, Turner's belief that consumers have limited choices completely ignores among other things the used car market and the import market, as well as the price reductions that occur at the end of a model year--all of which have meant tremendous differences between car ownership and income classes in the U.S. compared to Europe. Since the automobile market in this country is primarily for replacement demand,

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22/ Joe S. Bain, Industrial Organization (New York: John Wiley & Sons, Inc., 1968).

23/ Edward S. Mason, Economic Concentration and the Monopoly Problem (Cambridge, Mass.: Harvard University Press, 1957), p. 117.

24/ Carl Kaysen, "The Business Corporation as a Creator of Values," in Sidney Hook, ed., Human Values and Economic Policy (New York: New York University Press, 1967), at p. 218.

consumers can also exercise considerable market power by postponing a decision to purchase. These points are discussed in more detail by Root and Sylvester.[25/] As Katona, Strumpel, and Zahn point out in their comparison of consumer attitudes in the United States and Western Europe, information-seeking behavior and consumer attitudes toward durable goods do not support the assumption that firms have the power to dictate consumer choices.[26/]

It is ironic that just when criticism of the annual style change is mounting the auto industry has already begun to move away from the annual changes. Detroit is aware that the "love affair with the auto is fading."[27/] The industry representatives say that increased investments required to meet safety and smog standards are replacing money designated for engineering and styling. Nevertheless, the industry is still reluctant to drop the annual style change, which they feel is an "example of competitive response to customer demand for improved product value and design change."[28/]

25/ H. Paul Root and Horst Sylvester, "Competition and Consumer Alternatives in the Automobile Industry," Working Paper No. 26 (Ann Arbor: Bureau of Business Research, Graduate School of Business Administration, University of Michigan, Feb. 1971); Horst Sylvester, "New and Used Cars as Consumer Alternatives," Working Paper No. 40 (Ann Arbor: Bureau of Business Research, Graduate School of Business Administration, University of Michigan, May 1971).

26/ George Katona, Burkhard Strumpel, and Ernest Zahn, Aspirations and Affluence (New York: McGraw-Hill Book Co., 1971), pp. 115-17.

27/ Automotive News, April 26, 1971, p. 27.

28/ Same reference as footnote 27, at p. 27.

But the movement toward less frequent styling changes would seem to result from changing consumer attitudes as well as from the need to cut costs. The Wall Street Journal has mentioned a new "utilitarian" attitude toward cars, one which demands smaller, more practical cars with less emphasis on styling.[29/] Undoubtedly these changing attitudes have to some extent been brought about by critics' charges of too much emphasis on materialism. There is a legitimate role for critics--but it is also legitimate for firms to respond directly to changing cost and demand conditions brought about by decisions in the market place, rather than to respond directly to the charges of critics.

Pressures For Antitrust Action

Bauer and Greyser made a valid point in "The Dialogue That Never Occurs"[30/] when they pointed out that there should be more emphasis on fact finding rather than fault finding between marketing and its critics. This advice has not been heeded by everyone; there are still many responses to the effect that "our critics simply don't understand product differentiation," or "structural arguments are not

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29/ Wall Street Journal, March 30, 1971, p. 1.

30/ Raymond H. Bauer and Stephen A. Greyser, "The Dialogue That Never Occurs," Harvard Business Review, Nov.-Dec. 1967.

completely sound in either theory or fact." Responses of this type underestimate the intensity of the critics' desire for change and the substance of their arguments.

The advocacy position illustrated by Snell's charges is certainly a legitimate approach for the courtroom. This approach does, however, create many problems when it is presented to the general public as a legitimate analysis. True, the Yale Law Journal could hardly be classified as a general news medium. But the Snell analysis is an important part of Ralph Nader's document "The Closed Enterprise System." The Nader report was released to the public, and the immediate coverage it received is illustrated by the New York Times headline: "Nader Asserts Monopolies Mulct the Public of Billions."[31/] The report was also issued to key members of the U.S. Congress.

In regard to the cereal industry, Robert Choate had raised certain criticisms which prompted Senate hearings. A closing comment of Senator Frank Moss, chairman of these hearings, was: "I wrote to the Federal Trade Commission and asked them what steps they were taking to bring the advertising practices of the cereal industry into line."[32/]

31/ New York Times, March 28, 1971.

32/ U.S., Senate, Hearings before the Consumer Subcommittee of the Committee on Commerce, on Dry Cereals, 91st Cong., 2d sess. July 23, Aug. 4-5, 1970, p. 272.

It seems conceivable that this interest in antitrust by congressional leaders was at least partly caused by the visibility accorded many critics. The congressional hearings on both the auto and the cereal industries have generally been noted for their tendency to discredit industry spokesmen on the grounds that they are biased. Certainly it would be difficult for a senator not to make a statement such as Senator Moss's when one of the last pieces of testimony was a statement by such an "impartial" group as the editors of Antitrust Law and Economic Review. According to this statement the problems of excessive advertising, high prices, and product deterioration in the cereal industry can be cured by considering structural conditions and conduct factors. It went on to cite seven structural features of the cereal industry that lead to poor conduct-performance:

1. Concentration

2. "Exceedingly high entry barriers of so-called 'product differentiation' "

3. "Industry profits are maintained at super-competitive levels

4. Advertising expenditures [are too high]

5. "Product quality is, as Mr. Choate has so eloquently described, at a very low level"

6. "Consumer prices are...probably 25 per cent or more above the price that would be expected to prevail under a competitive (unconcentrated) industry structure"

7. "There are no 'scale-economy' or 'efficiency' justifications for the high degree of concentration."33/

Obviously, most of these charges are related to marketing policy, which is in turn derived from perceptions of how consumers make purchase decisions.

Does the marketing profession have anything to say about these issues? We could take the attitude of indifference expressed by former Attorney General Katzenbach in a New York Times interview regarding the Nader report: "If this report results in more interest in antitrust enforcement, then I think it relatively unimportant that many of its facts are wrong and its judgments biased."34/

No one would seriously question that a vigorous antitrust policy is in the best interests of both consumers and business. Nor would one question that interpretations of law should be responsive to changing public attitudes of what is fair and just. Some business practices that were used at the turn of the century, though legal at the time, were later declared illegal because of changing value systems. Certainly court actions, as well as market actions, should be sensitive to changing consumer demand. Critics have played an important role in influencing public attitudes or business practices and will continue to do so. But is it not also conceivable that legitimate responses from

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33/ Same reference as footnote 32, at pp. 248-249.

34/ Same reference as footnote 31, at p. 40.

the marketing community are also important to the intrepretation of antitrust policy.

Implications For Marketing Professionals

The marketing profession would generally agree with the critics who say our goal should be to achieve a variety of quality products at the lowest possible consumer costs. But they would not generally agree that this goal would be achieved by placing restrictions on product differentiation or by breaking up all large firms. The issues ultimately come down to our ability to predict the effects of a more active antitrust policy. This, in turn, means that we need to consider decision-making behavior, both in firms and of consumers. We need to be concerned not only with that behavior today but also with the trends taking place. The question put to the marketing profession by Clarence Walton is valid: "One might ask if the market today is encouraging more rational decision making and more rational consumer behavior."[35/]

There is no doubt where critics stand on that issue. To say that the marketing profession cannot interpret "rational decision making," as is often claimed, is simply not true. No one condones the practice of selling inferior products at inflated prices in ghetto neighborhoods.

35/ Clarence C. Walton, "Ethical Theory, Societal Expectations, and Marketing Practices," reprinted in Marketing and Society: The Challenge, Robert J. Lavidge and Robert Holloway, eds. (Homewood, Ill.: Richard D. Irwin, Inc., 1969), p. 48.

But such practices are not the work of large firms in concentrated industries. Critics argue that they see little difference between those practices and that of General Motors and General Mills when they advertise to ghetto residents, who then buy Cheerios instead of rice, and a Buick instead of taking the bus. But there is a difference between such advertising and the high-pressure tactics and false information that can be used in personal selling. There are also vast differences in the availability of alternative products. To attack product differentiation because it, along with many other management skills, has been successful in the market place does not seem to be a satisfactory solution.

There has been a great deal of recent research on information seeking by consumers. But it has generally been concerned with the implications for marketing decisions. An appropriate subject to begin to consider would be the effects of information seeking behavior on market structure. Some initial theoretical and empirical work on this has been done in economics by Philip Nelson,[36/] but more attention needs to be paid to the question by marketing professionals.

36/ Philip Nelson, "Information and Consumer Behavior," Journal of Political Economy, LXXVIII (March-April 1970), 311-29.

There also has been a great deal of research on consumers' perceptions of product characteristics. But it was an economist, not someone in marketing, who pointed out that:

> Many economists take a puritanical view of commodity differentiation since their theory has induced them to believe that it is some single characteristic of a commodity that is relevant to consumer decisions (that is, automobiles are only for transportation), so that commodity variants are regarded as wicked tricks to trap the uninitiated into buying unwanted trimmings. This is not, of course, a correct deduction even from conventional analysis, properly used, but is manifestly incorrect when account is taken of multiple characteristics.[37/]

Certainly more effort should go into showing that important questions of both fact and theory need to be answered before we attempt to break up large firms and restrict product differentiation.

37/ Kelvin J. Lancaster, "A New Approach To Consumer Theory," Journal of Political Economy, LXXIV (April 1966). p. 150.