percent during the years 1975, 1976 and 1977, well over double the rates then prevailing in most industries.

The author states:

> "We suggest that in the bus industry there exists what amounts to a golden regulatory handshake. An understanding achieved between the regulated and the regulator: good service -- qualitatively -- is to be provided at a price which does not generate an embarrassment of riches.
>
> "...It is what might be termed subtle capture; but we prefer the concept of a regulatory rapprochement -- an understanding is achieved in which the needs of the regulators are appreciated by firms being regulated; and the needs of the firms being regulated are appreciated by the regulators. Elected officials are not drawn into the process. The value of excluding them is appreciated by the regulators and the regulated firms. A fair fare deal for the consumer is not part of the contract."

The author considers that the under utilization of capacity and excess profits do not adequately reflect the full long term costs of regulation. He cites studies which have found that demand for intercity bus service would increase substantially if fares were lower. In other words, under competitive conditions, fares would be lowered by substantially more than the amounts indicated by the excess profits because traffic would increase substantially.

Some low density routes would be abandoned under competitive conditions. However, if it was public policy to maintain them, the author estimates that they could be subsidized at a fraction of the cost of the present regulatory system.

FOREIGN AND INTERNATIONAL

U.S. ATTORNEY GENERAL EXPLAINS ANTITRUST POLICY SHIFTS

An address by U.S. Attorney General William French Smith to the District of Columbia Bar on June 24, 1981 deals with the directions in which the Reagan administration plans to move antitrust policy. What seems to be in

store is continuing vigorous enforcement of the legislation as it applies to collusive arrangements but a softer stand on mergers and vertical restraints, and a more accomodating stance in dealing with other countries on extra-territoriality issues. Exerpts from the speech follow.

> "As the result of the election of President Reagan, the critical question today is not just what the government has been doing, but where it is going now.
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> "Today, I want to try to answer that question concerning one large area for which the Department of Justice is primarily responsible -- antitrust enforcement...
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> "The underlying theme of our antitrust activities will be the promotion of competition...
>
> "We will seek out and prosecute those who engage in anticompetitive activities. When we find agreements between competitors to fix prices, allocate markets, or otherwise refrain from competition, we intend to bring criminal actions. We will not be satisfied by having corporations pay fines. In these cases of knowing violations of clear-cut antitrust prohibitions, indictment of, and prison sentences for, the individuals involved will be vigorously pursued.
>
> "...In the past, under the guise of promoting competition, other Administrations have pursued a number of misguided and mistaken concepts that have generated anticompetitive results in the name of antitrust enforcement. We intend vigorously to enforce the antitrust laws against clearly anticompetitive activities and to spare no effort in also eliminating anticompetitive governmental practices.
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> "For example, some have argued that competition is synonymous with a large number of competitors. Economic reality, however, is more complex. The number of firms in any given industry does not always, without a great deal more information, reveal enough about the nature, quality or vigor of competition in that industry. In some industries, competition yields a large number of competitors -- in others, only a few -- depending upon the economies of scale, distribution costs, and other factors.

"In any industry, however, competition will inexorably result in the elimination of some competitiors -- those that are least efficient. That process is, indeed, one of the results and purposes of the competitive process. We must recognize that bigness in business does not necessarily mean badness -- and that success should not be automatically suspect.

"The disappearance of some should not be taken as indisputable proof that something is amiss in an industry. In a race, the fastest runner is not penalized by being required to wear fetters around his or her ankles. Similarly, in an economy based upon unfettered competition as the rule of trade, efficient firms should not be hobbled under the guise of antitrust enforcement. The preservation by government of inefficient competitors inevitably leads to economic distortions that will disadvantage the consumer. Although the behaviour of firms in industries with relatively few competitors will always deserve the attention of our Antitrust Division, evidence of anticompetitive behaviour and of barriers to entry should be carefully analysed prior to government's intervening in the private competitive process.

"Another area in which erroneous concepts have found their way into interpretations of the Sherman Act concerns so-called "vertical restraints". Vertical arrangements between a manufacturer or importer and its distributors -- such as exclusive territories, requirements contracts, or resale price maintenance -- are not necessarily anticompetitive. To the contrary, these types of arrangements often are procompetitive by promoting cost-saving efficiencies along the chain of distribution. In analysing any specific vertical arrangement, on must ask whether it has an anticompetitive effect at any identifiable horizontal level. Where vertical arrangements do, we shall seek whatever relief is necessary to eliminate that anticompetitive effect.

"We are also rethinking past policies with respect to mergers. Merely classifying mergers as horizontal, vertical, and conglomerate, is not talismanic. For antitrust purposes, there is no reason to distinguish between vertical and conglomerate mergers because the key question in analysing any merger is whether it is likely to have a negative impact upon competition at any horizontal level. In addition, in the past, insufficient

attention has been paid to entry conditions in assessing the competitive impact of mergers.

"For these several reasons, we are planning to revise the merger guidelines issued by the Department in 1968. Through these revisions, which some may consider drastic in certain respects, we intend to focus attention upon the potential horizontal impact of nonhorizontal mergers and to increase the attention given to entry conditions in assessing horizontal mergers. That process is already under way, and will continue in the months ahead.

"We are also considering possible revisions in the premerger notification rules. It may prove possible to raise the threshold at which transactions are covered by the rules and to reduce both the amount of information that must be reported in the initial filing and the number of burdensome second requests. Of course, we will coordinate any such efforts with the Federal Trade Commission.

"We have begun a review of more than twelve hundred judgements and decrees that have been entered and remain in effect in government antitrust actions to determine which might profitably be modified or vacated. For example, injunctions that pervasively regulate a firm or an industry can, with the passage of time, begin to hinder and not promote competition. Other injunctions may reflect erroneous economic analysis and thus produce continuing anticompetitive effects. Others may be merely superfluous. At the same time, we are improving our ability to monitor compliance with those injunctions that, fully enforced, would further competition...

"As a general proposition, we would prefer to see more competition and less, or no, government regulation in every industry. A number of statutes mandate our advocacy of competition before federal regulatory agencies and we intend to discharge those mandates fully. Both through our membership on the President's Task Force on Regulatory Relief and through the Antitrust Division we will actively support and encourage the Adminsitration's overall effort to deregulate the American economy.

"Too many legal decisions in recent years have been founded upon unsound, outdated economic theories. Too many unsound cases have been settled just to avoid the uncertainty and expense of litigation -- even where the underlying legal theory is dubious or counterproductive to procompetitive forces. As part of our effort to further competition in the real world of commerce, we believe that every effort must be made to raise legal doctrine to the state of the art in assessing economic reality. We will therefore seek leave to participate as amicus or to intervene in selected private actions when our participation could positively influence the development of law. Through such participation, we hope to persuade courts to eliminate anticompetitive doctrines that have found their way into law, and to make less likely the adoption of such doctrines in the future...

"We will also undertake a broad reassessment of our antitrust enforcement practices concerning international commerce -- and especially joint ventures by American businesses that are not likely to have anticompetitive effects on domestic markets. The federal government should not -- and rational antitrust enforcement need not -- impede American firms' efforts to compete internationally.

"In addition, we are studying those serious problems caused by the extra-territorial reach of our antitrust laws. Too mechanical an extraterritorial application of those laws fails adequately to take account of our own commercial interest as well as the legitimate interests of our trading partners."

DEVELOPMENTS IN THE UNITED KINGDOM

The Office of Fair Trading has brought to light three more sets of unregistered agreements. On June 29 a secret price fixing agreement among six manufacturers of gas-fired central heating boilers was disclosed. On August 10, three hitherto secret agreements of a registrable kind involving British Steel Corporation were placed upon the register. Last December, British Steel was fined £ 50,000 for collusion and undertook to check if it was involved in any more agreements; that check brought the other agreements to light. On August