

BASING POINT PRICING AND REGIONAL DEVELOPMENT. By George W. Stocking. Chapel Hill: University of North Carolina Press, 1954. Pp. vii, 274. \$6.50.

Well known as the co-author, with Myron Watkins, of the recent Twentieth Century Fund's trilogy on cartel and monopoly problems, economist George W. Stocking has authored the best all around discussion of basing point system to appear to date. The superlative I believe appropriate, in spite of the fact that in the economic portion of the study the empirical analysis is deliberately restricted to the iron and steel industry and the locational impact of steel's basing point pricing system on the economy of the South.¹ A careful analysis of the structural characteristics and ownership pattern in the steel industry place the author's and reader's evaluation of the basing point system in proper perspective. The excellent chapter on The Law on Basing Point Pricing helps the reader judge whether repeated efforts to clarify the law were aimed at dispelling confusion or competition. Finally, the author has succeeded remarkably in his twin endeavor of writing lucidly for the layman without being trite for the professional economist.

Chapter One, Basing Point Pricing: Its Mechanics and Logic, presents very simply for the uninitiated, with the help of diagrams and tables, non-arid explanations of single and multiple basing point systems, f.o.b. mill pricing systems, freight absorption, and phantom freight. However, it does more. And those who pretend to be economically literate should not brush aside this apparently introductory chapter. The author clearly distinguishes the case of the firm which practices delivered pricing in order to make sales in more distant markets via absorbing freight from that of the firm which participates in an industry-wide delivered pricing *system* in accordance with the basing point formula. Stocking correctly points out that genuine competitors who independently make delivered prices on the more distant sales, ". . . are not apt to insist that buyers use any particular method of transportation, nor that they pay a delivered price based on a particular method. Buyers are free to buy f.o.b. or on a delivered price basis as they see fit." (p. 4). The essence of the industry-wide basing point *system* is that *all* prices are to be delivered prices, made according to the *formula* of the least combination of base price plus *published* freight (usually rail) to destination. What Stocking does not state explicitly for the reader is why a cooperative formula breaks down if local buyers are offered the option of taking

1. Professor Stocking's study was initiated in 1950 upon a request from the Committee of the South, which Committee in turn had been established by the National Planning Association to promote research on the South's postwar economic problems.

delivery at the mill in their own trucks. The point, of course, is that the destination cost of local buyers who do their own transportation becomes unknown to more distant sellers who wish to make sales to such buyers via freight absorbing delivered prices. Such local buyers are in a position to bargain over price with more distant sellers who lack knowledge of the buyer's transportation cost and who are thus unable to bid an identical destination price.²

Professor Stocking was aware of the significance of this factor,³ and indeed it is implicit in his discussion. Unfortunately, on the basis of personal discussions, I have found that all too many other economists otherwise well versed in the formal aspects of basing point pricing systems, including the White House staff economist who helped write President Truman's 1950 statement which accompanied the veto of the O'Mahoney Basing Point Act, have failed to appreciate how uncontrolled trucking can weaken significantly the effective functioning of basing point systems. If many otherwise informed economists have failed to appreciate this factor, how may the layman be expected to perceive its implications in the absence of explicit explanation?

Chapter Two concerns the environmental aspects of the industry which tend to condition its price behavior. With respect to costs, empirical data is supplied to support the familiar proposition that fixed costs constitute a large proportion of total costs. As a consequence, average costs rise appreciably at outputs below capacity rates of operation. In the absence of some cooperative restraints, high shutdown costs also tend to discourage restrictions in output when demand declines. Also, since steel-makers are characteristically multiple product producers, the high fixed costs constitute common costs which, if independently allocated in calculating costs and prices, may be expected to exert a downward pull on the average level of prices in the steel industry. Moreover, exit of capacity from the steel industry is slow and painful because of the long life of specialized steel plants and its nonadaptability for the manufacture of other products.

At the same time demand is subject to sharp cyclical shifts, both because the products made of steel are durable, and therefore replacement

2. For a more detailed discussion of the competitive uncertainty introduced when buyers have the option of taking delivery at the mill in their own trucks and of the efforts taken in the cement industry to eliminate or control trucking see Loescher, *Geographical Pricing Policies and the Law*, 27 JOURNAL OF BUSINESS OF U. OF CHI. 211, 215 (1954).

3. On page 188 Stocking strongly criticizes the Federal Trade Commission's 1951 order against the iron and steel industry because it did not require the individual respondents "to refrain from refusing delivery at the plant to buyers who wish to use their own means of transportation."

can be postponed, and because steel demand is derived from its use in other industries and therefore will reflect the inventory policies of its purchasers. Moreover, steel producers believe demand for their product to be inelastic with respect to price at all times, partly because there are few good substitute materials and partly because steel represents but a small proportion of total costs of most finished goods.

Were the market composed of many sellers with few possibilities for effective collusion, the situation would appear to be ripe for some powerful and rigorous below full-cost price competition with every decline in demand. However, such is not the case. Because of the large economies of scale of vertically integrated plants, the number of steel companies would necessarily be limited.⁴ More important than even plant size, however, in explaining concentration in the steel industry, has been the industry's merger history resulting in large company size based on multiple plant ownership. There is a question as to whether the largest companies may not exceed the size necessary for efficiency. The restricted number of sellers, accompanied by the dominating size of one particular seller, has certainly facilitated the adoption of cooperative practices against the merciless competitive pressures of any cyclical decrease in demand.

That some special form of geographical pricing formula came to be adopted reflects the peculiar regional distribution of plant facilities induced by basic economic forces of location. Both raw materials (iron ore, coal, limestone, and subsequently steel scrap) and finished products are relatively expensive to transport; as a consequence, productive facilities of various companies came to be established at a limited number of locations which, at the time of construction, were believed to minimize the transportation costs involved in assemblage and distribution. Since steels of specified metallurgies and degrees of fabrication constituted standardized products, freight rates on finished products were of great importance in determining patronage when sellers sought to penetrate each other's market in the effort to increase sales. That a succession of various forms of basing point pricing formulas were adopted in the steel industry reflected the necessity, from the industry's point of view, of avoiding un systematic dumping as sellers penetrated each other's market in times of excess capacity. The basing point *system* was a means of stabilizing prices in an industry selling a standardized product which was produced at separate centers by a limited number of producers who, fearing competition, were few enough to adopt and adhere to such a pricing formula.

4. That entry is difficult Stocking has demonstrated on page 35. "Between 19 and World War II not a single wholly new fully integrated steel company came into existence."

Chapter Three, *The Origin of Restrictive Practices in the Iron and Steel Industry*, emphasizes the importance of the formation of United States Steel Corporation to the development of three crucial industry-wide trade practices.

Pittsburgh Plus basing point pricing, which had been experimentally used in the late nineteenth century, became generalized for all steel products after formation of the Steel Corporation. Evidence is offered that several Steel Corporation subsidiaries participated in steel product associations in the early years of the consolidated company, and there is testimony which convincingly suggests that steel companies cooperatively followed in the adoption of the single basing point pricing system. (p. 49). The purpose of the famous Gary Dinners was to produce mutual confidence and solidarity so as to maintain adherence to formula pricing by discouraging unsystematic shading of the delivered prices.

Price leadership by United States Steel Corporation was voluntarily accepted by other sellers. Testimony by officials of both the Steel Corporation and Bethlehem Steel to this effect is cited. (p. 55). With only the Steel Corporation initiating changes in the base price, frequent changes in all delivered prices were avoided, and temporary uncertainties in making identical delivered prices were eliminated. Moreover, after 1924, when multiple basing points superceded Pittsburgh Plus, price leadership guaranteed stable differentials between the multiple base mill prices.

Finally, machinery was established to facilitate joint determination of a schedule of prices for "extras." Given the fact that the industry made a multitude of products to an almost infinite variety of specifications, base prices were alone insufficient to insure identical prices. As Stocking puts it, "[b]uyers frequently want steel of a different quality and size, a different finish, a different chemical content, a different weight, or a different thickness from that of the standard product." (p. 55). The "extra" cost per unit of product would be expected to vary with a firm's costing practice. Stocking cites several forms of cooperative activities which have been used in the steel industry to arrive at average costs for the extras. At least until 1940 the Steel Corporation used cost studies of the American Iron and Steel Institute in making up its price list for extras, and other steel companies were found to be quoting identical prices for the multitude of extras.

In addition arbitrary methods were adopted from time to time to control trucking. Although under the NRA, the American Iron and Steel Institute, acting as the Code Authority, required steel-makers to quote delivered prices based on all rail freight; the demise of the NRA merely led to a change in form without change in substance. The Insti-

tute on July 6, 1935, passed a resolution whereby members arbitrarily imposed a standard charge of thirty-five percent of the applicable railroad freight rate and applied identical railroad switching charges when buyers took delivery of steel products at a basing point. Incentives for buyers to truck were virtually, if not completely, destroyed.

The succeeding two chapters concern the impact of, first, Pittsburgh Plus pricing and, second, multiple basing point pricing on the iron and steel industry of the South. Clearly, the locational impact of the successive modifications of the basing point pricing system has been one of degree rather than kind. The locational aspect, which might have been less clear in the absence of Professor Stocking's excellent analysis, is that retardation of the southern steel industry's growth is not to be found primarily in the deliberate effort of northern industrialists (and proverbial Wall Street) to prevent the rise of southern competitors. Rather, the stifling of the growth of southern industry was primarily an unconscious by-product of (1) a special type of geographical pricing formula designed principally to stabilize prices at a higher average level, and (2) the dominating position of a subsidiary of the gigantic Steel Corporation in the Birmingham region's raw material and basic steel markets.

Chapter Four presents both analysis and evidence to demonstrate the impact of the single basing point system in retarding the growth of the iron and steel industry in the period prior to 1924. Pittsburgh Plus, of course, permitted Pittsburgh producers to ship into all markets without the absorption of any freight. With southern markets so easily invaded, volume economies through large scale plants and high rates of capacity operation could be less easily achieved, and there was, thus, less incentive for new producers to develop and older producers to expand in the South. Market invasion was indeed a very important factor in retardation, but the possibility still remained for southern producers to invade intermediate and northern markets, freight absorption being entailed in the process. Such, for example, was the only important impact of basing point pricing in industries such as cement where the product was fabricated for final use at the destination point of the purchaser (in roads, buildings, etc.). However, fabricators of steel differed markedly from fabricators of cement because steel fabricators not only produced for their own local markets but also shipped into other markets, including, where possible, local markets of rival fabricators.

Hence, the most important deterrent to expansion of a basic steel industry during the period of Pittsburgh Plus was the limited growth of a regional market of southern steel fabricators, since fabricators of steel had an incentive to locate where the price of steel was low, namely in

the region of the Pittsburgh basing point producers. Stocking supports his analytical conclusions with empirical information on the cost disadvantages and market handicaps experienced by several southern fabricators of rivets, plows, boilers, steel structures, ships, and bedsprings.

Since the Birmingham region was the lowest cost steel producing area in the United States, one might ask whether Pittsburgh Plus pricing was a rational policy in the longer run interest of the United States Steel Corporation, whose subsidiary controlled the major sources of raw material and steel capacity in the Birmingham area. That the Steel Corporation neglected its own interest in expanding operations and markets for its Birmingham subsidiary apparently reflected (1) the importance attached by the Steel Corporation and other important steel-makers to the somewhat greater mechanical simplicity of a single basing point formula, (2) the deceptive effect of Pittsburgh Plus in disguising from the Steel Corporation its longer run interest in cultivating southern markets for its Birmingham subsidiary, (3) the deadening effect of highly satisfactory profits (induced by the geographical formula's price stabilization) on the Steel Corporation's initiative in discovering its long run cost and marketing advantages in the Birmingham region, and (4) the evident failure of the Steel Corporation to reconcile its short run advantage in exporting its excess capacity (produced at low marginal costs) from the Pittsburgh area with its long run profit advantage in expanding capacity in Birmingham.

Chapter Five discusses the regional impact of multiple basing point pricing between 1924 and the beginning of World War II. We are informed that even after the demise of Pittsburgh Plus, southern steel development was discriminated against by the pricing leadership of the Steel Corporation. From 1924 until 1938 some of the phantom freight was in effect frozen into the new Birmingham base price by setting the base price somewhat higher than that of Pittsburgh. And although, after 1938, the Steel Corporation reduced the Birmingham base price on most items to identity with that of Pittsburgh, discrimination still prevailed since Birmingham's total costs per unit were apparently the lowest in the nation.

Stocking has assembled a wealth of information for the decade of the thirties to demonstrate the marked cost advantages in producing steel at Birmingham. The greatest cost advantage was in assemblage transportation costs. In spite of the somewhat poorer grade iron ore and coal in the region, necessitating more tons hauled per ton of steel, the amazingly short haul tremendously reduced the total ton-miles of materials assembled. Furthermore, lower wages in the South offset any dis-

advantages inherent in the larger number of man hours required to mine the irregular formations of local ore and coal and the greater capital costs necessitated for smelting equipment. But not only were costs of producing pig iron substantially less, the local surplus of scrap—the other principal ingredient of steel—resulted in substantially lower prices in the South for scrap.

The research staff of Professor Stocking also prepared transportation data to indicate the freight advantage area of Birmingham producers with respect to the other major producing centers of the United States. An informative map showing Birmingham's freight advantage territory appears on page 86, and a modified freight advantage map to conform with state boundaries and steel consumption information (collected on a state-wide basis) appears on page 88. Using previously unpublished material collected by the TNEC for the month of February, 1939, Stocking has estimated that Birmingham supplied less than half (47.4 percent) of the total tonnage of the six principal steel products which it delivered to its natural market during this period. (p. 89). And more selective information presented by Stocking suggests that the February, 1939, TNEC data was not unique.

The growth of the southern steel industry is shown to have been retarded in other equally important ways. Only a limited range of steel products were being produced in the Birmingham area in spite of Stocking's convincing evidence that an ample regional market existed for these other steel products. Although twenty-eight can-making plants existed in the southern states, no tin plate was produced in the Birmingham area until 1938. And, although about forty percent of the tube and pipe (consumed primarily by the oil industry) was used during the thirties in states nearest, freightwise, to Birmingham, there was no production in the Birmingham area despite its low production costs.

Professor Stocking is particularly discerning in discussing reasons for the slow growth of the southern steel industry. Certainly a basing point pricing system made it feasible for northern mills to export their low marginal cost, excess capacity into southern markets at prices as attractive as those of Birmingham. And the stabilization of prices at a higher average level under systematic formulas permitted the northern mills greater absorption of freight, deterred the longer run marginal scrapping of redundant capacity in the North, and restrained the marginal erection of more efficiently located mills in the South which more competitive pressure would have painfully brought about. However, the author emphasizes another and probably more important factor—the ownership of the strategic Birmingham natural resources and steel ca-

capacity by the United States Steel Corporation. Potential basic steel producers are either unable or hesitate to enter production because their raw material source of supply would be controlled by a vertically integrated producer. The same deterrent would apply to potential non-integrated tin plate or pipe and tube producers. Further, existing vertically integrated, low cost producers hesitate to lower the base price of steel in the Birmingham region in order to encourage growth by deterring northern freight-absorbing sales since the dominating position of U. S. Steel, which is geographically diversified, provides the power to discipline such independence with a punitive base price at its Birmingham subsidiary. That U. S. Steel has evidently desired to maintain stable base prices, reflecting higher profit margins at Birmingham, probably reflects (1) a desire to lessen rivalry and uncertainty which would accompany alteration of inter-base price differentials, (2) protection of and emphasis on its shorter run interest in a relatively profitable southern market for the excess capacity of its northern mills, and (3) the very sluggishness and inefficiency which at least in the past characterized the bureaucracy of a monolithic concern.⁵

Stocking argues, and apparently with ample reason, that had Tennessee Coal and Iron Co. (the Birmingham subsidiary) remained an independent concern, the growth of the southern steel industry would have been much more rapid—even under the handicap of northern freight absorption.

Chapter Six furnishes empirical support for familiar, analytically-derived consequences of basing point system. The author shows that the basing point system generally succeeded in stabilizing prices at higher average levels. However, even adherence to steel's formula gave way to some extent, on some products, during the Great Depression. The concessions and open price reductions tended to be greatest on those products in which U. S. Steel and other large producers did not represent a predominant share of the market and on those products for which there were a few powerful buyers. Nevertheless, even where adherence to the formula was punctured, steel price changes were remarkably small in contrast with the reductions in steel production. The basing point system in practice, moreover, seemed to discriminate against the smaller buyers. When steel was easy, the smaller buyers received the smallest concessions,

5. The author refers at length to the findings of the Ford, Bacon, and Davis private engineering report which were disclosed during the Celler Committee Hearings. Not only had U.S. Steel been ignorant of its Birmingham subsidiary's relative cost of production, but one of the major recommendations made by the consulting firm, and eventually adopted by the Corporation, was the construction of a tin plate mill in the Birmingham area.

but when steel became tight, and producers found the absorption of freight less advantageous, the smaller, distant buyers were the first to lose their sources of supply. Stocking also found that many buyers in the South, during the tight steel situation between 1941-1947 were losing their former supply sources to the north. Although such southern consumers were willing to pay the full freight during this period, they found their northern suppliers unwilling to sell to them f.o.b. mill.

Stocking goes on to discuss the three familiar ways in which adherence to the basing point formula served to increase costs in the steel industry: (1) by encouraging wasteful cross-hauling, (2) by tending to increase selling costs under non-price competition, and (3) by increasing average production costs through lessening the competitive pressures to increase efficiency and eliminate high cost producers. Suggestive empirical information supports each of these charges, while the discussion itself is judicious and avoids overstatement of the case.

Finally, the author concluded that the effect of relatively rigid and relatively high prices for steel has meant a redistribution of income in favor of those who produce steel. And, although he admits the controversial nature of a consequent implication, I believe that he is correct when he opines, "[i]t is not unlikely that this redistribution has affected adversely the size of the national income itself." (p. 143).

Chapter Seven, *Developments in Iron and Steel Since 1938*, is brief primarily because, in the absence of a neo-TNEC, firsthand information is largely lacking. The author refers to the reinvigoration of U. S. Steel under the leadership of Benjamin Fairless, which apparently has been even greater than the reorganization which began in 1932 under Myron Taylor. Stocking acknowledges that millions of dollars have been spent on regrouping producing properties at main producing centers, modernization, and equipment for the making of newer products, and that the Birmingham facilities have been somewhat expanded including the construction of a modern tin plate plant. But he questions whether the Steel Corporation is yet as efficient and fast-moving as some other steel companies with fewer handicaps of size. And he believes ". . . it remained timid about building Birmingham facilities to compete with products traditionally produced exclusively by its northern plants despite rich nearby markets to absorb Birmingham's output." (p. 146).

Stocking notes that the South's proportion of domestic ingot steel capacity which had remained constant at three percent between 1904 and 1938, had expanded to four percent by 1945, and five percent by 1950. Nevertheless, in view of the size of the natural market in the South and the marked advantage in production costs, the South still lags in the ex-

pansion of its steel industries.

The author notes that the postwar period has seen the South lose one of its important cost advantages in steel making; low wage rates had helped hold down labor costs in the more difficult mining of Alabama coal and iron ore. The most important southern advantage has, however, always been in lower assembly costs. Reduced costs in transporting coal, iron ore, and limestone counter-balance the loss of the labor cost advantage, while access to cheaper scrap iron continues to throw the low cost steel making title to southern mills.⁶ Although some of their relative cost advantage has been reduced, transportation advantages of southern steel-makers in marketing have continued to grow. Steel consuming production centers have continued to shift, percentagewise, not only toward the West but to the South as well. Stocking contends that had the essential southern raw materials been accessible to independent steel concerns, expansion of southern steel capacity could have been much greater in the period after 1938.

Stocking briefly discusses U. S. Steel's formal statement of July 7, 1948, announcing the firm's intention to abandon the basing point system in favor of f.o.b. mill pricing. The author reminds us, however, that freight absorption had been largely eliminated in the steel industry prior to the *Cement Institute* decision.⁷ In the face of successive increases in freight rates during the early postwar period as well as the unfulfilled demand for steel at prevailing prices, extensive freight absorption was found to be unprofitable. That the author evidently did not believe the formal shift to f.o.b. pricing would become permanent, industry-wide policy probably explains why he neither speculated systematically on the probable long run economic consequences of the shift nor indicated the immediate consequences of the shift other than to mention a substantial increase in truck shipments of steel. And with respect to this shift from rail to truck, we are not told if buyers were free to arrange their own truck haulage.⁸

Chapter Eight, *The Law on Basing Point Pricing*, performs a superb job in untangling and then synthesizing the significance of court decisions

6. The author cites on page 150 some engineering estimates which place the 1950 total costs of producing open hearth ingot steel at \$1.57 to \$3.50 a ton less than any northern or eastern mill, the Birmingham costs being \$36.81 a ton.

7. *FTC v. Cement Institute*, 333 U.S. 683 (1948).

8. If shipments moved from steel mills only in trucks of the steel company's trucking contractors or common carriers, truck transportation delivery charges could be published. Known and definite transportation charges still could be computed to derive formula delivered prices, and the certainty of identical destination prices for a multiple basing point system would be provided at such times as excess capacity led to the resumption of freight absorption.

in basing point and related price discrimination cases, the shifting Federal Trade Commission remedial policy, and, finally, the intention and likely consequences of Congressional "clarifying" legislation. This chapter is strongly recommended to everyone concerned with the law, politics, and semantics of the basing point "problem."⁹ Professor Stocking's analysis is elaborated and documented so extensively that summary will necessarily make his argument appear both cryptic and dogmatic—which it is not.

Professor Stocking applauds both the FTC for developing and the courts for accepting the doctrine of implied conspiracy in the Federal Trade Commission Act cases involving rigid, systematic adherence to industry-wide basing point formulas. Although some evidence of overt collusion is usually available with respect to the initial development of arbitrary geographical pricing formulas, once an industry-wide pricing system is established adherence to the system may require no overt cooperation. Therefore the only evidence of competition restraining behavior may be circumstantial—that found in the rigid and sustained adherence to an industry-wide pricing formula. The doctrine of implied conspiracy—in terms of a "planned common course of action" and "conscious parallel action," used to describe concerted action as practiced in the cement and rigid steel conduit industries—has permitted findings of violation of the Federal Trade Commission Act though the evidence of concerted action may not have been sufficient to show a Sherman Act violation. Moreover, the doctrine of implied conspiracy as developed under the Federal Trade Commission Act is seen as necessary to draw up effective remedial orders, designed to encourage some unsystematic price behavior in industries involving geographical competition. Professor Stocking sees no challenge under outstanding Section 5 orders to sellers regularly absorbing freight in order to invade competitively the rivals' more distant markets.

The author believes that any question or confusion as to the freedom of individual sellers to invade rival markets via freight absorption has arisen from certain applications of the Robinson-Patman Act in both basing point and other cases. Although sympathetic to the use of the Robinson-Patman Act to strike down predatory action and phantom freight, he believes that the mill-net doctrine, as applied in the *Glucose* cases,¹⁰ did raise *some* questions as to the legality of regular and sustained freight absorption in industries involving important geographical compe-

9. This chapter (in addition to most of the final chapter) is reproduced virtually verbatim in Stocking, *The Law on Basing Point Pricing: Confusion or Competition*, 2 JOURNAL OF PUBLIC LAW 1 (1953).

10. *Corn Products Refining Co. v. FTC*, 324 U.S. 726 (1945) and *FTC v. Staley Mfg. Co.*, 324 U.S. 746 (1945).

tition. Of even greater significance, however, he views the *Morton Salt* case's dilution of the standard for judging a lessening of competition to a mere "reasonable possibility."¹¹ Finally, although Stocking applauds the Commission's relegation of "meeting of competition" in the *Indiana Standard* case to a mere procedural defense,¹² he criticizes the identification of injury to competition with mere injury of competitors. Now, *were* standards developed in the nonbasing point cases to be applied in conjunction with the mill-net doctrine of the *Glucose* cases, a theoretical danger of Robinson-Patman Act violation could be found in regular freight absorption.

The Federal Trade Commission announced in October, 1948, as a statement of policy that strict f.o.b. mill pricing was not required under the Federal Trade Commission Act and that it intended to apply only broad standards in judging injury to competition with respect to the application of the Robinson-Patman Act in freight absorption cases; it is not surprising that, despite their assurance, they failed to halt an onslaught for new legislation. For it was not really uncertainty about rights to absorb freight and sell in distant rival markets that fired the boilers of political pressure groups. "On the contrary it apparently was the growing certainty of the illegality of systematic industry-wide basing point pricing as a means of restraining competition. . . ." (p. 180).

Professor Stocking, in an excellent analysis, helps us to understand the extent to which two of our antitrust statutes were likely to have been emasculated if the O'Mahoney Basing Point Bill had not been vetoed. Although superficially it only legalized the right to absorb freight, it would have made difficult the use of behavior data of sustained formula-price identities as circumstantial evidence and probably would have resulted in the destruction of the doctrine of implied conspiracy under the Federal Trade Commission Act. Even more pronounced would have been the change in the Clayton Act. Sponsors of the legislation were not content with modestly enacting a test of "reasonable probability" (as distinct from "possibility") into law; the verb "will" would have replaced the historic "effect *may* be." (Emphasis added). Moreover, the good faith meeting of the lower price of a competitor would have been made a complete substantive defense to any charge of illegal price discrimination even though it tended to lessen competition substantially.

Stocking concludes this discussion with a criticism of the Commission for its 1951 findings and consent order in the iron and steel industry. The author is quite pessimistic about the likelihood that this

11. *FTC v. Morton Salt Co.*, 334 U.S. 37 (1948).

12. *Standard Oil Co. v. FTC*, 340 U.S. 231 (1951).

order shall rejuvenate competition in the iron and steel industry. Because of administrative weaknesses (the complaint charged conspiracy, the findings did not sustain the conspiracy charge, yet the consent order in its principle requirements was phrased in terms of conspiracy) the FTC presumably would have to prove conspiracy anew in seeking enforcement of its order before an appellate court. More important are substantive defects in the order. The order failed to prohibit *individual* respondents from quoting fictitious f.o.b. prices and refusing delivery to buyers who wished to use their own form of transportation. Finally, the Commission was apparently so eager to demonstrate its lack of hostility to freight absorption that it made a strategic blunder, which may well interfere with opportunities for achieving compliance. Instead of indicating circumstances under which price uniformity might constitute evidence of conspiracy, the Commission went so far as to reject explicitly that uniformity of prices alone would constitute evidence of violations.

The concluding chapter, briefly summarizes Stocking's policy recommendations. Rejecting "(1) systematic basing point pricing maintained through concerted action, overt or tacit [and] (2) mandatory f.o.b. pricing," Stocking casts his vote for "(3) non-conspiratorial pricing with sellers free to sell as they wish, even to absorb freight, as long as their doing so does not tend to eliminate competition." (p. 192). Stocking believes that required f.o.b. mill pricing might tend to stimulate expansion of steel capacity in the South, but he thinks it would do so at the expense of unutilized capacity in the North and such need not represent an economical allocation of the nation's resources. Moreover, mandatory f.o.b. mill pricing, at least in the short period, would make steel prices higher to southern consumers because of the present deficit of southern steel capacity. Furthermore, in Stocking's view, even in the longer period, strict f.o.b. mill prices are likely to fail to produce for both the South and nation alike the type of competitive price flexibility which non-conspiratorial pricing would bring about.

In the quest for effective competition via non-conspiratorial pricing the author would have the FTC limit its attack on basing point pricing to "conspiracy under the Federal Trade Commission Act" (presumably including implicit conspiracy) and those Clayton Act offenses involving phantom freight and predatory behavior.

However, even if the above recommended policy for the FTC should succeed in inducing a more flexible pricing policy, the development of the southern steel industry may still be retarded because of the subordination of U. S. Steel's Birmingham subsidiary to the larger interests of the Corporation. But, given the concentration and the dominant positions of

a few large firms in the steel industry, Stocking is not completely confident that the policy recommended for the FTC will be successful in freeing ". . . the iron and steel industry from the restraints to which systematic basing point pricing has subjected it." (p. 194). In event of failure, Stocking recommends altering the industry's structure by means of suits for dissolution, which would require the cooperation of the Department of Justice.

I should like to complete this recapitulation of Stocking's policy statement by reference to his final paragraph, which represents, I believe, a necessary broadening of any discussion bearing on antitrust policy:

The courts and the electorate may not support such a program. They may oppose it because, confusing business rivalry with price competition, they see no need for it, or because like the leaders of the industry they believe price competition is ruinous. If society does not find some way of stabilizing economic activity at a high level of employment and income, they may be right. (p. 194)

This reviewer ventures the opinion, however, that Stocking's necessary condition, indicating the relation between national income and non-ruinous, effective competition, may be insufficient. A good deal of "ruinous," effective competition in industry may be just the malady required to insure that the Federal Government will take a large enough dose of counter-cyclical fiscal medicine so as to guarantee the maintenance of tolerably high levels of national income and employment. Experience indicates that all too many industrial leaders prefer the protection of their industry's own stability by measures of defensive monopoly. Denied the use of such trade restraining, price stabilizing devices, the only alternative that industry may find for relative income stability may be that forthcoming from a high level of demand for their products. Vigorous support by industry, in place of indifference or hostility, toward federal counter-cyclical policy involving large budget deficits (if and when necessary) might arise if the only alternative to profit ruination were sustained aggregative demand in the economy.

Only three criticisms—all on specific points—have I to offer in concluding. The first concerns the author's failure to clear up the confusion which has so often arisen in basing point discussions around the phrase "systematic freight absorption." The phrase is sometimes used to describe pricing systems employed by a single or by several firms individually whereby they regularly maintain a whole structure of varying mill-nets while absorbing varying amounts of freight on different sales. The antithesis of such broadly defined "systematic" freight absorption might

be "sporadic" freight absorption. The other connotation of the phrase involves punctilious adherence to a geographical pricing formula of identical prices. The adjective "systematic" suggests an industry-wide system in which just enough freight is absorbed so as always to "meet" and never "beat" competition. The antithesis of this second usage of "systematic" would presumably be "unsystematic." Stocking almost invariably uses "systematic freight absorption" in the second and conspiratorial sense, and the reader is clearly aware of Stocking's meaning. However, the author does not clarify for the reader the confusion which sometimes arises from the first usage of the term and, in fact, appears on one occasion to have used the term in the first sense.¹³

Secondly, although I agree that unsystematic intermarket penetration represents the public policy objective most likely to conduce to effective competition and price flexibility in industries involving geographical competition, I believe that Stocking's argument, and his empirical support, disposing of the Stiglerian position,¹⁴ favoring exclusive f.o.b. mill pricing, is unconvincing. Stigler's thesis is that the basing point system permitted the sellers to adjust to peripatetic regional shifts of demand for steel in a reasonably satisfactory manner through the mere absorption of freight. He argued that as construction demand moved about geographically, feast and famine characteristics of markets would have required substantial variations in f.o.b. mill prices had freight absorption not been practiced, while the collusion necessary to re-establish cooperatively and continuously the mill price differentials (in effect, market-sharing) would have been so flagrantly overt that necessarily they would have run afoul of the antitrust laws. One reply by Stocking is that the mere mechanics of the basing point formula would not guarantee an equitable division of the business and profits. However, as I read Stigler, a lesser standard of perfection in the merits of the basing point system appears to be all that the author claimed. Stocking's major reply to Stigler, however, is that cross-hauling was extensive under the basing point system and that, therefore, shipments did not tend to flow only from areas of weak to strong demand. Stocking may be correct with respect to the prevalence of cross-hauling (sellers do try to maintain a geographically diversified group of buyers and particularly to cultivate long term customer-supplier relationships), but unfortunately all of his evidence

13. That is on page 171, where he says:

Critics . . . allege . . . administration and interpretation of the Robinson-Patman Act in cases in which basing point pricing has not been an issue, or if an issue not the main one, have contributed to uncertainty about the legal right of a seller systematically to absorb freight in getting into remote markets.

14. See Stigler, *A Theory of Delivered Price Systems*, 39 AMER. ECON. REV. 1143 (1949).

covers a period of extensive unutilized capacity (1937-1939), during which period market shortages could at most be labeled relative shortages (deficits). Stigler's argument might have been whittled down more effectively had the nature of steel consuming markets been analyzed as to their susceptibility to geographical fluctuations in demand. The example used in Stigler's article referred to reinforcing steel bars used in large construction projects. But what proportion of steel products is destined for peripatetic construction projects as distinct from the locationally more stable manufacturers who will fabricate steel into transportable products? An answer to this question would appear to answer the question as to whether geographically unstable demand might bulk large enough that ". . . f.o.b. mill pricing will require a flexibility of prices that will often be beyond the reach of colluding oligopolists, so we may expect more frequent outbreaks of price competition."¹⁵

Finally, Professor Stocking does not face up to the question as to whether exclusive f.o.b. mill pricing might not be more conducive to competitive price behavior than systematic adherence to basing point formulas, in the event (the possibility of which Stocking admits) that the mere presence of concentration and domination in the steel industry thwarts efforts of the Federal Trade Commission to induce unsystematic price behavior. While I prefer the quest for unsystematic price behavior and imagine that public policy can modestly succeed in this quest, I still would prefer exclusive f.o.b. mill pricing to continuance of the old basing point pricing system. Spatial configuration of sellers (of such a nature that firms initiating the mill price reduction are likely to gain more of the geographical marginal buyers than *individual* rival sellers will lose by particular price reductions, thus raising at least some uncertainty as to whether the price reduction will be met) in addition to the element of geographically shifting demand is likely to produce incentives to mill price reductions which are largely non-existent under the basing point formula.

Philosophical grounds, however, appear to represent the author's major reason for categorically rejecting compulsory f.o.b. mill pricing:

The South has a broader and more enduring reason for rejecting mandatory f.o.b. pricing, viz., the preservation of a free economy. To tell businessmen that they must price what they sell only f.o.b. plant, when in their individual judgment freight absorption might prevent bankruptcy or enhance profits, is inconsistent with the function of the entrepreneur in a competitive

15. Stigler, *supra* note 14, at 1157.

society. Positive interference of this sort is apt to accentuate the tendency, now everywhere around us, for the government to assume responsibility in the guidance of individual enterprise. (p. 193).

Stocking's explanation is not so doctrinaire as it might appear, since he adds: "Some interference with freedom may be necessary to perpetuate it, but in a democracy policy should be directed toward creating an environment conducive to freedom and laying down rules designed to preserve it." (p. 193).

Hence methods of preserving freedom are obviously subject to practical policy judgments. Stocking views attacks on implicit conspiracy under the Federal Trade Commission Act, on phantom freight, and on predatory behavior under the Clayton Act as consistent with the creation of an environment conducive to freedom. He also pictures suits for corporate dissolution to alter an industry's structure as consistent with the creation of a free environment. I doubt if the United States Steel Corporation (or many economists for that matter) would view dissolution proceedings against the Corporation and other dominant steel producers as a lesser threat to "individual judgment" and the "function of the entrepreneur in a competitive society" than mandatory f.o.b. pricing. I shall repeat categorically that I should prefer public policy to move in the direction of dissolution rather than that of mandatory f.o.b. pricing, because I believe the former to be more vital in promoting effective competition. But for many reasons involving economics, administration, and law¹⁶ I should not like to count on the likelihood of extensive dissolution. Consequently, if dissolution should have to be ruled out as a feasible policy alternative, or in the unlikely case that vigorous antitrust enforcement should fail to produce sufficient unsystematic geographical pricing, it would appear that the protection of society's freedom would call for a trial of the effectiveness of mandatory f.o.b. pricing. Where substantial power continues to reside in highly concentrated oligopolies, the public interest will likely require that the use of such power be limited in order to prevent its abuse.¹⁷ But these concluding remarks primarily reflect subtle differences in judgment between the author and the reviewer. My initial plaudit still stands—Professor Stocking has written the best book on basing point pricing to date.

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16. See Levi, *A Two Level Anti-Monopoly Law*, 47 N.U.L. REV. 567, 572-573 (1952).

17. Levi, *supra* note 16, at 573-574. See also DIRLAM and KAHN, *FAIR COMPETITION passim* (1954).

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