"significantly threatened competition." This effectively eliminates most of the traditional defenses to antitrust action and lowers the threshold for violations.

The purpose of this recommendation: restraining the growth of larger firms in favor of smaller ones, decentralization of industry. The commission is very specific in this regard. They suggest that Congress examine the reforms "in view of possible disincentives to business growth or public perceptions of unfairness." The courts "should not accept any form of relief that is inadequate to restore competition even though adequate relief may have adverse tax or other financial consequences for the divesting firm or third parties." The third party here is the American public, which will be paying inflated prices for obsolescent technologies and productive capacities.

The commission then proposes to end government's role in the development of the infrastructure that is vital both to industrial production in the United States and to exports. Antitrust immunities of the trucking industry and railroads should be eliminated and those industries be substantially deregulated, goes the proposal. The same is recommended for ocean shipping, if defense and diplomatic considerations make that feasible.

The American transportation grid, despite certain problems, is probably the best in the world. From at least 1919 on, it was developed as a joint government-private industry venture to permit the levels of investment and extent of services necessary for a growing industrial economy. This joint venture, the commission proposes, should be abolished and the industry thrown open to "free competition" — route cutting, price wars, and an end to capital investment as innumerable small companies attempt to establish a niche for themselves.

The deregulation policy coheres with the overall objectives of the commission's recommendations to decentralize the American economy. In their minds, this is a desirable *social* policy to be enacted by manipulation of the antitrust laws.

Hoping for nothing too drastic

Public scrutiny has been assiduously avoided in every step of the commission's operation. The commission was established with a six-months duration, extraordinarily short for the complex issues to be considered. Senator Kennedy's staff has explained to the *Executive Intelligence Review* that this is no problem because "the most effective way to get results would be to hammer out the guidelines before the commission began its work." These "guidelines" included a number of procedural recommendations, subsequently adopted by the commission, a proposal to review all regulated industries exempt from antitrust prosecution and eliminate those exemptions, and to facilitate divestiture. The work was well-prepared far in advance, the commission was stacked with trustbusting advocates and, by the time the recommendations were issued, legislation was already drawn up to begin implementing the recommendations.

An *Executive Intelligence Review* survey of House and Senate Judiciary Committee members, conducted six months ago, indicates that none of them, besides Senator Kennedy, has the least understanding of what is underway. Senator Paul Laxalt's office commented last June: "As far as we are concerned the commission will begin and end with no reforms proposed."

Corporate attorneys were playing the same game of biding their time and hoping that nothing too drastic will result, making a compromise here or there on procedure, airline deregulation and so forth. But the cards are on the table. Senator Kennedy and his allies have announced their platform: U.S. industry is to be divested and shrunk to tiny, decentralized entities, organizationally and financially incapable of making the necessary technological advances.

—Felice Gelman

The Metzenbaum bill

Senator Howard Metzenbaum (D-Ohio) has introduced legislation to amend the Antitrust Civil Process Bill in a first step toward implementing the National Commission's proposals. The bill deals entirely with the commission's procedural recommendations, all of which place great pressure on attorneys, judges, and corporations to avoid or settle antitrust litigation, while providing private trustbusters with a major incentive to sue.

The bill would:

- provide the government with access to discovery material on the record in separate private cases for use in prosecuting an antitrust action against a corporation;
- permit any judgement won by the government in an antitrust action to be introduced as *prima facie* evidence in a private antitrust action;
- increase sanctions against corporate attorneys who delay the prosecution of an antitrust case;
- permit a plaintiff who has won a private antitrust suit to collect interest on the amount of the judgement from the time the complaint was filed in court, thus increasing the pressure on corporations to settle fast, rather than fight litigation.