In marketing, he found less than a dozen small oil dealers whose exit from the business appeared to have had anything to do with local price cutting. In refining, he found "no evidence that predatory price cutting was used to depress asset value of the more than 120 competitive refineries that Standard bought." He concluded:

> Anyone who has relied upon price discrimination to explain Standard's dominance would do well to start looking for something else. The place to start is merger . . . What this study says is that Standard did not achieve or maintain a monopoly position through price discrimination. The issue of whether the monopoly should have been dissolved is something else.

"Cutting to Kill"

No one in 1911 seemed to notice the high Court's studied disregard of the market strong-arming charges against Standard. They had already passed into legend. In 1912 a prominent economist, John Bates Clark, in a book, *The Control of Trusts,* listed some of the alleged obnoxious practices of large firms, including "... the familiar (sic) practice of cutting prices locally . . . (or) the cutting of the price of some one variety of goods which a rival makes, in order to ruin him." He said that "the suppression of these policies would go far toward rescuing competition, protecting the public, and insuring to it a large share of the benefit that comes from economy in production."

Congress tried it. The overwhelming part of the 1914 Congressional debate on the Clayton bill concerned "predatory price cutting," and resulted in Section 2, making it unlawful to discriminate in price between customers "where the effect may be to substantially lessen competition."

But in the next 24 years, that is, until Section 2 was rewritten by the Patman Act, the number of such cases brought under Section 2 was negligible.

Price cutting, for any purpose, costs money. To consider its profitability, apart from its morals, the simplest way is to look at it as though through a banker's eyes. How much will it cost? and just how are you going to profit from it?

Like a military war, no one knows how severe a commercial price war may become. But one thing is pretty certain; while it lasts, the big company on the offensive will be losing more money than the little one on the defense. Meantime, the small competitor, instead of scaring, may close down for a while and let Mr. Big go on losing money. And even if the small firm goes broke, there's only a slim chance that the

big one can take over its business for nickels. If the big firm is shooting for a monopoly, somebody may buy up the bankrupt property for its scarcity value; but if the big competitor is just one of many, it may shoot its deer but then see one of its competitors get the carcass.

But just suppose the big competitor *does* win. Then how does he recoup his losses? By raising prices to a normal level? That will take a long time. By raising them to abnormal, above-market levels? That is an invitation to outsiders to come and join the fun.

Of price wars today, the most conspicuous and colorful are those in gasoline. They do not fit the predatory-pricing legend at all. They are started by sellers of all sizes, whose calculations have but one thing in common – a belief that they have some advantage, innovation, improvement, or low-cost supply source that will enable them to come out ahead. Of the predatory-pricing notion, a gasoline marketer some years ago made the classic comment:

> One of the fallacies often advanced is that so-called leading marketers reduce prices to drive out competition so that they may later enjoy a monopoly.
>
> That is like trying to sweep back the ocean to get a dry place to sit down. Competition is impelled by impersonal forces that never scare, and never hesitate for long, and would move in immediately when prices were restored – offering little opportunity for a single marketer to recoup his losses.
>
> As a practical matter, selling below cost to drive out a competitor is a sure road to bankruptcy.

The notion of long-time gains to be made by short-time price raids in geographic markets has numerous variations in other kinds of markets. One was quoted above – "the cutting of the price of *some one variety of goods* which a rival makes, in order to ruin him." There are many others. Any company making diversified goods, selling to diversified customers, or having some vertical diversification, may be charged, at some point in its business, with using its "power" to sell at "unfairly low" prices with competitive malice aforethought.

Such allegations are frequently compounded with the even more fanciful notion that losses in one product line, customer category, market division, or vertical stage of a business may or will be indefinitely "subsidized" from the others. The preposterous findings against A & P in the 1940's were a striking instance; but such thinking now permeates the F.T.C.'s antimerger cases (though not present in the Clorox case).