Prior to the start of this panel at least one member of the audience quipped about the significance of the word "open" in the term "open competition"; he wanted to know how the term differed from closed competition. The answer may lie in the eleventh definition of "open" given in the unabridged edition of *The Random House Dictionary of the English Language:* "without restrictions as to who may participate: an open competition."[8]

We do not have time today for a thousand other opinions of what open competition really means. Therefore, we shall settle for other opinions from four informed and able men: Kevin Ryan, Steven Newman, Lewis Roberts, and C. Arthur Williams, Jr.

THE REGULATOR

KEVIN M. RYAN

Earlier this year, President Nixon's Council of Economic Advisors stressed the merits of free competition. Their analysis puts it this way: "Traditionally, this nation has accepted the premise that the individual should be as free as possible to decide for himself what goods and services will be best for him and where and how he will exercise his own talents and energies. By and large the resultant system serves us well."

It may not be clear in the non-life-insurance business that the consumer has the opportunity to choose whether or not he will buy the product in the first place. For instance, the purchase of automobile and fire insurance is nearly universal due to social and economic necessity. The consumer *must* buy the product in most instances. There is no effective competition as to whether he will purchase or not, or as to alternative or substitute products. But this is true in other traditionally competitive industries, dealing in the so-called "necessities," e.g., automobile, refrigerators, communication, etc. The circumstance is not a compelling argument against open competition.

Open competition as we refer to it here on this panel is a misnomer. We are not referring to competition but to a pricing process which, for all practical purposes, is the "non-prior approval" pricing process. From the regulator's viewpoint, open competition is a pragmatic realignment of responsibilities with stress supplied by the public and price adjustment from the companies. The open competition which the regulator must look for

[8] Random House, New York 1969, p. 1008.

is a pricing system that benefits the consumer, and not one which merely emphasizes the industry's new freedoms, although the latter consideration is inherently characteristic of this new system. We are viewing a system in which new flexibility is given to the insurance industry for the sole intended result that the consumer will have, in every market, an effective choice among the best possible products. This effective choice will consist of meaningful product variations and price differences.

The result that we seek, if this program is to be deemed successful, is to have, in heretofore neglected areas, active and vital markets where choices are afforded the consumer. The necessary competition will result from an increased capability of a company to move into a market where, having established operations, they can adapt to the conditions there. It has been the feeling of some regulators that the reason for tightly restrictive markets is that companies are fearful of committing themselves to a market to which they cannot adjust. Entering an area and expending start up costs where inadequate rates develop may lead to market restrictions. But these market restrictions become necessary to management if regulators will not allow price adjustments in these new markets. In Illinois, as of January 1, we have given management the flexibility and the power to adjust to a market, without any political or bureaucratic intervention.

It must be kept in mind that this pricing system we speak of is based on the presumption that there is, or can be, the broad type of "open" competition. Without competition, the insurance market has to be regulated. Few argue that, in most endeavors, the existence of competition is by far the best price regulator. A policy of permitting and encouraging competition of all kinds would, if general economic experience is any guide, make the industry more efficient and ultimately benefit the public. But it does depend upon competition. Is there such a thing as effective competition in the insurance market place? Competition broadly has certain characteristics:

1) a large number of competitors that are well informed, act independently, and are sufficiently dispersed in strength and number so that no one of them controls the price by its activity alone;
2) easy entry into and exit from the market;
3) standardized product.

Numbers 2 and 3, easy entry and standardized product, seem to fit the insurance process. On the other hand, within the first requirement, independent

action has been, and continues to be, a problem. Despite the fact that there is sufficient independence for reliance upon open competition, companies must act more independently for open competition to fulfill its promise to the satisfaction of all. Furthermore, there is no question but that there is very little competition existing in various areas of the insurance market. Some of those areas are: Medical malpractice, sub-standard automobile insurance in various geographical areas, and low-valued property in ghetto areas. Various causes combine to make very restricted markets in these areas.

Medical malpractice provides a classic example of the companies' inability to properly price a product and establish competitive markets due to changing social conditions that are outstripping price adjustment. Even in the more predictable automobile lines, market restrictions are, at times, a direct result of social upheavals which change the product without changing the price. Due to the inability of the pricing mechanism to respond completely and totally, market restrictions are created.

Obviously, there are areas where, due to very little competition, the open competition rating laws may not be successful. What is the solution to this problem, viz., the problem of trying to regulate rates through competition where there is, in fact, very little competition? An existing, and workable solution is to have the effect of competition artificially created by regulatory agencies. Already the institution of Fair Plans and the expansion of Automobile Assigned Risk Plans have overcome some of the lack of competition. Artificial effects of competition must be developed by means of these plans in order for proper regulation to exist. In this way, the effective and controlled utilization of these plans is not only an effective placement program, but rather, and more importantly to rate regulation in non-competitive areas, it becomes an artificial price regulator.

What happens in effect with Assigned Risk Plans is that a ceiling is put on prices in areas where competition is not strong enough to place a ceiling. It seems reasonable that no carrier in an area affected by the full operations of Assigned Risk Plan can charge, for any large segment of the population of that area, prices higher than the Assigned Risk Plan. Once the new rating system is in full operation, what other items will we be looking for as regulators? What other items are there that will be indicators that the open competition type of rating law is working? We expect competition to increase as the attitudes of price uniformity engendered under the prior approval system recede. By the rate regulator's intervention, originally en-

couraged by industry and currently imbedded in some industry attitudes, the government not only failed to promote competition, but actually tended to prevent it. One of the concrete changes we expect to encounter is a splintering of the market-place. Why? This is based on the premise that there has been, under the prior approval system, a curtailment of territorial and some classification breakdowns. The state has allowed a restriction of the market-place by creating a need for selective underwriting. Under prior approval it became obvious that, because of pricing restrictions, classifications had clearly definable bad and good risks, i.e., risks that an underwriter knew were better or worse than the stipulated regulated price. Such a situation naturally resulted in market restrictions for those identifiably bad. This unfortunately holds true for territories. By demanding non-selective pricing, the regulator has encouraged selective underwriting and market restriction. We now expect selective pricing and the corresponding lifting of market restriction.

In summary, we expect to see more classifications and more territories, a result that will give the companies the needed flexibility to handle larger portions of the market. In addition, we expect to see greater activities in areas where there has been a definite slow-down of market penetration. We now believe that companies will actively engage in previously restricted areas beacuse they now have the marketing flexibility that prior approval did not give. We look for a modernization of the Illinois Assigned Risk Plans so that they will be more active in areas where *companies have not and will not voluntarily compete.*

Overall we do not look for any abnormal industry-wide price changes, except perhaps in the areas where new competition will be developing. Here, Assigned Risk Plans for property, liability and any other areas where they are necessary, must become the effective regulator. We do not look for great industry-wide upheavals, but expect major marketing changes by companies in those areas where they realize that various Assigned Risk Plans must enter, if they do not. In fact, we are not looking for any dramatic changes which will involve the majority of market places and the majority of the consumers. We are, however, looking for a revitalization of those areas that prior approval restricted. We are looking to those areas where classification and territorial definitions will be amplified and the company's attitude toward its market adaptability will be strengthened for the benefit of those who have suffered because of old attitudes. The regulator has contributed to the problem and must effectively work for the solution.