OLE OF GIANT CORPORATIONS

1352

HEARINGS

BEFORE THE

SUBCOMMITTEE ON MONOPOLY

OF THE

LECT COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

NINETY-FIRST CONGRESS

FIRST SESSION

ON

THE ROLE OF GIANT CORPORATIONS IN THE AMERICAN AND WORLD ECONOMIES

PART 1A—APPENDIXES

AUTOMOBILE INDUSTRY—1969

JULY 9, 10, AND 11, 1969

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Select Committee on Small Business

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Appendix I

Invitation to National Automobile Dealers Association to Participate in the Hearings, and Letter Declining Invitation

A. EXPLANATORY NOTE

The subcommittee chairman, Senator Nelson, invited Mr. Lyman W. Slack, President, National Automobile Dealers Association, to be a member of the witness panel on "Distribution." The staff, in discussions with NADA officials, explained that the association could, if it wished, designate another officer or representative of the association for the panel, if for any reason it was inconvenient for Mr. Slack to appear. The letter of invitation to Mr. Slack, which follows, was substantially identical to the written invitations extended to other witnesses.

B. LETTER DATED MAY 28, 1969, FROM SENATOR NELSON TO LYMAN W. SLACK, PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION

U.S. Senate,
Select Committee on Small Business,
Washington, D.C., May 28, 1969.

Mr. Lyman W. Slack,
President, National Automobile Dealers Association, Portland Oreg.

Dear Mr. Slack: This will confirm the invitation extended to you on my behalf by our counsel to participate in a series of hearings in July on the role of giant corporations in the American and world economies. I am looking forward to your early response and hope that it will be possible for you to participate in this endeavor of the Senate Small Business Subcommitee on Monopoly. July's hearings will continue our study of the automobile industry, and your appearance is scheduled, subject to your acceptance, for 10:00 a.m. on Wednesday, July 9, 1969.

A proposed witness list for the three days of hearings, on July 9, 10, and 11, is enclosed. Each day's hearings will be in panel-session form; that is, all witnesses for the day will come forward and sit together at the witness table, rather than testifying separately. We are asking each speaker to make a statement of approximately 20 minutes' duration (not over 25 minutes, please). When all witnesses have been heard, each will be given another 10 minutes to comment on the points made by others that he thinks most require comment. Then there will be a discussion, as informal as possible, in which the members of the witness panel and the subcommittee may exchange view and—if and as it develops—argument.

The hearing will begin on each of the three days at 10:00 a.m. in Room G-308 (the auditorium), New Senate Office Building, and will be open to the press and public. Prepared statements and initial commentary will be heard on the morning. After a luncheon break, we shall have the panel discussion in which the witnesses and subcommittee members can exchange views. I anticipate that we shall adjourn each day's session at or before 4:30.

A copy of the 18th annual report of the Small Business Committee is enclosed. You will find, at page 37, a summary of the first hearing (in 1967), of which this July's sessions are a continuation.[1] Also enclosed is a summary of last year's hearings.[2] That document suggests the controverted questions of fact and policy

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[1] See exhibit 2 in the record, p. 4, pt. 1.
[2] See exhibit 3 in the record, p. 10, pt. 1.

which the subcommittee most wishes to pursue further. We shall welcome your views on any of the issues stated in the enclosed summary; but we are especially anxious to hear your comments on the issues of corporate secrecy, price competition, the dealer system, technological advance, and national values and priorities.

I understand that you already have copies of the 1967 and 1968 hearing records; if not, please let me know and they will be sent at once.

I think that our discussions will be more fruitful if each witness has an opportunity to see the prepared statements of other witnesses in advance. Therefore, if you join our panel, I request that you send a copy of your paper (or outline, if you will not be speaking from a text) to each of the other panelists of the 3-day series, whose names and addresses are on the enclosed list, in time to be received at least a week before the hearing. Please also send 5 advance copies to me and bring at least 75 more copies with you to the hearing.

The witness list also includes the telephone numbers of all speakers. If witnesses appearing on the same day wish to agree among themselves, in advance, on the order of speaking, that will be quite acceptable to the subcommittee. Otherwise, the order of speaking will be determined on the morning of the hearing, by lot.

Please call Committee Counsel Raymond D. Watts, 202–225–5176, if you have any questions or if we can be of any assistance.

I do hope that it will be possible for you to participate in these hearings, which I think will enhance public and congressional understanding of a complex and important subject.

Sincerely,

GAYLORD NELSON,
Chairman, Subcommittee on Monopoly.

Enclosures.
cc: Mr. Frank E. McCarthy.

C. LETTER DATED JUNE 9, 1969, FROM LYMAN W. SLACK TO SENATOR NELSON

NATIONAL AUTOMOBILE DEALERS ASSOCIATION,
Washington, D.C., June 9, 1969.

Hon. GAYLORD NELSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NELSON: Thank you for the invitation to participate at your Hearings July 9, 1969 on, "The Role of Giant Corporations in the American and World Economies." In our opinion, we are not particularly well qualified to discuss this topic since for the most part, automobile dealers are franchised by one manufacturer.

As single-product automobile franchisees, we participate in what is probably the nation's most highly competitive retail market. However, the keen competition at the retail level does not give us any special insight into the role of competition among automobile manufacturers.

With regard to the impact of big corporation activities abroad, we are not able to offer any assistance since our members are all located in the United States.

On behalf of the National Automobile Dealers Association, we appreciate the invitation to participate at your Hearings. However, since we do not feel that we can make a significant contribution in the area of your investigation, we respectfully decline.

Sincerely yours,

LYMAN W. SLACK.

APPENDIX II

CORRESPONDENCE AND MATERIALS ON NEW-CAR DISTRIBUTION AND MARKETING

A. "OPEN LETTER TO SENATOR NELSON" FROM WISCONSIN AUTOMOTIVE TRADES ASSOCIATION, AND RELATED CORRESPONDENCE

1. Letter of Transmittal Dated Oct. 2, 1968, from Louis Milan, Executive Vice President, Wisconsin Automotive Trades Association, P.O. Box 5345, Madison, Wis. 53705, to Senator Nelson

WISCONSIN AUTOMOTIVE TRADES ASSOCIATION,
Madison, Wis., October 2, 1968.

Senator GAYLORD A. NELSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: You have no idea how many dealers have called me taking exception to the newspaper publicity regarding dealer profits.

The enclosed copy of my bulletin should help clarify any misconception as to the dealer profit picture. The National Automobile Dealers Association will be glad to verify the percentages indicated.

I am also enclosing a copy of a newspaper item which appeared in the October 1st issue of the Milwaukee Journal wherein Ross Roy, Inc., also challenged the conclusions.[1]

Needless to say, I shall be very happy to bulletin any clarifying statement you may wish to make on this subject.

With kindest personal regards.

LOUIS MILAN,
Executive Vice President.

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2. "An Open Letter to Senator Nelson"

[From Bulletin No. 20 of the Wisconsin Automotive Trades Association, Oct. 1, 1968]

AN OPEN LETTER TO SENATOR NELSON

You have been widely quoted in nation-wide press releases issued in Washington and published in newspapers throughout Wisconsin regarding the "astounding" mark-up on cars and that "price increases should be rescinded". You stated that your remarks were based on information secured by Ralph Nader. Significantly, you didn't say that Nader's activities have contributed to the increased cost of cars even though you think manufacturers should absorb the cost of added safety features.

What really concerns the many Wisconsin dealers who have called your publicity to my attention is the UPI reference to your material that "the automaker didn't make any excess profit on what he charged the dealer for the basic car, but there was plenty of profit in what the dealer asked the customer." [2] Needless to say, they strongly object to the unfair and unjustified conclusion that "there is plenty of profit in what the dealer asked the customer."

In all justice to available facts, what should have been stated is "there may be plenty of profit in what the manufacturer charges the dealer for the basic car,

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[1] Ed. note.—Enclosure omitted; but see letter dated September 26, 1968, from Ross Roy to Senator Nelson, below.

[2] For the complete statement by Senator Nelson, see "Automaker's Cost Data Reveal High Markups," *Congressional Record*, 90th Congress, 2d session, p. S11354 (daily ed., Sept. 25, 1968); reprinted in hearings before subcommittees of the Senate Small Business Committee on "Planning, Regulation, and Competition: Automobile Industry—1968," 90th Congress, 2d session, p. 268 (1968).—Editor.

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but there is little if any profit left for the average dealer who tries to collect the mark-up from the customer".

For your information, the dealer pays cash on the barrel-head before he even receives the car from the factory and the factory collects a full profit on each sale to a dealer. The dealer on the other hand is merely entitled to the dubious and unpredictable privilege of trying to collect whatever mark-up he can between the factory billing price and the factory suggested "sticker" price. Ask any dealer if there is any difference between the "sticker" price and the ultimate selling price to the consumer. He'll tell you in no uncertain terms that the latter is regulated by the extreme competitive nature of the retail market. What's more, the difference is not in hard cash that the factory gets. In practically every sale it's only part cash and one or two used car trade ins which must be disposed of before an original new car sale is washed out. More often than not, the little profit that remains is in the form of "iron" which must be junked. For your additional information, following is what the retail automobile industry has experienced in the way or profit on sales for the past five years and this is before taxes and including finance and insurance sales income. 1967—1.83%; 1966—1.8%; 1965—2.1%; 1964—1.8%; 1963—1.9%.

As a matter of fact, Senator, the vast majority of dealers would gladly sell to the government what they have in "iron" inventory for the equivalent of hard cash. Maybe you could introduce a bill making it possible for dealers to pay their taxes with such "iron". You could also introduce another bill abolishing existing duplicating bureaus and departments and instead give their work to volunteer Naders. This should help cut down the payrolls and give tax relief to automobile dealers and private citizens.

Incidentally, we would appreciate receiving your publicity releases at the time the UAW was promoting and obtaining its inflationary wage demands. Surely you must have taken exception to those boosts which were considerably above administration suggested guide-lines and which did not include productivity or quality control considerations.

I know the above "irony" is not funny to you but then neither are the conclusions regarding profit conditions in the automobile retailing industry. The 1,095 dealers who are still in business can testify to this fact. So could 900 others who quit the business since 1937.

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3. Letter Dated October 10, 1968, from Senator Nelson to Louis Milan

U.S. SENATE,
Washington, D.C., October 10, 1968.

Mr. LOUIS MILAN,
Executive Vice President, Wisconsin Automotive Trades Association,
Madison, Wis.

DEAR LOU: Thank you for your letter of October 2. I know from past experience how diligent you are in protecting the rights of the dealers whom you represent and I certainly appreciate the opportunity you have given me to set the record straight on the Senate speech which I gave relating to the cost of manufacturing automobiles.

The phrase in the newspaper story relating to dealer profits was apparently a conclusion made by the reporter for United Press International who wrote the story. I did not say one word in my speech about unreasonable dealer profits.[3] In fact, the whole thrust of my speech was an analysis of what it costs the manufacturer to produce the car, compared with the price he charges the dealer for the car and its various options. I repeat, I made no comments whatsoever about dealer profits except to point out that the manufacturer seemed to be taking a much larger profit than what he allowed the dealer to take.

The Senate Monopoly Subcommittee has been trying to determine for some time the true cost of manufacturing automobiles. We are doing this because we

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[3] Editorial note.—Senator Nelson's language in the *Record* was: "Exhibits 1, 2, and 3, taken together, show that the No. 2 automaker in 1966 was making very handsome markups over its costs of automobiles and parts. *Far higher than it lets its dealers charge.*"—From *Congressional Record*, Sept. 25, 1968, p. S11357; hearings, loc. cit., at p. 275. The statement in the UPI wire story of Sept. 25, 1968, to the exact opposite effect, read: "The figures Nelson produced indicated the automaker received a modest markup on what he charged the dealer for the basic car, but the dealer's markup to the customer and what the manufacturer charged the dealer for so-called extras were substantially larger."

want to determine whether automobile manufacturers may be inflating automobile prices in such a way as to exert an undesirable inflationary pressure throughout the economy.

In the course of our investigation, we obtained some authentic Ford assembly plant cost analysis data. I introduced this into the Congressional Record and explained it as best I could, following a detailed study by the Senate Monopoly Subcommittee staff. I invited Ford Motor Company to appear at a public hearing and analyze this cost data if the analysis I offered should by any chance be mistaken.

None of the data which I introduced reflected in any way on the dealer. It simply showed, as I said in my speech, that the manufacturer took a handsome markup on the basic car when he sold it to the dealer and an even more substantial markup on the optional accessories, based on a comparison of the manufacturer's costs and his charges to the dealer.

If at all possible, Louie, I would appreciate it if this information could be included in the next issue of your Automotive Trade Association bulletin. I have enough of a problem explaining the things that I have said without taking on the responsibility of defending things I have never said.

It was good to hear from you and let me know whenever I can be of service.

Sincerely yours,

GAYLORD NELSON, *U.S. Senator.*

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4. Letter Dated Sept. 26, 1968, from Ross Roy, Chairman of the Board, Ross Roy, Inc., 2761 E. Jefferson Ave., Detroit, Mich. 48207, to Senator Nelson, with enclosure.

ROSS ROY, INC.,
Detroit, Mich., September 26, 1968.

HON. GAYLORD NELSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR NELSON: According to yesterday's Detroit Free Press, you charged on Tuesday of this week that "cost accounting records snitched from a computer at Ford Motor Co. show that auto makers take a 'great amount of markup' in their prices to dealers."

Later the article says, "The Galaxie 500 in his example, with V–8 engine, automatic transmission, power steering, power windshield wipers, AM radio, deluxe seat belts, air conditioning and oversize tires, had a factory cost of $1,910.92. The wholesale price to the dealer was $2,507.81, not counting freight and excise tax, according to Nelson's figures. Though making more than 31 percent over its cost on this car, Ford expects its dealers to operate on markups not more than 25 percent of what the cars cost them, according to Nelson."

These figures are very misleading and incomplete; and in fairness to the automotive industry, you might want to call another press conference and get the record straight. You might start by admitting that you have no way of knowing the *complete* cost to Ford Motor Company of building a Galaxie 500—in 1966, or today. It is obvious from the Ford cost accounting figures, which the Free Press says were "snitched", that these are manufacturing costs of building the Galaxie 500 and do not include many other items of so-called burden or overhead.

You said that this was a more than 31% markup of this car, but Ford Motor Company's net profit for the 1966 fiscal year was 5% after taxes. This is a matter of public record, as you must know, from tax returns to the Federal government.

The statement that "Ford expects its dealers to operate on markups not more than 25%" is most misleading. Anyone who knows anything about the retailing of automobiles knows that most dealers would be happy to get a markup of 5%. According to Automotive News, the average net profit of all automobile dealers in 1966 was 1.8%. So, instead of a 31% 'take' for the manufacturer and a 25% 'take' for the dealer, the actual figure is about 5% profit for the manufacturer and less than 2% for the dealer

You are quoted in the Free Press article as saying "that the industry needs some anti-trust enforcement to restore serious competition and reasonable profit levels to the industry".

I believe that there is the most serious kind of competition in the automotive industry and that profit levels are most reasonable. It seems to me that it is mighty serious competition for Chrysler Corporation and Ford Motor Company

when General Motors increases prices only 1.6% on 1969 models when nearly all costs are up over 5%. What could anti-trust do to make competition any more "serious"?

For your information, following are the net profit percentages for the automotive industry in the years 1966 and 1967:

	1966 (percent)	1967 (percent)
American Motors	[1] 1	[1] 10
Chrysler Corp	3	3
Ford Motor Co	5	1
General Motors	9	8

[1] 1 percent loss in 1966 and 10 percent loss in 1967.

ROSS ROY.

PS.—In view of the front-page publicity which your charges received, I have sent a copy of my letter to you to the Detroit Free Press and to other newspapers.

[Enclosure: Article by Philip Meyer, "Senator Blasts Auto Markups," from the Detroit Free Press, Sept. 25, 1968]

SENATOR BLASTS AUTO MARKUPS

(By Philip Meyer)

WASHINGTON.—Cost accounting records snitched from a computer at Ford Motor Co. show that automakers take a "great amount of markup" in their prices to dealers, Sen. Gaylord Nelson, D-Wis., charged Tuesday.

The closely guarded cost figures, obtained for one month's production at one Ford plant in 1966, suggest that the auto industry takes profits far higher than industries in which "real and serious competition exists," Nelson said.

Biggest markups are on optional equipment items, Nelson said.

Supplying more than 50 pages of what he identified as confidential company price tables, he said the markup ranged up to 293 percent, which was indicated for the V–8 option on a 1966 Ford Galaxie 500 four-door sedan.

The markup on the basic car itself was only 17 percent, but this is "frosting on top of a thick layer cake," Nelson said.

The Galaxie 500 in his example, with V–8 engine, automatic transmission, power steering, power windshield wipers, AM radio, de luxe seat belts, air conditioning and oversize tires, had a factory cost of $1,910.92.

The wholesale price to the dealer was $2,507.81, not counting freight and excise tax, according to Nelson's figures.

Cost to the factory of supplying the V–8 289-cubic-inch displacement engine instead of the standard six was only $19.22, Nelson said. Dealers paid $75.60 for this option and the suggested list price to the buyer was $101, he said.

Though making more than 31 percent over its cost on this car, Ford expects its dealers to operate on markups not more than 25 percent of what the cars cost them, according to Nelson.

The cost and price information, even though two years old, suggests that the auto companies need to produce "for more detailed cost data than they have" to justify their price increases, Nelson said.

"Surely General Motors does no worse than Ford on its markups, and I doubt that Chrysler does much, if any, worse," he said.

The data also led to the conclusion that the industry needs "some anti-trust enforcement to restore serious competition and reasonable profit levels to the industry," Nelson said.

Nelson said he got the accounting figures from Ralph Nader, who did not say where he got them.

Nader supplied the factory cost figures in the form of a computer printout which broke down the costs of dozens of Ford models and optional equipment items into categories labeled regular material, minor material, standard parts, inbound transportation, direct labor and manufacturing overhead.

Nelson compared these costs with price figures. The price lists were printed on paper perforated for a three-ring notebook and labeled "1966 Ford passenger car prices."

The cost tables supported Nader's claim, made last summer and challenged by industry spokesmen, that the labor costs of a medium-priced car do not exceed $300.

"Mr. Nader has produced strong evidence that his figure for direct and indirect labor costs is accurate, at least back in 1966," said Nelson.

Nelson said Ford makes further profits, not shown in the single factory's accounting records, on the parts sold to the factory by other plants owned by Ford.

Nader's computer data illustrate "the closeness and detail of the cost accounting done by a giant manufacturer," Nelson said.

"I doubt," he added, "that anyone will ever again be disposed to accept 'I don't know' or 'We don't keep track of that' from an auto executive as an answer to a question about costs."

In all of the argument over auto prices, there has been no "hard information" on manufacturers' costs, Nelson complained.

He suggested that "continued pressure should be put upon the industry to roll prices back to the 1968 levels or lower."

B. ANONYMOUS LETTER DATED JUNE 15, 1969, TO SENATOR NELSON

(NOTE.—The following letter, with its enclosure, received in the office of Senator Gaylord Nelson on June 18, 1969, was postmarked in a Wisconsin town on June 16, 1969. It was typewritten on business stationery, but the letterhead portion of the stationery had been cut off by the sender.)

JUNE 15, 1969.

Senator GAYLORD NELSON,
Capitol Building,
Washington, D.C.

DEAR SENATOR: I noticed the attached item in the Milwaukee Sunday Journal today, and after reading it, felt that I should address this letter to you.

I agree and know from experience that so-called cost secrecy in the automobile industry at the manufacturing level exists, always has, and if the industry has its way, always will. They just do not propose to expose any information in this regard.

Looking at General Motors, should they not expose the profits of each of their divisions—Cadillac, Chevrolet, Buick, Pontiac, Olds, GM Trucks, etc. down the line by divisions? This would only come as the empire was broken up into separated companies. The same applies to Chrysler, with its Dodge operation, its Chrysler and its Plymouth operation, plus Dodge Trucks, and other operations. Likewise this would have to apply to Ford in its Ford Division, its Lincoln-Mercury Division, the Truck division and Autolite Division, plus some others, Tractor and farm implement, not overlooking the foreign operations.

No one knows, for instance, the actual cost of building a Chevrolet Caprice 4-door sedan, or a Ford Galaxie 500 2-door Hardtop, or a Plymouth Road Runner, to name a few, but the manufacturer. The so-called "economic profit" element, before taxes could be as much as $1000. On lesser priced cars it could be as little as $500, and on large trucks as much as $3000 or more, with light trucks—½-ton pickups for example, as low as $300.

What kind of profit, percentagewise is the manufacturer entitled to take in his mark-up to the wholesale price he sells to his dealer? If this were established at say 25%, which is what the dealer has, in round numbers from his wholesale cost to the retail list price, would this not be a fair distribution of the profits? The same 25% would have to apply to accessory items.

The profits of the Big 3, per new car or truck sold wholesale to the retailer after taxes, far exceed the profit per new car or truck sold by the retailer to his customers. After taxes the Big 3 is looking at $300 to $500 per unit, while the dealer body, before taxes, is lucky to average out $100 per unit. The inequity of the profit distribution is quite obvious, and is something for Mr. Nader to get excited about. Why the small dealer profits? It might be due to factory sales pressures to secure or maintain industry positions. It might be an antiquated accounting system—tied in with the franchise as a must element, that does not properly expose the dealers' costs of doing business. Maldistribution of sales expenses exists in all automobile accounting systems. For instance $50 to $150 per unit sold expense is not permitted to show up in the sales department expense due to the accounting procedures in effect.

The retail automobile industry is the backbone of our economy. At the same time it has about the highest mortality rate in the nation. The annual issue of the Automotive News magazine shows that on 1–1–49 there were almost 50,000 dealers in the USA selling American made cars and trucks. On 1–1–69 the number was less than 28,000.

A retail automobile dealer can only survive with profit—adequate profit on his sales volumes. Lack of adequate profits, and in many cases outright losses, have forced 22,000 dealers out of business in 20 years, with some exceptions, of course.

Approximately 60% of all car and truck sales are made in the so-called Metropolitan areas and single-point cities—towns of 20 to 200,000 population with only one dealer in the line—Madison for instance. These are the same dealers who have difficulty in making profits. It might interest you to know that of one of the Big 3 lines in Milwaukee county, in 1968, of eleven dealers, only 3 made profit. Of another line, before taxes, only one was able to make in excess of $100 per unit, and this was on total sales volume approximating seven million dollars, with less than $80,000 profit before taxes. Profits for the remaining dealers were in the $60 per unit bracket down to the low of $20 to $30 per unit, with a few losing money.

The manufacturers seem to feel that if their dealers, especially in the big city area, are able to realize, before taxes, about 1% on their total sales volume, they should be satisfied. This thinking while those same manufacturers are making 10 to 15% on their sales volumes.

With the present and increasing demands of the Big 3 on their dealers for new, improved, relocated and extremely expensive facilities, the dealers' overhead per unit—cost of doing business—is constantly climbing. It is not uncommon to find metropolitan and single point dealers with a cost of doing business element varying from $300 to $400 per unit sold, and it is constantly climbing. The fore-mentioned antiquated accounting systems do not expose, plainly and simply, this factor. It might interest you to know that since 1946 there has been no major changes in the system, and it looks like none are coming. The "Buy our Production and Retail it for whatever you can make," theory seems to be the everlasting role of the Big. 3.

The Big 3, in their General Offices, prepare annual composites of sales, expenses and profits, by category—Metropolitan area, Single Point area, intermediate area and small town area. It would be very interesting to you to secure these composites and review them to see just what type of dealer doing what percentage of the manufacturer's total sales volume is making the least amount of money.

Boiling the entire foregoing down to basics it seems that this is a wide open track for a lot of investigation and correction of certain profit-building and loss-creating practices which have been prevalent for too long a period of time.

The Big 3 brass will make every attempt to explain away their dealers' inabilities to make adequate profits with established by themselves standards—return on investment, dealer group comparisons, etc., but the fact still remains that their profit after taxes exceeds the dealer body's by as high as 10 to 1 in some cases.

Some time ago, as I recall, you developed certain cost information from some Ford assembly plant, which turned out to be quite a shocker. This procedure, model by model—the basic model—and accessory by accessory item, should be exposed as to actual factory cost versus the wholesale price to the dealer and the percentage of profit per item determined.

Factory pricing concessions—allowances under established prices, made to dealers for their use in bidding for municipal and fleet business, is due for investigation. Price concessions up to $1,000 on heavy trucks is almost universal with the industry to some accounts.

You have had some exposure to the so-called warranty mess. The only good new car or truck warranty is 100% replacement of defective parts only within a specified period of time, with the customer paying for the labor cost at going retail levels. That is the TV industry program, and a good one.

The above should indicate to you that I have had some experience in both the wholesale and retail phases of the automobile industry, and still am deeply involved in it. For that reason I must remain anonymous. I hope that this letter may be the means for something being started to correct a bad condition for our industry.

Best regards.

[Enclosure]

[From the Milwaukee Journal, June 15, 1969]

AUTO COST SECRECY UNDER FIRE

WASHINGTON, D.C.—Large American corporations keep too much detailed financial information from the public and their own stockholders, Sen. Gaylord Nelson (D-Wis.) contended Saturday.

Nelson announced plans for his monopoly subcommittee to hold new hearings July 9–11 on the concentration of power in the automobile industry, especially General Motors, the world's largest manufacturing company.

In hearings last summer by Nelson's subcommittee and one headed by then Sen. Wayne Morse (D-Ore.), Ralph Nader, the consumer affairs expert, criticized the practice of large corporations publishing only consolidated financial data.

INFORMATION SOUGHT

Nader argued that more information should be made available on the costs of making an automobile and the profits on individual divisions of the "Big Three" automobile companies. The three companies and American Motors Corp. refused to send officials to testify before the two subcommittees.

However, in written testimony, the "Big Three"—GM, Ford and Chrysler—argued that they could not divulge more financial details because it would hurt their competitive positions.

Nader scoffer at that argument, contending that the car manufacturers knew each other's costs probably "to the fourth decimal point."

The myth that secrecy is necessary to preserve the bitter competition between companies has to be "a big joke in Detroit where there are few auto secrets," Nader said. "Secrecy is really directed against the public, pursuant to the tried precept that concealing the facts prevents the criticisms."

NADER SUPPORTED

Nelson took Nader's side Saturday, declaring that corporate secrecy in the automobile industry was "increasingly insupportable."

The senator wondered whether high, even exorbitant, profits in some divisions were being used to subsidize other divisions that made little or no profit.

This could severely damage "independent small business competition in those lines," he said.

Nelson ridiculed GM's argument that the approximate labor cost of building a car could be inferred by using wholesale cost figures and total payroll costs as "an egregious example of corporate question begging and obfuscation."

He noted that GM also was the leading producer of trucks, busses, locomotives and car cigaret lighters and made at least 167 other products and was the 10th largest defense prime contractor.

"ASTONISHING" IDEA

"Given this span of products and activities it seems astonishing that GM would suggest that the labor cost of building its cars can be approximately inferred by the method it suggested," Nelson said.

He expressed impatience with the securities and exchange commission, which published proposed new corporate disclosure regulations last September after more than two years of study. The regulations have been pending in revised form since February but have not been put into effect.

The senator also hopes to investigate the possibility that the "oligopolized condition of the industry" contributed to "the automobile's annual toll in human lives and limbs and the internal combustion engine's damage to the atmosphere."

C. TELEGRAM DATED JUNE 17, 1969, FROM W. W. RANK, RANK & SON BUICK, 4200 N. GREEN BAY AVE., MILWAUKEE, WIS. TO SENATOR NELSON

RANK & SON BUICK,
Milwaukee, Wis., June 17, 1969.

Senator GAYLORD NELSON,
Washington, D.C.:

Your hearings July 9–11 on auto manufacturers are ridiculous. Your big brother attitude makes Wisconsin ashamed that you represent us. Stop harassing

industry that is paying taxes to support your misguided actions. Suggest you investigate pay raises of Senators and Congressmen, along with the big blunders of Robert McNamara. Cut Government waste and spending instead of going on industrial witch hunts.

W. W. RANK.

D. CORRESPONDENCE BETWEEN JOHN W. AMATUCCI AND SENATOR NELSON

1. Letter dated April 21, 1969, from John W. Amatucci, Jack Amatucci Chevrolet, 10901 Georgia Ave., Wheaton, Md. 20902, to Senator Nelson

(NOTE.—The following letter was published, in substantial part, in the "Letterbox" column of *Automotive News*, May 19, 1969.)

JACK AMATUCCI CHEVROLET,
Wheaton, Md., April 21, 1969.

Hon. GAYLORD NELSON,
Chairman, Senate Small Business Subcommittee, Senate Office Building, Washington, D.C.

DEAR SENATOR NELSON: I have taken the liberty of writing to you personally regarding an article appearing in the March 31st, 1969 edition of the "Automotive News". The front page feature story I refer to, under banner headlines of "Auto Industry Facing Long Monopoly Hearing", outlines the government's proposed long range investigation of possible monopolistic practices in the automotive industry.

My experience in this field of endeavour should, I feel, at least entitle me to forward my opinion on this subject—particularly in lieu of recognition accorded individuals, whom I honestly feel are completely unqualified to pose as experts. Masquerading as journalists, some uninformed individuals, speaking and writing with self appointed authority, have attempted to disrupt a major segment of our economy.

First, Senator, I object to the common practice in such investigations of relying upon the opinions of university faculty members to ascertain the validity of industry wrong doing in this nation; irregardless of the product or manufacturer involved. By what right does this so-called "intelligentsia" have to claim expertise on all of the factors that determine our system of free enterprise? As a college graduate with a degree in economics, and a present college trustee, I wish to go on record here and now, that the similarity between the "Theory of Economics", and the "Live Show", is unrecognizable. Of course, Professor Galbraith possesses a high degree of academic intelligence. One could never deny this after reading his publication. The frequent use of words such as "oligopoly" and "puissant" will attest to his mastery of the English language. Evidently Webster was either unaware of, or considered unimportant one of these vocabulary gems as late as 1959. The "New Handy Webster Dictionary", printed in 1959 fails to even mention the word "oligopoly" in this edition. I hope you are this well versed in vocabulary Senator; however, as an average ordinary tax paying citizen, I am forced to admit my limitations in the essence of oratorical eloquence. This deficiency, however, does not reduce my understanding of the complexity of this issue—it is merely that this vocabulary restriction forces me to "tell it like it is".

I hesitate to overstate my objection to the college professor type solutions, however, in lieu of the importance bestowed upon them by you to date, I must detail my many reasons for total disagreement. Is administrative policy at Harvard, or Brown, one of envy? How can faculty, incapable of governing a body of teenagers, refer to our leaders of industry (many with records of brilliance) as morons? This select group of educators have made little secret as to their basic philosophy toward present student unrest. They view these disorders as behavior of mental healthiness, i.e., that the waving of The North Vietnamese flag is a symbol of free expression; that chants of "we love Mao" represents the inner spirit of independence; that the burning and vilification of the American Flag is a valid test of constitutionality; that the burning of draft cards, accompanied with the singing of "hell no, we won't go", is a sincere detestion of war—not cowardice or lack of patriotism; "students for democratic action" are not communist conspired or backed—because you haven't proved it yet. The condoning and acquiescence of such militant philosophy by these gentlemen would seem to explain their outspoken disgust of American industry and capitalism in general. Why not break up all of our large successful manufacturers into many smaller companies? Of course, anyone so knowledgeable in economics, if honest, would

admit the ultimate failure of such a venture. But, then again, this is not a real problem—when the inevitable occurs; we merely enact federal ownership. All of our prior difficulties will then be solved. "Why not? It has been proven by federal operation of the postal service, hasn't it?"

The frequent reference to Professor Galbraith's book, "The New Industrial State" as a modern bible of American industry is most interesting, yet disturbing, to me. Observing Professor Galbraith's evident flair for vocabulary and the importance he seems to place upon proper word usage, I find "Webster's definition of his publication title amusing and informative. "The New Industrial State," translated by Webster, is as follows: "The recent origin of productivity, involving labor and capital, politically organized under one government". The amazing similarity to this translation and the definition of another word in this same Webster dictionary is again worthy of mention. The word "socialism", defined by the very same issue (Webster 1959), is as follows: "An economic and political theory, abolishing individual ownership, making capital and labor production property of the state". The only word actually missing in the Professors book is "new". This of course is quite understandable since socialism itself is not "new", except when adopted in America.

I could rebut Professor Galbraith's theories one by one, but then, I to will have written a book. This is not possible since I am not a writer, but a businessman. I would, however, wish to comment on several of his remarks—particularly those printed in the Automotive News. The Professor states with confidence that anyone under fifty, who has studied economics, will of course agree with him. I am well under fifty, have a degree in economics, and am a member of Phi Lamba Sigma (honorary economics fraternity). Much more important than my studies in this field to me, is that I have lived it in practice for the past twenty two years. I not only disagree with Professor Galbraith, but am subject to spells of nausea when reading his theories and recommendations. I sincerely believe that if some of these pipe smoking intellectuals, who have become so proficient in the scientific processes of theory, i.e., "Pure Economics," "Mathematics of Economics," "P^2÷ Economics", etc., would acquire actual working experience in our industrial complex, they might possibly see the trees in the forest. The statement that, General Motors has brainwashed the public into paying unrealistic prices for their motoring requirements, is irresponsible, unrealistic, and unintelligent. I speak from years of retail experience in the automobile business. The American public is not required to pay the prices advertised for GM cars; in fact they do not even have to buy a GM car. There are many other makes and models, both foreign and domestic, with lower price tags. Why then doesn't the buying public purchase these so called "buys" in volume? Because the American consumer is much more intelligent than given credit for by Professor Galbraith. The average buyer can distinguish between quality and a "buy". I will agree with the Professor on one point. He is correct; GM is not competing with the apple grower nor the peanut vendor. The reason for this disassociation is quite complex and most likely will be difficult to comprehend to most people; however students of note, such as the Professor and myself, should immediately recognize obvious—"because GM manufactures and distributes automobiles, not apples or peanuts".

It never fails to amaze top financial experts and economic advisors to continually see the automotive industry in the role of the favorite whipping boy of Congress, the Justice Department, plus every self styled expert connected with this segment of business. Every knowledgeable individual, cognizant of the tremendous stimulant the automobile industry has upon our entire economy, must realize the inequities and injustice of such action. Statistics, readily available through the National Automobile Dealers Association, will prove beyond a doubt the enormous contribution made by this industry toward the maintenance of a healthy and prosperous economy in our nation. To mention but a few of the stimulus to America's necessary flow of arterial capital, such as: (1) continual program of land acquisition and construction for new facilities, by both manufacturer and dealer organization. (2) Purchase of equipment, heavy and light, for new plant facilities, and replacement of obsolescence, (3) purchase of allied products, such as; parts, accessories, glass, upholstery, tires, batteries, paint, gas, oil, grease, etc. (4) purchase of office equipment, business machines and computers, stationery, supplies, furniture and fixtures, cleaning solvents, etc. (5) outside services and sublet, such as: uniforms and industrial laundries, maintenance of equipment and real estate, advertising, legal and CPA services, insurance premiums, travel and entertaining, hospitalization, pension and retirement, etc. (6) Billion of dollars in wages to factory and dealer employees, at a level far

above average. (7) Contributions to every civic cause organized—automotive is always the first category solicited for church donations, boy scouts, girl scouts, cub scouts, little league, big league, etc. I could go on and on, however I feel that I have outlined sufficient data to support the contribution of our auto industry to the general welfare of all citizens of our country.

Tax revenues, both direct and indirect, generated by the automotive industry is a major source of income to the federal government. To fragment these successful corporations, as a federal penalty for building a better mouse trap, would most certainly result in a drastic reduction of the nation's revenues—normally anticipated based upon past performances. A popular expression today is that of "The American Dream". Evidently this altruistic state of being is now reserved for all except those who are the principal financial backers. Despite this major industries total benefit to the federal government's fiscal requirements, it has been the constant recipient of federal criticism and abuse. In my opinion, this is another all too frequent example of politics above country. This industry is singled out as if they, and they alone, are the uncompetitive giants of our industrial system. If the federal government will favor with a franchise for the second telephone company, or natural gas, water, or electric company, in metropolitan Washington, I will give written guarantee to them of lower consumer prices for all utilities. I challenge you to purchase a gallon of home fuel oil at even a tenth of a cent variation between suppliers in D.C. How many major appliance (radio, TV, refrigerator, etc.) manufacturers does the average consumer know and purchase in volume? How many major steel, copper and aluminum companies?, radio and TV networks?, movie studios?, boat and yacht builders?, brand suit manufacturers? I would venture that after naming three or four, they would be pressed to jog their memory for national names. Professor Galbraith states concern for the consumer due to alleged fictitious auto prices. My trustee experience has enabled me to observe how our centers of higher education determine their tuition, and room and board charges, to the public. Charges for similar services at nearby colleges are reviewed periodically. If the particular college making the survey discovers they are in the lower fifty percent of competitive schools, this is automatic justification to increase their own fees. If industry attempted a pricing policy that even approached this method, the Department of Justice would have a field day.

Before concluding my views in some length, Senator, I wish to make one thing very clear. I was motivated to compile this report solely by reading the article I referred to in my first paragraph. I have not discussed the contents of this letter with anyone, nor have I informed anyone of my so doing. I say this because the fact that I am a franchised Chevrolet Dealer will have obvious implications in this direction. It may come as a surprise and shock to some when I state that I have never been intimidated, beaten, or tortured by my manufacturer. I have never been pressured into purchasing any products distributed by the General Motors Corporation. My father founded the predecessor of my dealership in 1917, as a Maxwell Dealer. My family, and now myself, have attempted to supply new and used cars and trucks, parts and service, to the motoring public over the past fifty two years on a quality level. Many of our customers have included leaders of government—from the latter President Eisenhower, to present members of the Senate and House of Representatives.

Please accept my final remarks here, Senator Nelson, as most serious, with some challenging questions. How in Almighty God's name can a conscientious and respected Senator, or government, plan to spend millions of dollars plus a number of precious years, investigating an industry that has always had more impact on the economy of this nation than any other source? The effect is always one of a beneficial nature, unless their effectiveness is reduced by hearings, such as the one proposed; along with resultant adverse press coverage of similar hearings. Again I ask you sir, how you can justify these hearings—*particularly* when you do so in an era, in a nation, and in a city that is in dire need of your talents, and that of your associates' to enact legislation and programs of an emergency nature due to real danger threatening the very salvation of our republic? To conduct lengthy "economic theory of oligopoly" type hearings with a small group of pseudo intellectuals "getting their kicks", seems to me as verging on the criminal. To hold such hearings in a *city, where*, no respectful citizen can feel secure from violence or death on the streets, or in their homes. *Where*, narcotics are as easy to acquire as a package of cigarettes. *Where*, more banks are robbed daily than are parking meters. *Where*, rioting and looting are contested only when the danger spreads to within two blocks of the White House. *Where*, the federal government has become so large and uneconomical, that padded federal payrolls and patronage would give

General Motors the image of "Little Orphan Annie" by comparison. *Where*, the leaders of our government are "trigger finger" ready to investigate leaders of private industry on any charge of wrong doing, yet are reluctant to enact a code of ethics for themselves. *Where*, such investigations are publicized as championing the taxpayer's cause, while federal pay raises are as certain and regular as the four seasons. To hold such hearings in a *nation*, *where*, the belief in the Almighty borders on constitutionality, and the holders of such faith are held by our educators of high learning to be of meager intellect. *Where*, smoking "pot" is considered as American as "apple pie", *where*, it is more difficult for a citizen to go to church than to jail. *Where*, not even our highest court can define obscenity with enough clarity to effect conviction. *Where*, only "squares" still salute the flag and where patriotism is only for senior citizens.

Is this then, Senator, your mandate? Auto Hearing? If so, I humbly request your tolerance with my lack of comprehension. I could never possess the forebearance and patience of our present day leaders of industry. With constant pressure of left leaning egg heads to prod our free enterprise system toward socialism, I feel that I would have capitulated long ago. Why not? Is it really worth the struggle? Why, we can all quit work and become one nation of weed smoking bums. We don't even have to write a new National Anthem—merely change the words. For example, we could end our nations alma mater with, "The land of the hooked and the home of the hippies".

Respectfully yours,

JOHN W. AMATUCCI, *President*.

Cc: M's Helen Kahn, Washington Bureau Chief, Automotive News, 525 National Press Building, Washington, D.C.; Mr. E. M. Cole, President, General Motors Corporation: Mr. Jack Izzard, Regional Manager, Chevrolet; Mr. Bruce Stevens, Zone Manager, Chevrolet; Managing Director, NADA, 2000 K Street, N.W., Washington, D.C.; Mr. Mike Murphy, Automotive Trade Association National Capitol Area, 1250 Connecticut Avenue, N.W., Washington, D.C.; The President, The White House, 1600 Pennsylvania Avenue, N.W., Washington, D.C.; Mr. Robert D. Lund, General Sales Manager, Chevrolet Motor Division, General Motors Corporation, General Motors Building, Detroit, Michigan.

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2. Letter dated May 29, 1969 from Senator Nelson to John W. Amatucci

(NOTE.—The following letter was published in the "Letterbox" column of *Automotive News*, June 9, 1969.)

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C., May 29, 1969.

Mr. JOHN W. AMATUCCI,
President, Jack Amatucci Chevrolet,
Wheaton, Md.

DEAR MR. AMATUCCI: Thank you for your letter of April 21. I appreciated your taking time to write me in such detail about the automobile industry, in which you and I share a great interest. I am glad that you read the article in the March 31 issue of *Automotive News*, which reported the publication of the 1091-page printed record of hearings before Senator Morse's and my subcommittees last year on "Planning, Regulation, and Competition: Automobile Industry—1968." However, it does seem to me that you formed some erroneous impressions, which I hope you will let me correct.

1. *Witnesses*.—You and I obviously differ somewhat, quite honestly, on whether or not the testimony of university professors is useful in congressional studies of an industry: but we have no difference, you and I, on whether that kind of testimony is sufficient by itself. Clearly, any subcommittee looking for "the whole picture" will want to hear from business people, too, and that was the case with our subcommittees in our auto industry hearings last year. We invited each of the automobile manufacturers to send witnesses selected by themselves from among their high officials. We also invited the Automobile Manufacturers Association. It was our hope that these business witnesses, appearing in person, could discuss the issues with industry critic Ralph Nader and set him straight where he might be wrong, and answer any questions we might have. Unfortunately, the manufacturers and the AMA all declined our invitation to send live witnesses; but they all did submit written materials for the record. The principal written presentation of General Motors alone runs from page 617 to page 873. When we

add to that GM's written contributions elsewhere in the book, we find that your supplier corporation managed to occupy about one-fourth of the total volume, without ever having appeared at a session of our hearings. The invited written comments of five economics professors, on the other hand, occupy only 21 pages of the 1091-page volume. While Helen Kahn's article in *Automotive News* of March 31 gave most space to the professors' views, that was only because that aspect was the "news" right then. The professors' papers had not previously been available to the press. When GM's materials were submitted to our subcommittees last September, and immediately released by GM with our full consent, your excellent industry paper gave that news event very full coverage also, as it had to Mr. Nader's testimony still earlier.

2. *Impartiality of hearings.*—You seem to have concluded that, because our hearings began with a discussion of the ideas in Galbraith's *The New Industrial State*, our subcommittees had "bought" all the conclusions of that book and were engaged in an effort to "sell" them to the public. That is quite inaccurate. We thought and still think that Professor Galbraith's ideas deserve attention, but we are not at all persuaded that his view of industry is the closest to ultimate truth of all the views that are available. We are seeking in our study to understand many viewpoints. At the only one of our hearings at which Professor Galbraith was a witness in person (in 1967), he was one member of a panel of four, and the other three all disagreed with him on substantial parts of his theory.

3. *Purpose of hearings.*—You seem also to have concluded that we are engaged in an effort to make a "whipping boy" of the automobile industry. That, too, is inaccurate. We are engaged in an effort to understand as much as we can about the implications for small business and all the American people of an economy in which, every year, the 200 largest corporations own or account for a larger percentage of most of the important economic indicators: assets used in manufacturing, employment, sales, profits, etc. Perhaps there is no cause for any alarm whatever about the fact that, by 1975, the 200 largest corporations will probably control two-thirds of all the assets used in manufacturing; but even if that is the world we want, it will be a world in which small business is relatively less important, and I should think you, as a small businessman, would share our curiosity, if not concern, about the kind of world it will be.

As for our selection of the automobile industry as our first "case study," your own letter makes clear the reasons. If *you* were setting out to understand the role of giant corporations in the world today, with what industry would *you* start? Obviously, the auto industry, because that is where the very largest corporations are, and that is where the economic significance of corporate giantism, both to the benefit and detriment of American small business, is certain to be most important and possibly most easily discerned. If your point is that we should not study the problem of giant corporations because there are many other problems facing the nation, I can only say that the Congress—and I personally—are working hard on those other problems too, but we still think the giant corporations issue is worth some of our time and attention, and will get it.

4. *Conclusions.*—We are still at too early a stage in our study to have reached very many firm conclusions. The testimony is mixed on such questions as these: How real and effective is price competition among the manufacturers? What are the barriers to entry of the auto manufacturing industry? How free is the franchised automobile dealer to make business decisions that might help his profit picture but displease his principal supplier? What is the connection, if any, between corporate giantism in the auto industry and our much discussed national problems in air pollution, highway deaths, mass transit, and (as some allege) distorted national values and priorities? Where is the trend toward manufacturer-owned and manufacturer-aided dealerships going to take small business in your industry?

For my own part, I have made, really, only one conclusion to date in this study of corporate giantism, and that is that the giant companies are keeping too much information secret. I fail to see why no one except GM's directors, accountants and top executives should know whether the Chevrolet Division or the Cadillac Division is making a better profit, or have any idea what it costs to make a Pontiac. Similarly, why should the factory know the profit picture of its independent dealerships, while the independent dealers are given no information on the profitability of the factory-owned dealerships, by which their own supplier competes with them? I plan soon to introduce legislation to break down this wall of giant-corporation secrecy at least in part.

In the future hearings on the industry, the details of which will soon be announced, you may be sure that we shall continue to seek all points of view, in-

cluding those of auto dealers, who, of course, don't all agree with each other. I shall put your letter into the record, where your ideas can be judged on their merits, along with the ideas of others that will be found there.

Sincerely,

GAYLORD NELSON,
Chairman, Subcommittee on Monopoly.

Cc: Automotive News.

E. CORRESPONDENCE BETWEEN WILLIAM E. SCOTT AND SENATOR NELSON

1. Letter dated June 17, 1969, from William E. Scott, Scott Motor Company, Incorporated (Buick Motor Cars), 219 South Center St., Goldsboro, N.C. 27530

(NOTE.—The following letter was published in the "Letterbox" column of *Automotive News*, July 28, 1969.)

SCOTT MOTOR CO., INC.,
Goldsboro, N.C., June 17, 1969.

Senator GAYLORD NELSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I read with much interest your reply to Mr. John W. Amatucci's letter published in part in the Automotive News. I am sorry to say, Senator, and whether it pleases you or not is of no importance, I think Mr. Amatucci has a full understanding of your intent concerning the automobile industry. In fact, Sir, you are not subtle or clever with what you have in mind for the automobile manufacturers and their dealers. The fact is, the last few paragraphs that you summarize your thoughts in answer to Mr. Amatucci reveals your thinking entirely.

First, you are quite inaccurate when you say the automobile manufacturers are the largest corporations in the nation. If you will contact the United States Secretary of Commerce I am sure that he will inform you that the insurance companies are by far the largest corporations in the country.

You say you have made one primary conclusion; that is, there is too much secrecy at executive and top level accounting in the corporations. I must assume that since you mention Cadillac, Chevrolet and Pontiac you are making General Motors an example. (Any other manufacturer would be a surprise.) On the point you make that you cannot find out what it costs to build a Pontiac and how much one division makes or another loses bothers you, it may be a revelation to you, but this is the life blood and the crux of the free enterprise system. It would be difficult for me to believe any business executive would find joy in revealing his cost of product to you or anyone in Washington. You must remember, Sir, how carefully the United States Government has handled top level secrets that concern our national security. I admit they were only small things to leak out, just the secret to the atomic bomb, the hydrogen bomb, to mention two. To trust you and your committee with product costs information would only mean catastrophe for the manufacturer. What else?

We have been in the business for forty seven years and have never thought it was pertinent to or any of our business to ask our manufacturers these questions, because frankly it was none of our business and certainly it is none of your business or anyone else's in Washington. If I understand the free enterprise system correctly, all the manufacturers owe you is the federal taxes incurred on the profits they make on their operations. What you are really trying to do, as it seems is very popular with everyone in Washington today, is to destroy the free enterprise establishment. This has been the going thing in many parts of the world since 1919, Russia, China, Romania, Cuba and many places too numerous to mention. So you are not alone in your endeavor. But, it does worry me that you would collect monies from me, fellow dealers and manufacturers, in the form of taxes to pay your salary, feed and clothe your family while on the other hand you use as a whipping boy to keep your name in print and satisfy your political ambition.

In another paragraph you ask why the factory should know the profit of the independent dealerships while we as dealers have no knowledge of what the factory owned dealerships are doing in a profit way. This may come as a surprise to you, Senator, but in the contract we signed with the manufacturer, I have agreed to let him know by monthly financial statements how my operation is running, financially and otherwise. At the time I signed my first contract I did not care to know then how the factory stores were doing and I have not changed my opinion. I do not care now and as far as I am concerned it just is not any of my business, nor yours or the United States Government's as I see it.

In one place in your letter you intimate that possibly the automotive industry did not succeed through fair competition and so on. Strange as it may seem, I assure you they did. Manufacturers and their staffs, dealers and their staffs put in long hours, plan their time, manage their monies, balance their budgets, and above all, they sweat and they work; work—that is a good word. You people in Washington should try it for awhile. It may improve your outlook or at least it should be conducive in helping you to understand the automotive industry, if this is possible.

I close my letter to you with these few conclusions of my own. It has just been made public today that the United States only built thirty eight percent of the world's automobiles in the last twelve months. Less than a decade ago we produced and sold all over the world more automobiles than the rest of the automobile manufacturers in the world. Thanks to people like you, big government, big unions and so called automobile critics, that are not qualified, untrained, who go to Washington, we can no longer make that statement.

I have not heard of your offering to make a monopoly investigation of the big unions. It seems to me that you and the other ninety nine senators would have a full time job finding out why the budget is never balanced; why the nations' cities and campuses are torn with riots; why the dollar continues to shrink monthly; why we surrendered a ship to an insignificant nation without a fight; why the State Department has not made an error in our favor since 1932 goes uninvestigated; why are certain elected officials in our Government who have been exposed in fraudulent income tax filings, one even stealing pay checks from his employee, have not been imprisoned or relieved of their duties, at least one Congressman and one Senator I know of; why two atomic submarines mysteriously sank and a third one was almost lost while at dockside (now that is a hard one to explain); why two disastrous aircraft carrier fires in less than twelve months, not to speak of a destroyer, while on maneuvers, was cut in half; why we have over a half million men committed to a war that we will not win in the name of fighting communism 12,000 miles from our shores while there are known communists disrupting our cities, universities and campuses all over the United States and then they suddenly turn up in Cuba as guests of the Cuban government. That is another thing you probably cannot explain to me, Senator. Cuba is only ninety miles from our coast. If anyone was seriously interested in fighting communism, they could have started there.

Senator, I am sorry that like Mr. Amatucci, I must criticize you harshly, but you justly deserve it. So you sit there as Chairman of your committee and lay the whip on, and like sheep, we will continue to pay taxes to feed people like you while you do everything in your power to destroy us. Be sure to listen to the egghead college professors that have contributed so much to the betterment of this country. If you do not think so, just read their comments about disorders on their own campuses. Just their theories are nauseous much less their actions.

If you care to look beyond the end of your nose, you will find that the automobile manufacturers and dealers and their personnel are just average twenty four karat Americans supporting their government and civic clubs and their cities, providing jobs and building homes for their families and other genuine American things. I trust this does not surprise you too much.

In closing, for your information, I do not now and have never belonged to the Klu Klux Klan, White Citizens Council, American Nazi Party, Minute Men or any other far-right organization. I am a veteran of World War II who served honorably and now for the past twenty years have been a legitimate businessman and taxpayer.

You may place this letter in the file and record along with Mr. Amatucci's letter. I feel I shall be in good company there, but, please, Sir, do not bother to judge it on its merit as you promised Mr. Amatucci. The reason being, I have a distinct premonition that you do not understand the American English meaning of the word merit.

Sincerely yours,

William E. Scott.

2. Letter dated July 17, 1969, from Senator Nelson to William E. Scott

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
July 17, 1969.

Mr. WILLIAM E. SCOTT,
Scott Motor Company, Inc.,
Goldsboro, N.C.

DEAR MR. SCOTT: Thank you for your letter of June 17. Your letter certainly demonstrates again the fact that not all dealers see the world and the industry in the same way. As of possible interest to you, I enclose copies of the statements presented at our hearings last week by Mr. Raphael Cohen, a Chrysler-Plymouth dealer, and Mr. Alexander Hammond, a former Ford dealer.

As you requested, we shall include your letter in the printed record of our hearings.

Sincerely,

GAYLORD NELSON,
Chairman, Subcommittee on Monopoly.

Encls. [omitted]

F. COMMENTS OF DEALERS AND OTHERS ON THE VIEWS EXPRESSED BY JOHN W. AMATUCCI AND WILLIAM E. SCOTT

1. Letter dated May 20, 1969, from Raphael Cohen, Chairman, Executive Committee, Metropolitan Independent Dodge-Chrysler Dealers Association, Inc., P.O. Box 421, Ridgewood, N.J. 07451, to Senator Nelson

(NOTE.—The following letter was published in the "Letterbox" column of *Automotive News*, June 2, 1969.)

METROPOLITAN INDEPENDENT DODGE-CHRYSLER DEALERS ASS'N, INC.,
Ridgewood, N.J., May 20, 1969.

Senator GAYLORD NELSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR NELSON: In the May 19, 1969, issue of "Automotive News", our trade publication, excerpts of a letter to you from John W. Amatucci, a Chevrolet Dealer from Wheaton, Maryland, have been reprinted. I enclose a copy.

The purpose of this letter is to assure you that all dealers do not feel that your hearings are meaningless and harmful. In fact, I and the organization I represent, takes an entirely different view.

Although I do not believe that being an intellectual is the only asset necessary to have a meaningful dialogue, it certainly is not a detriment. Further, although I do not smoke, it is difficult for me to understand Mr. Amatucci prejudice against pipe smokers.

What I have really been trying to say is that attacking the individuals making statements before your Committee, instead of attacking the statements, is an old trick which demagogues have used for years. It diverts attention from the facts and appeals to the prejudice of the individual reading the letter.

Mr. Amatucci speaks of never being "intimidated, beaten, tortured by my manufacturer". What does he term the five year franchise agreement General Motors dealers sign? What does he term the new parts agreement between General Motors and the Federal Trade Commission, which was not discussed with leading General Motors parts wholesalers? This agreement cut into the profits of these dealers and threaten their very existence.

When speaking of how important the motor vehicle has become to the economy there are two points I desire to make.

1. The society has been even kinder to those in the industry. Auto executives earn salaries far in excess to that of the President of these United States.

2. That this industry has a greater obligation to this nation than the nation has to this industry.

In closing I would like to commend you and your committee for these hearings. Were I a resident of Wisconsin, I would be proud to support you. As a citizen of this nation I am proud of you, and Senators like you, who stand up for all society, and not for little subjective groups.

I am sending a copy of this letter to "Automotive News" and Mr. Jack Amatucci.

Sincerely,

RAPHAEL COHEN,
Chairman, Executive Committee, M.I.D.C.D.A.

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2. Comments on John W. Amatucci's letter to Senator Nelson by Werner Hanstein, Service Manager, Triumph Sports Cars, Inc., 1745 Broadway, New York, N.Y. 10019; and Robert J. Natzel, General Manager, Natzel Oldsmobile, 1253 E. Colorado Blvd., Pasadena, Calif. 91101.

(NOTE.—The following communications, not received directly by Senator Nelson or the Senate Small Business Committee, appeared in the "Letterbox" column of *Automotive News*, June 2, 1969.)

AMATUCCI BACKERS

EDITOR'S NOTE: *The following two letters were prompted by Dealer John Amatucci's letter to Senator Gaylord Nelson, which appeared in the May 19 issue of* AUTOMOTIVE NEWS.

With over 30 years experience at the bottom of the pile in domestic and foreign car dealerships, I feel competent to match my opinion and experience against those of mostly academically, statistically and legislatively oriented gentlemen who recently sat and will sit in the fall again in judgment of the industry.

Following with keen interest the hearings in Washington. I am surprised by the fact that the most important question—the shortage of skilled and unskilled labor—was barely touched.

Judging by the testimonies of the academic experts, I have come to the conclusion that they are as poorly equipped to solve my service problems as I am to solve the college mess.

More than three million cars are added yearly to be serviced by an industry that has the most acute labor shortage for many years. As an example, upon my request to the local state employment office for car washers at $2.25 an hour, 40-hour week with all union benefits, the state agency was unable to fill this position with one single man.

Admiring the audacity of the gentlemen in Washington rather than their knowledge of the industry, I suggest that these academic experts concentrate on training young men for the service field in general and the automobile industry in particular.

This will keep them plenty busy and off the back of the "Big Three" and their smaller brothers for a while—WERNER HANSTEIN, Service Manager, Triumph Sports Cars, Inc., New York, N.Y.

In your letter to Senator Nelson, quoted in the AUTOMOTIVE NEWS of May 19, you have performed a fine service for yourself and many of us who feel as you do but delay in stating our views for one reason or another. I congratulate you and thank you for a job well done.

Since statements of qualifications as an expert seem to be in order these days I also have a degree in economics, performed two years of graduate study in economics at Vanderbilt University, spent 15 years in the Army and have been an automobile dealer for 15 years. I agree with all of your statements most emphatically.—ROBERT J. NATZEL, General Manager, Natzel Oldsmobile, Pasadena, Calif.

3(a). Letter dated June 13, 1969, from J. Roy Alphin, Alphin Motors, Inc., 5055 Virginia Beach Blvd., Virginia Beach, Va. 23462, to Senator Nelson

ALPHIN MOTORS, INC.,
Virginia Beach, Va., June 13, 1969.

Senator GAYLORD NELSON,
Chairman, Subcommittee on Monopoly,
U.S. Senate, Washington, D.C.

DEAR SENATOR NELSON: I have read Mr. Amatucci's letter and your reply, which prompts me to say a few words on the subject of Auto Manufacturer-Franchised Dealer relations. As to qualifications I am not an economist as Mr. Amatucci claims to be but I have spent forty years in the Automobile industry, moving through every phase of the business, independent garage, manufacturing and wholesaling with a major automobile company and for the past eighteen years a franchised dealer under one of the Big Three automobile manufacturing corporations. In 1967 I served on the first National Motor Vehicle Safety Advisory Council. In 1968 I was factory maneuvered out of the new car business. This is a very complex industry but I will try to confine my remarks to factor-dealer relations and to the area with which I am familiar without theorizing.

First, I would like to say, as Mr. Amatucci has stated, that I was never beaten or tortured by my manufacturer during the eighteen years I held their franchise but intimidation and coercion is something else and is engaged in so professionally by trained factory personnel that the average dealer fails to recognize it as such. Of course the big lever used to keep dealers "in line" is the absolute control over distribution. As any dealer knows this can mean the difference between success and failure. Regardless of how independent a franchised automobile dealer may feel he is still at the mercy of the manufacturer as they have so many ways and means to apply pressure-warranty claims, parts shipments, advertising, car shipments, adding outlets etc.

There can be no doubt about the Big Three's determination to acquire one or more retail facilities in every major market in the nation. This is a method used to secure or guarantee continued representation of their products regardless of how many "operators" have to be replaced. This is just another strong link in their chain of control and is a very serious threat to the franchised system.

As Mr. Amatucci states, the public is not required to pay the advertised price for GM cars. Neither can an automobile dealer survive on fifty dollar deals to smart shoppers and fleet accounts. Here is where the public gets hurt. It takes so much profit to sustain any dealership so the smart buyers get the bargains and the uninitiated pay the price. Therefore the whole concept of merchandising automobiles is based on the premise of "buyer beware."

Although the contribution of the automobile industry to our economy is tremendous it is also one of the greatest wasters of our resources. One has only to drive along our highways and see the huge collections of old automobiles and realize the millions of dollars they represent. Many of these abandoned cars could have had a much longer life of usefulness if the industry had concentrated more on durability and service and less on styling.

You and your committee are to be commended on your work in investigating the operation of the automobile industry. If I can offer any help to your committee, please do not hesitate to call upon me.

Very truly yours,

J. ROY ALPHIN.

3(b). Letter dated July 2, 1969, from Senator Nelson to J. Roy Alphin

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
July 2, 1969.

Mr. J. ROY ALPHIN,
Alphin Motors, Inc.,
Virginia Beach, Va.

DEAR MR. ALPHIN: Thank you for your letter of June 13 and for the kind words of encouragement it contained. I appreciated not only your good wishes but the helpful information you provided.

It is my hope that the hearings before the Monopoly Subcommittee next week will help solve some of the problems your letter describes, and will also help to protect and preserve a place for small business in the automobile industry. I enclose a press release about the hearings.

Your letter will be made a part of the public, printed record of the hearings; however, I shall delete your letterhead and your name unless you give me permission to include them. While your letter would be a more valuable part of the record if the writer were identified, this is not essential, and I appreciate that you might not have had publication in mind when you wrote. Please let me know your wishes.

Incidentaly, it would be interesting to me to know with what manufacturer you were associated during your 18 years as a dealer; also, to know what, if any, new cars you are selling now; but again, it is entirely in your own discretion whether to disclose those points.

Sincerely,

GAYLORD NELSON,
Chairman, Monopoly Subcommittee.

3(c). Letter dated July 9, 1969, from J. Roy Alphin to Senator Nelson

ALPHIN MOTORS, INC.,
July 9, 1969.

Hon. GAYLORD NELSON,
Chairman, Subcommittee on Monopoly, U.S. Senate,
Washington, D.C.

DEAR SENATOR NELSON: This will acknowdege your letter dated July 2, 1969 relative to public hearing before the Monopoly Subcommittee.

With reference to my letter dated June 13th, I have no objections to your use of this letter in any way you may see fit, with full identification. If I were still a franchised dealer, I would hesitate to give this permission for fear of factory reprisals.

In reply to the last paragraph of your letter, I was employed by the Ford Motor Company for approximately fifteen years and I operated a Mercury dealership under this company from 1950 until 1968. I am presently operating a used automobile business and hold no new car franchise.

Very truly yours,

J. ROY ALPHIN, *President.*

4(a). Note concerning the following two letters

The following letter, dated June 17, 1969, was written to Senator Nelson by a Chrysler-Plymouth dealer in Ohio. It did not appear on the face of the letter that it was intended for publication. On July 2, 1969, Senator Nelson wrote the dealer (text below) to ask permission to reveal his identity. No reply to the Senator's letter having been received at press time, the name and address of the dealer are being withheld from this public record.

4(b). Letter dated June 17, 1969, from a Chrysler-Plymouth dealer in Ohio to Senator Nelson

(LETTERHEAD DELETED BY THE SUBCOMMITTEE.)
June 17, 1969.

Senator GAYLORD NELSON,
Chairman, Subcommittee on Monopoly, U.S. Senate, Washington, D.C.

DEAR SENATOR: I read your recent letter to Automotive News in their June 9 issue. I am happy to see some one in government is interested in the small businessman. It appears we may be, like the Indian, a vanishing race.

The automobile franchise system, I believe, is in jeopardy. Individual businessmen can compete with each other in the open market place for the favor of the consumer. He cannot compete with the giant corporation, his own supplier, over a long period of time. Once the large corporations have their own outlets in the major markets, will there be honest competition? Or will the public pay the price they set? The automobile manufacturer creates the climate in which we do business. One of our most popular car imports does not discount the price to anyone.

They get full price. The supplier controls this. What will happen when the supplier sets up his own outlets? There will be no competition.

We want competition, but not from our manufacturer. A year ago one factory controlled outlet was set up ten minutes from my dealership. Now I understand they are going to build a large outlet ten minutes drive to the other side of our dealership.

I have been a dealer for . . . years with my life's work in it. I have a son who may be interested in following up for me when he returns from the Army. However, I don't think his future will be too encouraging.

Thank you for expressing your views and hope you are successful in your endeavors.

Very truly yours,

(Signature deleted by the Subcommittee).

4(c). Letter dated July 2, 1969, from Senator Nelson to a Chrysler-Plymouth dealer in Ohio

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
July 2, 1969.

(Name of addressee deleted by the subcommittee.)

DEAR MR. ———: Thank you for your thoughtful letter of June 17. I appreciated your taking time to send me those kind words of encouragement.

The problem of manufacturer competition with its own dealers is one of the many urgent issues that will surely come up at the Monopoly Subcommittee's hearings next week. I think that Raphael Cohen of the Metropolitan Independent Dodge-Chrysler Dealers Association, Inc., who will be on Wednesday's panel of witnesses on "Distribution," can be counted on to represent, very ably, the concerns and viewpoint expressed in your letter. I am enclosing a press release about the hearings.

I plan to insert the text of your letter into the public, printed record of the hearings; however, I shall withhold your identity unless I receive your permission to include your name and address. If you are willing to be identified, please let me know promptly, as it would be helpful—although not essential—to be able to disclose your name.

You may be sure that I share your hope that our hearings will be of some help in preserving a place for small business in your industry. My thanks, again, for your good wishes, and my own best wishes to you.

Sincerely,

GAYLORD NELSON,
Chairman, Monopoly Subcommittee.

5(a). Note concerning the following letter

The following letter was written to Senator Nelson on June 11, 1969, by a Chrysler-Plymouth dealer in one of the North Central States. On July 2, 1969, Senator Nelson wrote a letter to the dealer, the text of which was substantially identical to the letter reproduced as appendix II–F–4 (c), above. No answer having been received to Senator Nelson's letter as of mid-August 1969, a member of the staff telephoned the dealer to repeat the inquiry. The dealer said, "Frankly, I did not answer the letter because I am a coward." He explained that, in the past, when he has made any kind of public complaints the company has "crucified" him at new-model time. He agreed that the letter could be reproduced if his name, letterhead and all remarks in the text by which he might be identified were deleted.

5(b). Letter dated June 11, 1969, from a Chrysler-Plymouth dealer in one of the North Central States to Senator Nelson

(LETTERHEAD DELETED BY THE SUBCOMMITTEE)
June 11, 1969.

Senator GAYLORD NELSON,
Senate office Building,
Washington, D.C.

DEAR SENATOR NELSON: I have just read your fine letter in the June 9th issue of Automotive News. It is nice to know that we small automobile retailers have some one on our side. You have put our thoughts into words.

We have been Plymouth dealers since * * * and have always been on the plus side. Our records show at the Chrysler Regional office that we carry the greatest percentage of repeat customers of any dealers in the * * * region. We try.

Today our service department is becoming overrun with requests for service from people driving lease cars and cars delivered by Factory stores that have not been serviced before delivery. We can tell by parts that should have been installed during assembly that are still missing and should have been corrected by a very basic pre-delivery service check. This overload and the fact that my own service is growing leads me to the thought of building a new and larger building.

Today I am afraid to build: The fact that Chrysler could plant a factory store in my town and operate it at a loss as they are doing in * * * , I think. * * * I have a good idea of what a dealer must make over invoice on a car sale to stay in business and in this area it is over $175 over invoice to break even. * * *, the Factory store in * * * runs full page ads showing Factory Invoice and stating that they would take any deal over their invoice. With this type of factory competition I wonder how wise I would be to build a building that would take several years to pay for.

This business has been good to me and I have [relatives] who are active in it with me. It is our hopes that it could continue. With your help it may.

Thank you.

Sincerely,

[Signature deleted by subcommittee].

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6. Letter dated July 30, 1969, from Harold Reese, Reese Bros., Inc. (Dodge), 655 Sunrise Highway, Lynbrook, L.I., N.Y. 11563, to Senator Nelson

(NOTE.—The following letter was published in the "Letterbox" column of *Automotive News*, Aug. 11, 1969. For other comments from the same column, see number 8, below.)

REESE BROS., INC.,
Lynbrook, Long Island, N.Y., July 30, 1969.

Senator GAYLORD NELSON,
Washington, D.C.

DEAR SENATOR NELSON: Have just read a rather lengthy article in Automotive News by Mr. William Scott of Goldsboro, N.C., and wanted you to know that while Mr. Scott might be sincere in his sentiments and thinking we are sure that his opinions are not representative of the majority of automobile dealers.

In fact we are reminded of the Bard of Avon and what he had to say about "sound and fury."

HAROLD REESE.

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7. Article by Robert M. Finlay, "Mitchell, Cohen Urge Efforts to Correct Malpractices—Attack on Senators Called Unwise"

[From Automotive News, Aug. 4, 1969]

MITCHELL, COHEN URGE EFFORTS TO CORRECT MALPRACTICES—ATTACK ON SENATORS CALLED UNWISE

(BY ROBERT M. FINLAY)

Two auto dealers who have taken leading roles in industry affairs called last week to warn against dealers attacking senators who are looking into industry malpractices.

Up until now, they pointed out, most senators have been understanding of the dealer role in the industry.

"But," said William H. Mitchell Jr., chairman of NADA's Consumer Relations Committee, "there is reason for inquiry into the industry, and if we attack the senators who look into it, we are going to pay the price."

Raphael Cohen, chairman of the executive committee of the Metropolitan Independent Dodge-Chrysler Dealers Assn., asked:

"What is wrong that we can't accept criticism? Why not look and see what we can do to make the industry right instead of accusing the critic of everything wrong in the world.

"We talk of the U.S. government as if anyone connected with it is a criminal. After all, we are all citizens of this country.

"If something is wrong, what the hell are we doing to correct it?"

Mitchell and Cohen were concerned about a letter in *Automotive News* July 28 by William E. Scott, of Goldsboro, N.C., to Senator Gaylord Nelson, accusing the senator of trying to destroy the free-enterprise system.

"I understand how Mr. Scott feels," Mitchell said, "and I think he is sincere. But conditions in most of the major metropolitan markets are not the same as they are in Goldsboro."

Mitchell contends that the biggest threat to the franchise system comes from a relatively few metropolitan dealers who engage in practices that should be investigated and eradicated from the industry.

"Many of us who have been most concerned with this," said Mitchell, "are now despairing of the industry ever cleaning its own house.

"If the great majority of reputable dealers decry these practices, why do they make no real effort to clean them up?"

Mitchell said that the thing that is getting top priority from NADA is the drive to eliminate factory subsidies to lease and rental fleets.

While he opposes the subsidies, Mitchell said:

"It may well be that NADA will win this fight and the biggest benefactors will be the factories and not the dealers.

"This would leave the dealers with their major problem.

"I hate to see the fight against rental and lease subsidies used as a red herring to disguise the main issue.

"Certainly this subsidy issue is taking up all the time of NADA leaders.

"The real threat to the franchise system comes from the few bad apples."

Mitchell asserted that he felt that government agencies have been rather slow in moving against the bad practices of the industry.

He warned legitimate dealers against attacking honest efforts of inquiry by senators.

"If, as we say, 90 percent of the dealers are reputable while 10 percent are causing all the problems and the bad image, why not let some one come in and expose the 10 percent? Mitchell asked.

"We might get some action where it is needed.

"Certainly, we aren't making any real progress in cleaning house, and our house needs cleaning.

"None of these senators are attacking all dealers as rascals. But if we start fighting them, we are going to pay the price."

Mitchell explained that many big-city wheelers got business by promising discounts that are not possible, cheating on new-car preparation and warranty and service obligations. In the past, he said, some made up part of the discount by shylocking on financing and insurance. Regulation Z may take care of that, he said.

He asserted that factories set up a dealer's planning potential based on his capital, his buildings and his facilities.

Then, he stated, weak factory personnel at the local level "let these egomaniacs come into a market and ruin it with deceptive cut-price advertising.

"I've seen these dealers come and go, leaving the market in shambles," he said.

"They often go broke, but they pull down other dealers with them.

"And they set a pace of questionable practices that tempts legitimate dealers to emulate them in an effort to hold their own business."

Thus, he said, the malpractices start with faulty distribution of a supply of cars far beyond planned potential to the wheelers.

As additional evidence of the need to clean house, Mitchell referred to a recent column by Sylvia Porter, whom he called one of the nation's most competent and conscientious reporters, on used-car traps to catch the unwary.

"Are dealers going to scream that she is out to tear down the free-enterprise system?" he asked.

"Or are they interested in being objective and in cleaning up the business?"

In the used-car area Mitchell indicated that the wrong ones led the right ones into error. He estimated that 50 to 60 percent of dealers owned used-car operations on which it was a common practice to set back mileage on odometers.

He termed loan sharking another industry sin which he hopes will be cleared up by Regulation Z.

"These regulations had to come because there were abuses in the industry," he asserted.

On the subject of new cars of poor quality, he asked:

"Do you think Ed Cole, (president of General Motors) wants to turn out cars of poor quality?

"I have been told that it is practically impossible to punish a union member for not doing his job right. Maybe the senators can help the industry straighten out this situation."

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8. *Comments on William E. Scott's letter to Senator Nelson by "Indiana Reader;" Lane R. Baird, vice-president, Parrish & Clark, Inc. (Dodge), 1001 South Boston St., Tulsa, Okla. 74119; and Raymond Feiden, President, Hall Oldsmobile, Inc., 1900 Coney Island Ave., Brooklyn, N.Y. 11230*

(NOTE.—The following comments appeared in the "Letterbox" column of *Automotive News*, August 11, 1969, and were not received by Senator Nelson or the Senate Small Business Committee directly. See also letter from Harold Reese, number 6 above, which appeared in the same column.)

I was much impressed with William E. Scott's letter in the July 28 issue.

If more people would make themselves heard as Mr. Scott has, we'd have more intelligent people in Congress instead of the "Stupes" like Nelson and many others.

There are already too many people in Washington trying to run somebody else's business when they can't run their own. The postal system is a prize example.—INDIANA READER.

COMPLIMENTS DUE

I certainly think that William E. Scott's letter to Senator Nelson should be given additional publicity by other automotive journals.

He is to be complimented on devoting his time and thought to a presentation of the thinking of the vast majority of Americans who are herded about by a minority segment of do-gooders who are on the Congressional gravy train.—LANE R. BAIRD, vice-president, Parrish & Clark, Inc. (Dodge), Tulsa, Okla.

A FINE SUMMARY

William E. Scott's letter in your July 28 issue was one of the finest summaries that I have ever read.

I wish that there were more dealers with the guts of Mr. Scott. His suggestion of a committee to investigate the Congress is a very good one.

If I may say that I would like to represent all U.S. automobile dealers, I would like to stand up and applaud Mr. Scott, for them and for myself.

I would also like to thank you for printing Mr. Scott's letter.—RAYMOND FEIDEN, president, Hall Oldsmobile, Inc., Brooklyn, N.Y.

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9. *Letter from Jack H. Leopold, Twin Town Sales & Service, Inc. (Plymouth, Chrysler, Imperial), 630 New York Ave., Huntington, N.Y. 11743, to "Letterbox" Column of Automotive News.*

(NOTE.—Mr. Leopold wrote a substantially similar letter to Senator Nelson on August 8, 1969.)

[From Automotive News, Aug. 18, 1969]

SCOTT OUT OF TOUCH

I wear two hats, one as president of the New York State Auto Dealers Assn., and another as a Chrysler dealer of 23 years.

I read with tongue in cheek the Letterbox item of William E. Scott in your July 28 issue. Mr. Scott is against everything our country has to offer and his ramblings tell me that he is really out of touch with the automotive industry and the factory inroads of the last five years into the retailing of automobiles.

I know the activity of Mullane and Cohen et al., and the fleet subsidies battle, etc., as a reality of today's fierce competition, but Mr. Scott seems to be out of touch with the pace of today's world.—JACK H. LEOPOLD, Huntington, N.Y.

G. LETTER DATED JUNE 24, 1969, FROM L. P. FRANCIS, PRESIDENT, FRANCIS CHEVROLET COMPANY, 11200 ST. CHARLES ROCK ROAD, BRIDGETON, MO. 63042, TO THE HONORABLE JOHN MITCHELL, ATTORNEY GENERAL OF THE UNITED STATES, AND RELATED CORRESPONDENCE

1. Letter from Mr. Francis to the Attorney General

(NOTE.—A copy of the following letter was received in the offices of the Senate Small Business Committee on July 11, 1969, with a referral memorandum from the office of Senator Stuart Symington.)

FRANCIS CHEVROLET CO.,
Bridgeton, Mo., June 24, 1969.

Hon. JOHN MITCHELL,
Attorney General,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: For several years the automobile manufacturers have been engaged in a practice which is detrimental to their franchised dealers, and in my opinion is illegal. On a number of occasions and quite consistently our National Association has sought to get them to discontinue this practice to no avail. I refer to subsidies granted to Fleet and Leasing Companies and to Governmental Subdivisions.

A few years ago a very comprehensive report on this subject was turned over to the Federal Trade Commission by a legal firm representing NADA, but no action has been taken by the Commission. The plans vary slightly from manufacturer to manufacturer, but they all result in the leasing company or the large fleet company securing delivery of new cars at prices at or below the dealer's invoice cost. In the case of Governmental Subdivisions, such as large purchases by the highway departments and by cities for police use, prices are as much as $1,000 below dealer's invoice cost. These units are all invoiced through a dealer, although in some cases shipment is made directly to leasing companies by the manufacturer.

Most of the purchases are made early in the model season and this results in dealers being denied enough cars in these early months for their normal retail buyers. Although these units are invoiced through franchised new car dealers, they are not applied against dealers' allotments and are thus completely free of the normal limitations which would otherwise be applicable. This preferential treatment cannot be justified on the basis of the manufacturer's cost of either production or distribution. Cars are shipped four or six at a time on transports, unloaded and serviced by a dealer, and delivered one at a time to the fleet or leasing company.

In all fairness to General Motors, they were the last to succumb to this practice, which was initiated by Chrysler. General Motors and Ford feel that they must be competitive, even though I think they have serious reservations about the legality of the practice under the Robinson-Patman Act. The leasing companies even have the option of a guaranteed resale amount, depending on the type unit and the length it is in service, and these cars are then taken back by the manufacturer and distributed through auto auctions and dealers as used cars. Cars that were in service in Florida during the winter months have been brought into our St. Louis market and are now being disposed of here, in competition with normal trade-ins.

Some of the leasing companies, such as Avis and Hertz, take their cars out of service after six months and advertise them for sale at retail at ridiculously low prices, in competition with new car dealers, who are trying to make a reasonable profit on the same current models. All of these actions result in prices being depressed. The average single car purchaser is adversely affected, because his trade-in value is lowered by the great number of units which are dumped into the market at certain times of the year. The amount of this business is on the increase. It has been estimated that the leasing and rental business is approaching 25% of the total market and that in a few years it will reach 33⅓%. This means that between two and three million vehicles, which were originally purchased at prices below dealer cost, are competing in the same market with the cars owned by individual new car purchasers numbering between six and seven million. I estimate that this affects the value of these individuals' cars to the extent of $150 to $200 each. Thus, the savings to these large companies of millions of dollars is being absorbed by individual buyers, whose cars are worth less as a result of favored treatment by the manufacturers.

Our National Association has not been able to persuade the manufacturers to discontinue the subsidies or to postpone deliveries at new model announcement time. Many thousands of new car dealers throughout the country are greatly disturbed and are vehement in their demand that the manufacturers discontinue these very detrimental practices. It is my opinion that they will not do so until they are ordered to either by a Court Order, or by a decision from your office, or from the Federal Trade Commission.

It has always been my understanding that the only way a manufacturer can justify a special price to any consumer is by a showing of a cost saving. Some years ago I was told by a General Motors official that their only legal justification for the special 5% allowance they make to dealers on parts ordered on the regular parts order pad, was that the savings in handling costs made it possible to pass this on to the dealers. Following this line of reasoning, the car manufacturers would have to show that the cars that are built for fleets and leasing companies cost them less to manufacture and distribute than cars built for ordinary customers. This they cannot do, because they are the same cars. It is very difficult to get new car dealers to agree to sue their manufacturer, for obvious reasons, but unless we can obtain favorable action from your office, this will probably be the only course of action left to us.

The franchise system of distribution has served the manufacturer and the consumer well, but in recent years it has become apparent that the manufacturers in their competitive zeal, may destroy this system, by introducing policies and procedures which seriously interfere with the maintenance of reasonable volume and profit. Some of the manufacturers have even gone so far as to establish dealers with their own capital and in competition with private capital. This, together with the subsidy program, and the very costly and difficult to administer warranty programs, are causing dealers all over the country to wonder whether the franchise system of distribution can survive.

It is my hope that you will assign the task of investigating the problem of subsidies to one of your ablest assistants, and I assure you that our National Association, with offices at 2000 K Street, Northwest, Washington, D.C., will be happy to cooperate, furnishing any information which may be required.

Sincerely yours,

L. P. Francis, *President.*

Cc: Sen. Symington.

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2. Letter dated July 18, 1969, from Senator Bible to Senator Symington

U.S. Senate,
Select Committee on Small Business,
July 18, 1969.

Hon. Stuart Symington,
U.S. Senate,
Washington, D.C.

Dear Stuart: Thank you for your memorandum of July 10 and the accompanying copy of a letter written on June 24 by Mr. L. P. Francis, President, Francis Cheverolet Company, Bridgeton, Missouri, to the Attorney General. Your thoughtfulness in sharing this correspondence with the Senate Small Business Committee is appreciated.

Last week the Committee's Subcommittee on Monopoly held hearings on "The Role of Giant Corporations in the American and World Economies: Automobile Industry—1969." The information contained in the letter written by Mr. Francis to Attorney General Mitchell corroborates in a most valuable way testimony offered by two witnesses, Mr. Alexander Hammond and Mr. Raphael Cohen, at the hearings last week. I know that Senator Nelson, the Subcommittee Chairman, would like to include this letter in the record of the hearings, if Mr. Francis has no objection. If he would not want his letter to Mr. Mitchell to become a part of a public printed Senate hearings record, please ask him to so inform Senator Nelson or me. We shall of course respect his request to hold his communication in confidence, but we shall assume that he has no objection to our printing it, unless you or he informs us otherwise.

Cordially,

Alan Bible, *Chairman.*

Cc: The Honorable Gaylord Nelson.

3. Letter dated July 24, 1969, from L. P. Francis to Senator Symington

FRANCIS CHEVROLET CO.,
Bridgeton, Mo., July 24, 1969.

Hon. STUART SYMINGTON,
U.S. Senate Building,
Washington, D.C.

DEAR SIR: Thank you for your letter of July 22, attaching a letter from Senator Alan Bible.

I have no objection to Senator Nelson, the Subcommittee Chairman, including my letter in the record of the hearings of his Subcommittee on Monopoly.

I want you to know that I sincerely appreciate your efforts in bringing this matter to the attention of this Subcommittee.

Yours very truly,

L. P. FRANCIS, *President.*

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4. Letter dated July 28, 1969, from Senator Symington to Senator Bible

U.S. SENATE,
Washington, D.C., July 28, 1969.

Hon. ALAN BIBLE,
Chairman, Select Committee on Small Business,
Old Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is with reference to your letter of July 18, about use of the June 24th letter to the Attorney General from Mr. L. P. Francis of Hazelwood, Missouri, in the Monopoly Subcommittee's hearings on the automobile industry.

Attached is a copy of a letter from Mr. Francis, giving permission for the use of his letter in the hearings record.

Good wishes.

Sincerely,

STUART SYMINGTON.

H. LETTER DATED JULY 2, 1969, FROM IRVING BERMAN, 295 CENTRAL PARK WEST, NEW YORK, N.Y. 10024, TO RALPH NADER, AND RELATED CORRESPONDENCE

1. Letter from Mr. Berman to Mr. Nader

(NOTE.—A copy of the following letter was referred to the Senate Small Business Committee by Mr. Nader and was received on July 29, 1969.)

NEW YORK CITY, N.Y., *July 2, 1969.*

Mr. RALPH NADER,
Washington, D.C.

DEAR MR. NADER: While the president of General Motors is lambasting critics of GM's quality control in manufacturing and safety in design, by stipulating that everything is being done to improve car safety and quality, the largest deterrent to implementing those objectives is something that has been completely oblivious to the naive public, the attorney general, the FTC and the Justice Dept. I refer of course to the marketing practices of the automobile industry.

The sales practice of the automotive companies are the most nefarious, underhanded and illegal of any major industry in the U.S. These factors definitely affect the guarantees, warranties, safety and quality of every new car purchased and are a much greater hazard than the repair of one minor mechanical defect upon the gullible public.

One premise the automobile companies have uppermost in their minds is that they are out to "sell" cars and not guarantee or repair them. Constantly oversaturating marketing areas with additional sales outlets, they have literally forced dealers in a given area to operate on a minimal gross profit. For example in one downtown Los Angeles area there are five Ford dealers within a four mile radius. These dealers because of the competition between other Ford dealers will not give the proper after service to cars because the forced competitive situation precludes their doing so. In addition, Ford Motor Co. literally owns one of the largest agencies themselves. Putting in Ralph Williams as the nominal owner for record purposes to avoid anti-trust proceedings, Ford literally spends

over $100,000.00 per year for TV advertising for this dealer; in addition to paying his rent. However, other dealers in the area are not so subsidized and of necessity must compete against their own factory. Gross profits for these dealers are sometimes down to $200 per car. After paying a salesman's commission and overhead expenses could you imagine any dealer wanting to take care of customer complaints?

The automotive companies in their desire to have showrooms in prestige locations in major cities completely subsidize their operations. For example, The 57th St. and Broadway area in N.Y. where a showroom might rent for $100,000.00 per year is completely paid for by the factory, whereas a dealer in Brooklyn has to pay his rent himself.

In addition, should this rent subsidy be insufficient to operate the agency in a profitable manner, the factory authorizes the agency to send them fictitious AFR (authorized factory repair) bills for labor and parts performed on fictitious automobiles and for a certain amount of dollars, as a further subsidy. Can you now see how "Marketing" precludes carrying out warranties? Is the Robinson-Patman act still in force?

No matter how slipshod the manufacturers make an automobile, you can be sure that the dealers will not expand their service facilities to take care of them. In the N.Y. Metropolitan area, there is not one dealer that can operate their service department at a profit. Consequently limiting that service, they assume the same attitude of the factories themselves; we are out to "Sell" cars not repair them.

The consequences of the auto companies saturating a market has been the impetus to another conspiracy which now exists in the N.Y. Metropolitan area. The dealers have formed an association in which each dealer has posted a $1500.00 bond. Any dealer sending a shopper to another dealer can collect this 1500.00 bond posted by another dealer if this shopper can show a purchase contract for a car with a gross profit under $300.00. Of course, the offending dealer is the one who loses the money.

Make no mistake about it, the automobile manufacturers are in the retail business. You can imagine how their great wealth which subsidizes their own operations affects both the independent dealer and the buying consumer.

My amazement at this situation is that how could the automotive companies get away with it for so long? How could the second largest industry in the country constantly violate the laws of this country and get away with it?

All the allegations made in this letter can easily be substantiated by anyone with the slightest investigative experience. I leave it to your decision whether it be worthwhile for the U.S. automobile buyer, that you do so.

Sincerely yours,

IRVING BERMAN.

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2. Letter dated August 14, 1969, from Raymond D. Watts, Counsel, Senate Small Business Committee, to Irving Berman

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C., August 14, 1969.

Mr. IRVING BERMAN,
New York City, N.Y.

DEAR MR. BERMAN: Ralph Nader sent me a copy of your letter to him of July 2 concerning automobile distribution. This Committee's Subcommittee on Monopoly is currently preparing the printed record of hearings conducted in July on "The Role of Giant Corporations in the American and World Economies: Automobile Industry 1969." It is our intention to publish the text of your July 2 letter to Mr. Nadar in an Appendix II of the record, under the heading "Comments and Correspondence Concerning Automobile Distribution and Marketing."

If you have any objection to the inclusion of your letter to Mr. Nader in a public printed hearing record, please let me know at once.

Sincerely,

RAYMOND D. WATTS, *Counsel.*

Cc: Ralph Nader, Esquire.

3. Letter dated August 18, 1969, from Irving Berman to Senate Small Business Committee

NEW YORK, N.Y., *August 18, 1969.*

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

(Attention of Mr. Raymond D. Watts).

GENTLEMEN: Replying to your letter of August 14, I wish to inform you that you have my complete permission to use my letter of July 2 to Ralph Nader in any way you deem possible.

I would sincerely appreciate a copy of the printed text after its publication. Thanking you again for giving it your serious consideration, I am,

Truly yours,

IRVING BERMAN.

I. STATISTICAL DATA ON U.S. DOMESTIC MAKE NEW-CAR DEALERSHIPS

(NOTE.—The tables in this appendix are from Automotive News, 1967, 1968 and 1969 Almanac Issues, are copyrighted by Automotive News, and are used here by permission.)

1. Number of U.S. (domestic make) new-car dealerships, 1947–1969.

U.S. DEALERSHIPS, 1947–69

Date	Number of dealerships	Percent gain or loss from previous year	Date	Number of dealerships	Percent gain or loss from previous year
Jan. 1, 1947	45,580		Jan. 1, 1959	35,077	−5.68
Jan. 1, 1948	46,092	+1.12	Jan. 1, 1960	33,658	−4.05
Jan. 1, 1949	49,173	+6.68	Jan. 1, 1961	32,482	−3.49
Jan. 1, 1950	46,821	−4.78	Jan. 1, 1962	31,331	−3.54
Jan. 1, 1951	47,543	+1.54	Jan. 1, 1963	30,853	−1.53
Jan. 1, 1952	46,014	−3.22	Jan. 1, 1964	30,827	−.08
Jan. 1, 1953	45,191	−1.79	Jan. 1, 1965	30,691	−.44
Jan. 1, 1954	41,910	−7.26	Jan. 1, 1966	30,278	−1.35
Jan. 1, 1955	40,374	−3.66	Jan. 1, 1967	28,422	−6.14
Jan. 1, 1956	41,018	+1.60	Jan. 1, 1968	[1] 27,784	−2.24
Jan. 1, 1957	37,982	−7.40	Jan. 1, 1969	27,486	−1.07
Jan. 1, 1958	37,188	−2.09			

[1] Revised.

Source: From Automotive News, 1969 almanac issue, Apr. 28, 1969.

2. Numbers of dealers handling U.S. makes of passenger cars, by make, 1966–1969. Tables from 1967, 1968 and 1969 Automotive News Almanac Issues

DEALERS HANDLING U.S. MAKES OF PASSENGER CARS, 1967 VERSUS 1966

[Estimated by Automotive News]

	Jan. 1, 1967				Jan. 1, 1966			
	Exclusives (within corporation)	Multiples (within corporation)	Total franchises	Net dealers	Exclusives (within corporation) [1]	Multiples (within corporation) [1]	Total franchises [1]	Net dealers [1]
American Motors (Rambler)	2,462	0	2,462		2,636	0	2,636	
Chrysler Corp	2,925	8,905	11,830	6,421	3,012	8,873	11,885	6,506
Chrysler	15	3,486	3,501		14	3,485	3,499	
Dodge	2,382	738	3,120		2,395	733	3,128	
Imperial	0	1,429	1,429		0	1,432	1,432	
Plymouth	528	3,252	3,780		603	3,223	3,826	
Ford Motor Co	4,959	4,826	9,785	7,254	5,166	4,644	9,810	7,386
Ford	4,705	1,440	6,145		4,863	1,382	6,245	
Lincoln	0	1,094	1,094		0	1,045	1,045	
Mercury	254	2,292	2,546		303	2,217	2,520	
General Motors	8,995	9,153	18,148	13,470	9,097	9,224	18,321	13,595
Buick	1,453	1,651	3,104		1,467	1,653	3,120	
Cadillac	213	1,428	1,641		200	1,455	1,655	
Chevrolet	4,457	2,050	6,507		4,538	2,058	6,596	
Oldsmobile	1,208	2,238	3,446		1,210	2,250	3,460	
Pontiac	1,664	1,786	3,450		1,682	1,808	3,490	
Total	19,341	22,884	42,225	29,607	19,911	22,741	42,652	30,123
Minus inter-corporate duals				705				746
Net dealers				28,902				29,377
Studebaker [2]				0				1,303
Total				28,902				30,680

[1] Revised.

[2] On Jan. 1, 1966, Studebaker had 1,503 outlets, including 200 domestic duals. Thus, Studebaker accounted for 1,303 dealerships on Jan. 1, 1966.

Source: From Automotive News, 1967 almanac issue, Apr. 24, 1967.

DEALERS HANDLING U.S. MAKES OF PASSENGER CARS, 1968 VERSUS 1967

[Estimated by Automotive News]

	Jan. 1, 1968				Jan. 1, 1967			
	Exclusives (within corporation)	Multiples (within corporation)	Total franchises	Net dealers	Exclusives (within corporation)[1]	Multiples (within corporation)[1]	Total franchises[1]	Net dealers[1]
American Motors	2,347	0	2,347	2,347	2,462	0	2,462	2,462
Chrysler Corp	2,686	9,459	12,145	6,282	2,925	8,905	11,830	6,421
Chrysler	13	3,585	3,598		15	3,486	3,501	
Dodge	2,248	1,018	3,266		2,382	738	3,120	
Imperial	0	1,447	1,447		0	1,429	1,429	
Plymouth	425	3,409	3,834		528	3,252	3,780	
Ford Motor Co	4,671	5,127	9,798	7,065	4,959	4,826	9,785	7,254
Ford	4,458	1,547	6,005		4,705	1,440	6,145	
Lincoln	0	1,188	1,188		0	1,094	1,094	
Mercury	213	2,392	2,605		254	2,292	2,546	
General Motors	8,118	9,816	17,934	12,770	8,260	9,862	18,122	12,990
Buick	1,085	2,015	3,100		1,117	1,987	3,104	
Cadillac	233	1,404	1,637		213	1,428	1,641	
Chevrolet	4,390	2,020	6,410		4,457	2,050	6,507	
Oldsmobile	1,052	2,340	3,392		1,084	2,356	3,440	
Pontiac	1,358	2,037	3,395		1,389	2,041	3,430	
Total	17,822	24,402	42,224	28,464	18,606	23,593	42,199	29,127
Minus intercorporate duals				690				705
Net dealers				27,774				28,422

[1] Revised.

Source: From Automotive News, 1968 almanac issue, Apr. 29, 1968.

DEALERSHIPS HANDLING U.S. MAKES OF PASSENGER CARS, 1969 VERSUS 1968

[Estimated by Automotive News]

	Jan. 1, 1969				Jan. 1, 1968			
	Exclusives (within corporation)	Multiples (within corporation)	Total franchises	Net dealers	Exclusives (within corporation)	Multiples (within corporation)	Total franchises [1]	Net dealers [1]
American Motors	2,294	0	2,294	2,294	2,347	0	2,347	2,347
Chrysler Corp	2,587	9,660	12,247	6,217	2,686	9,459	12,145	6,282
Chrysler	11	3,621	3,632		13	3,585	3,598	
Dodge	2,210	1,109	3,319		2,248	1,018	3,266	
Imperial	0	1,464	1,464		0	1,447	1,447	
Plymouth	366	3,466	3,832		425	3,409	3,834	
Ford Motor Co	4,498	5,289	9,787	6,940	4,671	5,127	9,798	7,065
Ford	4,310	1,586	5,896		4,458	1,547	6,005	
Lincoln	0	1,263	1,263		0	1,188	1,188	
Mercury	188	2,440	2,628		213	2,392	2,605	
General Motors	7,840	10,030	17,870	12,690	8,038	9,896	17,934	12,780
Buick	1,100	1,990	3,090		1,155	1,945	3,100	
Cadillac	235	1,400	1,635		233	1,404	1,637	
Chevrolet	4,340	2,025	6,365		4,390	2,020	6,410	
Oldsmobile	955	2,435	3,390		1,015	2,377	3,392	
Pontiac	1,210	2,180	3,390		1,245	2,150	3,395	
Total	17,219	24,979	42,198	28,141	17,742	24,482	42,224	28,474
Minus intercorporate duals				655				690
Net dealers				27,486				27,78,

[1] Revised.

Source: From Automotive News, 1969 almanac issue, Apr. 28, 1969.

Article by John K. Teahen, Jr., "U.S. Dealer Total Dips; 200 Drop Out in 1st Half," and Supporting Table

DEALER TOTALS—AUTOMOTIVE NEWS ESTIMATES OF DEALERSHIPS HANDLING U.S. MAKES OF CARS

	July 1, 1969	Jan. 1, 1969
American Motors	2,286	2,294
Chrysler Corp	6,119	6,217
Ford Motor	6,916	6,940
General Motors	12,610	12,590
Total	27,931	28,141
Minus intercorporate duals	645	655
Net dealers	27,286	27,486

Source: Automotive News, Aug. 4. 1969.

U.S. DEALER TOTAL DIPS; 200 DROP OUT IN FIRST HALF

(By John K. Teahen, Jr., Assistant Managing Editor)

Domestic auto makers had 200 fewer dealers on July 1 than they had at the beginning of this year, according to the semiannual AUTOMOTIVE NEWS census.

The midyear survey found 27,286 establishments in operation, compared with 27,486 on Jan. 1.

Most of the decline resulted from changes in the Chrysler Corp. and General Motors totals. Chrysler is down 98 dealerships since the first of the year, and GM is off 80.

Ford Motor showed a dip of 24 outlets for the six-month period, and American Motors was down only eight. As individuals, the four companies lost 210 dealers. A decline of 10 in the number of intercorporate duals reduced the industry's overall drop to 200.

All figures in this article refer to the net change in the dealer population, both for the individual corporations and car lines and for the industry as a whole.

The first-half loss of 200 dealerships was nearly twice as high as last year's downturn of 109. But it was considerably lower than in 1967 when 344 establishments faded away in the first half.

This year, the domestic industry suffered a decline of 91 dealerships in the first quarter and 109 in the second quarter. In 1968, the quarterly slips were 58 and 51. The 1967 numbers were 170 and 174 in the first two quarters.

There are two principal reasons for the continuing drop in the dealer population. At the dealer level, it's the profit squeeze. At the factory level it's the ongoing trend toward fewer but larger dealerships.

American Motors had the smallest change in its dealer total, a fallout of eight outlets for the half. AMC opened the year with 2,294 dealers, had 2,287 at the end of March and 2,286 at the end of June.

The single-outlet decline in the second quarter was AMC's best showing since the fourth quarter of 1963.

Although its total changed only slightly, AMC was busy in the franchising field. For example, the company reported that it signed 28 dealers in June, the highest monthly total in nearly two years. Along with the signings, there have obviously been departures from the AMC fold.

Some of the dropouts have been Big Three duals. AMC had 638 duals with Big Three makes at the beginning of the year, 646 on April 1 and 631 on July 1.

Chrysler Corp. had 6,119 passenger-car dealers at midyear, down 98 from Jan. 1. Quarterly declines at Chrysler amounted to 33 in the January-March period and 65 in the April-June span.

Franchise totals for each of the corporation's cars are lower than at the beginning of the year. Latest franchise counts are: Chrysler, 3,596; Imperial, 1,453; Plymouth, 3,787, and Dodge, 3,288.

Plymouth was down 45 franchises for the half, and the falloff amounted to 36 for Chrysler, 31 for Dodge and 11 for Imperial.

In addition to its 6,119 passenger-car outlets, Chrysler Corp. has 43 that handle only Dodge trucks, and four that are carried as "DeSoto exclusives." Those 47 spots are not included in the passenger-car totals for either the corporation or for Dodge.

For Ford Motor, this year's slip amounted to 11 dealerships in the first quarter and 13 in the second. The latest tally of 6,916 passenger-car outlets compares with 6,929 on April 1 and 6,940 at the beginning of the year.

Ford Division had 5,858 car franchises in effect on July 1, down 38 from the 5,896 on the books on Jan. 1.

Lincoln and Mercury showed gains for the first half. Lincoln added 54 for a midyear total of 1,317, and Mercury was up 29 at 2,657.

Ford Division has 40 dealers that handle only trucks. They are not included in the passenger-car totals of 6,916 for Ford Motor and 5,858 for Ford Division.

General Motors ended the first half with an estimated 12,610 passenger-car dealers, compared with 12,690 on Jan. 1. GM had a decline of 35 outlets in the first quarter and 45 in the second quarter.

Franchise estimates by makes, as of July 1, were: Buick, 3,085; Cadillac, 1,635; Chevrolet, 6,330; Oldsmobile, 3,370, and Pontiac, 3,385.

Chevrolet was down 35 franchises for the first half, and Oldsmobile was down 20. Buick and Pontiac were off five apiece, and Cadillac was unchanged.

The midyear total of 27,286 domestic car dealerships is down 389 from the 27,675 establishments in business on July 1, 1968.

The 12-month period showed declines of 163 dealerships for Chrysler Corp., 135 for GM, 82 for Ford Motor and 34 for AMC. There are 25 fewer intercorporate duals than there were a year ago.

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3. New-car sales per U.S. maker: Corporate totals per dealership, 1955–1968

NEW-CAR SALES PER U.S. MAKER (CORPORATE TOTALS PER DEALERSHIP, 1955–68)

Year	American Motors	Chrysler Corp.	Ford Motor Co.	General Motors	Studebaker	All U.S. industry [1]
1955	49	129	225	215	47	175
1956	47	104	189	183	44	148
1957	56	130	194	169	30	154
1958	75	83	133	141	21	118
1959	127	97	199	169	53	158
1960	142	141	214	197	44	184
1961	125	104	208	193	34	172
1962	139	119	232	261	37	212
1963	139	163	243	283	33	233
1964	125	186	276	294	15	246
1965	115	213	318	351	8	299
1966	104	214	321	331		290
1967	100	212	258	321		270
1968	112	244	318	345		304

[1] Average for all U.S. industry includes Studebaker for 1955–64.

Source: From Automotive News, 1969 almanac issue, Apr. 28, 1969.

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4. Average numbers of new-car sales per dealer, 13 principal makes, 1957–68

Make	1968	1967	1966	1965	1964	1963	1962	1961	1960	1959	1958	1957
Chevrolet	323	307	330	365	317	319	305	231	241	198	168	194
Ford	303	250	321	317	273	240	223	199	209	214	148	212
Pontiac	258	244	240	238	197	173	150	105	111	104	61	82
Buick	203	182	183	195	154	145	128	93	86	78	78	111
Plymouth	186	165	157	166	138	131	96	88	118	66	54	75
Oldsmobile	184	161	168	175	147	135	125	93	97	97	82	98
Dodge	177	154	173	168	157	144	96	86	128	55	40	73
Mercury	140	115	122	132	123	114	129	123	118	58	47	84
Cadillac	126	128	119	112	88	91	86	80	85	77	69	79
Rambler	112	100	104	115	125	139	139	125	142	127	75	44
Chrysler	61	58	66	59	42	38	41	37	33	26	22	38
Lincoln	47	31	46	41	36	31	31	30	19	26	22	26
Imperial	11	11	10	12	15	11	10	9	13	14	10	19

Source: Automotive News, 1967 and 1969 almanac issues.

I. STATISTICAL DATA ON IMPORTED NEW-CAR DEALERSHIPS IN THE UNITED STATES

(NOTE.—The tables in this appendix are from Automotive News, 1967, 1968 and 1969 Almanac Issues, are copyrighted by Automotive News, and are used here by permission.)

1. Number of imported-car dealerships in U.S., 1957–1969

IMPORTED CAR DEALERSHIPS IN THE UNITED STATES

	Jan. 1, 1967	Jan. 1, 1966 [1]
Imported cars only:		
Exclusives	1,832	1,623
Duals	1,330	1,213
Total	3,162	2,836
Import domestic duals:		
U.S. duals with captive imports [2]	2,045	1,269
U.S. duals with other imports	1,627	1,908
Total	3,672	3,177
Total, imported car outlets in the United States [3]	6,834	6,013
	Jan. 1, 1968	Jan. 1, 1967 [1]
Imported cars only:		
Exclusives	1,971	1,835
Duals	1,351	1,330
Total	3,322	3,165
Import domestic duals:		
U.S. duals with captive imports [2]	2,794	2,045
U.S. duals with other imports	1,036	1,378
Total	3,830	3,423
Total imported car outlets in the United States [4]	7,152	6,588
	Jan. 1, 1969	Jan. 1, 1968 [1]
Imported cars only:		
Exclusives	2,219	1,971
Duals	1,310	1,346
Total	3,529	3,317
Import-domestic duals:		
U.S. duals with captive imports [2]	3,086	2,794
U.S. duals with other imports	1,120	1,045
Total	4,206	3,839
Total imported-car outlets in the United States [5]	7,735	7,156
	July 1, 1969	Jan. 1, 1969 [1]
Imported cars only:		
Exclusives	2,347	2,244
Duals	1,333	1,346
Total	3,680	3,590
Import-domestic duals:		
U.S. duals with captive imports [2]	3,186	3,086
U.S. duals with other imports	1,217	1,193
Total	4,403	4,279
Total imported-car outlets in the United States [6]	8,083	7,869

[1] Revised.
[2] Captive duals are: Buick-Opel; Ford Motor-English Ford; Chrysler Corp.-Simca and Chrysler Corp.-Rootes.
[3] From Automotive News, 1967 almanac issue, Apr. 24, 1967.
[4] From Automotive News, 1968 almanac issue, Apr. 29, 1968.
[5] From Automotive News, 1969 almanac issue, Apr. 28, 1969.
[6] From Automotive News, Aug. 25, 1969.

[From Automotive News, Aug. 25, 1969]

Import dealers—Number of dealerships in U.S. handling imported cars, 1957 to 1969

Date	Number
Jan. 1, 1957	2,930
Jan. 1, 1958	11,409
Jan. 1, 1959	14,031
July 1, 1959	[1] 14,989
Jan. 1, 1960	14,674
Jan. 1, 1961	13,135
Jan. 1, 1962	11,894
Jan. 1, 1963	7,138
Jan. 1, 1964	5,249
Jan. 1, 1965	5,856
Jan. 1, 1966	6,013
Jan. 1, 1967	6,588
Jan. 1, 1968	7,156
Jan. 1, 1969	[2] 7,869
July 1, 1969	8,083

[1] Alltime high.
[2] Revised.

IMPORT DEALERSHIPS INCREASE TO 8,083; EXCLUSIVES GAINING

(By John K. Teahen, Jr., Assistant Managing Editor)

In the first six months of this year, there was an increase of 214 in the number of dealerships handling imported cars in this country.

The latest Automotive News census found 8,083 import outlets on July 1, compared with a revised count of 7,869 at the beginning of the year.

The import experience was almost the exact reverse of that of the domestic makes. The imports gained 214 outlets in the first half; the domestics lost 200.

Major factors in the latest import rise were an increase in the number of exclusives and an upturn in the number of captive duals.

An exclusive is a dealership that handles one imported make and no other foreign or domestic line. A captive dual is one in which the import is twinned with the domestic make that controls its U.S. distribution.

The first half resulted in a gain of 103 import exclusives, with Toyota, Volkswagen and Fiat accounting for most of them.

On the captive side, Buick gave Opel to 61 more of its dealers, and another 51 Chrysler Corp. dealers signed franchises for Simca and/or Rootes.

All figures in this article refer to net changes in the dealer population, both for the individual makes and for the imported-car industry as a whole.

Most of the major imports had more dealers at midyear than on Jan. 1. Among the five top sellers, there were gains of 61 for Opel, 27 for Volkswagen, 15 apiece for Toyota and Fiat and eight for Datsun.

Biggest gain of the period was made by Subaru, the Japanese minicar, which reported an increase of 100 franchises. Rootes has 82 more outlets than at the start of the year. Also on the up side were Austin-MG, Mercedes-Benz, Saab, Porsche, Simca, Rover and Citroen.

Triumph reported 62 fewer dealers than on Jan. 1; Volvo was down 24, and English Ford was off 13. Jaguar's total was unchanged, and Renault, Alfa Romeo, BMW and Peugeot held steady with dips of three or less.

The foregoing are franchise figures. Because of dualing, a change in a franchise total for a specific make does not necessarily represent the gain or loss of a dealership for the industry.

Opel (1,933) and Volkswagen (1,091) are the only imports with more than 1,000 dealers. English Ford is third with 884, followed by Toyota, 718; Simca, 636, and Datsun, 614.

Totals for other leading makes are: Austin-MG, 586; Fiat, 549; Rootes, 479; Triumph, 438; Renault, 383; Volvo, 381; Subaru, 380; Saab, 365; Jaguar, 310; Mercedes-Benz, 277; BMW, 271; Peugeot, 265, and Porsche, 233.

The AUTOMOTIVE NEWS census divides import dealerships into two categories: Those handling only imported cars and those handling both an import and a domestic make.

On July 1, there were 3,680 dealerships handling only imported cars (an alltime high for this category) and 4,403 import-domestic duals.

The corresponding figures for Jan. 1 were 3,590 import-only and 4,279 import-domestic.

The 3,680 import-only dealerships on July 1 consisted of 2,347 exclusives and 1,333 that carry two or more lines of imported cars (but no domestics).

The 2,347 single-line import dealerships represented an alltime high. The total was up 103 from Jan. 1, and three makes were primarily responsible for the gain. Toyota added 36 exclusives during the first half; Volkswagen added 34, and Fiat added 22.

Four makes account for better than three-fourths of the import exclusives. They are: VW, 906; Toyota, 381; Datsun, 309, and Fiat, 193.

Next in line are BMW, 136; Saab, 100; Volvo, 59; Mercedes-Benz, 55, and Renault, 46.

There are 115 dealerships that handle only Austin, Austin-Healey and MG and 63 that carry only Renault and Peugeot, but these are not exclusives in the strict meaning of the term.

Captive dealerships comprise the bulk of the import-domestic duals. At midyear, 3,186 of the 4,403 outlets in this class were captive.

All 1,933 Opel points are captives. Buick gives the Opel franchise only to its own dealers. There were 1,872 Opel outlets on Jan. 1.

At English Ford, 845 of the 884 franchises are held by Ford Motor domestic dealers. The Jan. 1 tally was 857 captives out of 898 dealers.

The remainder of the English Ford franchises are in the noncaptive class. There are a few exclusives, but most of them are twinned with other imports.

The Simca-Rootes situation is more complicated because they must be considered both as individual makes and as part of a combined division.

At midyear, Chrysler Corp. domestic dealers held 396 of the 636 Simca franchises. The Jan. 1 tally showed 336 captives among 624 Simca dealers.

Chrysler Corp. dealers held 237 of the 479 Rootes franchises at the beginning of July. This is much higher than the Jan. 1 figure of 130 captives out of 397 dealers.

Simca-Rootes Division had 1,115 franchises in effect at midyear (636 Simca and 479 Rootes), Because of dualing between the two makes, this represented 705 dealerships.

Of those 705 outlets, 408 were in the captive class. Six months earlier, there were 732 Simca-Rootes Division dealerships, and 358 of them were captives.

The other Simca-Rootes setups fall in the noncaptive category. The bulk of them are duals with other imports.

Chrysler Corp. has made a good bit of progress this year toward its goal of a combined Simca-Rootes dealer organization.

At midyear, 58 percent (410 out of 705) handled both makes. On Jan. 1, only 40 percent (289 out of 732) handled both Simca and Rootes.

In addition to the captive duals, there are 1,217 dealerships that stock a U.S. make and an "independent" import. Toyota heads this list, having 194 duals with domestic makes. Austin-MG is next with 161. Triumph has an estimated 143, and Subaru has about 140.

Also: Datsun, 135; Fiat, 133; Renault, 132; Saab, 87; Mercedes-Benz, 78; Jaguar, 75; Volvo, 67, and Peugeot, 61.

(In some cases, two or more imports are dualed with the domestic make.)

The latest gain in the import-dealer total continues an increase that started early in 1964. The total slipped to 5,249 at the beginning of that year. Since then, it has risen steadily to the current 8,083.

Alltime high for import delaerships in this country was 14,989 on July 1, 1959. Many of the makes that swelled that total have long since left the U.S. market.

At the beginning of July, there were 12,988 imported-car franchises in effect, compared with 12,654 on Jan. 1. The figures do not include Morris (586) and Vauxhall (about 2,300), which are service-only arrangements. The alltime high for import franchises was 22,997 on July 1, 1959.

2. Numbers of dealers handling imported passengers cars in the U.S., by make, 1966–69

[From Automotive News, 1967 Almanac Issue]

IMPORTED CAR FRANCHISES IN UNITED STATES

	Jan. 1, 1967	Jan. 1, 1966[1]
British	7,166	7,027
Aston Martin	32	30
Austin	533	580
Austin-Healey	533	580
Bentley	44	50
Daimler	0	165
English Ford	380	197
Jaguar	275	301
Lotus	60	82
MG	533	580
Morgan	50	33
Morris[2]	533	580
Princess (BMC)	533	286
Rolls-Royce	44	50
Rootes	434	310
Rover	121	83
Land-Rover	228	213
Triumph	533	551
Turner	0	8
Vauxhall[2]	2,300	2,348
West German	3,096	2,438
Amphicar	71	67
BMW	158	185
Glas	25	0
Mercedes-Benz	230	223
NSU	130	124
Opel	1,300	685
West German—Continued		
Porsche	235	235
Taunus[2]	0	10
Volkswagen	947	909
French	1,519	1,587
Citroen	116	125
Peugeot	236	240
Renault	328	363
Simca	839	859
Italian	550	583
Alfa Romeo	121	146
Ferrari	17	12
Fiat	378	410
Lancia	30	12
Maserati	4	3
Swedish	706	674
Saab	301	273
Volvo	405	401
Japanese	1,138	850
Datsun	535	423
Toyota	603	427
Dutch	0	27
DAF	0	27
Miscellaneous	105	110
Total franchises	14,280	13,296

[1] Revised.
[2] Service only.

[From Automotive News, 1968 Almanac Issue]

IMPORTED CAR FRANCHISES IN UNITED STATES

	Jan. 1, 1968	Jan. 1, 1967[1]
British	4,226	4,333
Aston Martin	14	32
Austin	550	533
Austin-Healey	550	533
Bentley	42	44
English Ford	802	380
Jaguar	259	275
Lotus	60	60
MG	550	533
Morgan	20	50
Princess (BMC)	0	533
Rolls-Royce	42	44
Rootes	468	434
Rover	151	121
Land-Rover	216	228
Triumph	502	533
West German	3,477	3,097
Amphicar	0	71
BMW	238	158
Glas	0	25
Mercedes-Benz	256	231
NSU	110	130
Opel	1,623	1,300
Porsche	233	235
West German—Continued		
Volkswagen	1,017	947
French	1,471	1,519
Citroen	125	116
Peugeot	251	236
Renault	371	328
Simca	724	839
Italian	594	553
Alfa Romeo	103	121
Ferrari	16	17
Fiat	424	378
ISO	6	0
Lancia	30	30
Maserati	13	7
Moretti	2	0
Swedish	706	706
Saab	299	301
Volvo	407	405
Japanese	1,271	1,138
Datsun	544	535
Toyota	727	603
Miscellaneous	100	105
Total franchises	11,845	11,451

[1] Revised.

Note: Service-only franchises include 550 for Morris and about 2,300 for Vauxhall.

[From Automotive News, 1969 Almanac Issue]

IMPORTED CAR FRANCHISES IN THE UNITED STATES

	Jan. 1, 1969	Jan. 1, 1968 [1]		Jan. 1, 1969	Jan. 1, 1968 [1]
British	4,370	4,214	French	1,397	1,471
Aston Martin	21	14	Citroen	121	125
Austin	580	550	Peugeot	266	251
Austin-Healey	580	550	Renault	386	371
Bentley	41	42	Simca	624	724
English Ford	897	802	Italian	718	592
Jaguar	310	259	Alfa Romeo	93	103
Lotus	64	60	Ferrari	21	16
MG	580	550	Fiat	534	424
Morgan	1	8	ISO	11	6
Rolls-Royce	41	42	Lancia	42	30
Rootes	397	468	Maserati	17	13
Rover	121	151	Swedish	758	706
Land-Rover	237	216	Saab	353	299
Triumph	500	502	Volvo	405	407
West German	3,277	3,477	Japanese	1,309	1,271
BMW	272	238	Datsun	606	544
Mercedes-Benz	267	256	Toyota	703	727
NSU	30	110	Miscellaneous	115	100
Opel	1,872	1,623			
Porsche	222	233	Total franchises	12,394	11,831
Volkswagen	1,064	1,017			

[1] Revised.

Note: Service-only franchises include 580 for Morris and about 2,300 for Vauxhall.

[From Automotive News, Aug. 25, 1969]

IMPORTED CAR FRANCHISES IN UNITED STATES

	July 1, 1969	Jan. 1, 1969 [1]		July 1, 1969	Jan. 1, 1969 [1]
British	4,406	4,370	French	1,434	1,397
Aston Martin	22	21	Citroen	150	121
Austin	586	580	Peugeot	265	266
Austin-Healey	586	580	Renault	383	386
Bentley	43	41	Simca	636	624
English Ford	884	897	Italian	730	718
Jaguar	310	310	Alfa Romeo	91	93
Lotus	68	64	Ferrari	18	21
MG	586	580	Fiat	549	534
Morgan	1	1	ISO	13	11
Rolls-Royce	43	41	Lancia	44	42
Rootes	479	397	Maserati	15	17
Rover	167	121	Swedish	746	758
Land-Rover	193	237	Saab	365	353
Triumph	438	500	Volvo	381	405
West German	3,865	3,727	Japanese	1,712	1,589
BMW	271	272	Datsun	614	606
Mercedes-Benz	277	267	Subaru	380	280
NSU	60	30	Toyota	718	703
Opel	1,933	1,872	Miscellaneous	95	95
Porsche	233	222			
Volkswagen	1,091	1,064	Total franchises	12,988	12,654

[1] Revised.

Note: Service-only franchises include 586 for Morris and about 2,300 for Vauxhall.

3. Average numbers of imported-car sales per dealer, 20 principal makes, 1959–68

IMPORT SALES PER DEALER, 1959–68—HOW 1968 LEADERS FARED IN SALES PER DEALER IN UNITED STATES, 1959 TO 1968

	1968	1967	1966	1965	1964	1963	1962	1961	1960	1959
Volkswagen	542	462	453	438	383	338	292	293	307	285
Toyota	96	50	31	8	2	2	2	4	8	11
Volvo	94	83	63	44	41	35	33	32	39	57
Mercedes-Benz	89	81	70	55	33	29	32	40	41	36
Datsun	70	62	45	31	21	12	7	5	7	5
Fiat	58	39	23	21	22	26	23	28	44	90
Renault	52	56	33	28	37	45	55	66	79	161
Opel	46	35	29	26	28	0	1	3	10	15
Triumph	39	31	32	36	37	35	28	20	27	33
Saab	33	36	24	22	22	19	19	22	28	32
MG	32	41	39	38	42	38	17	15	22	28
Porsche	32	29	28	21	22	16	15	16	21	20
BMW	30	17	5	4	4	4	6	5	4	5
English Ford	26	31	26	24	21	15	8	13	34	64
Jaguar	17	21	16	13	12	13	13	11	15	14
Austin	17	3	3	2	1	1	3	5	8	7
Peugeot	16	17	13	11	9	9	13	15	24	28
Rover	14	20	19	17	8	10	11	20	21	10
Alfa Romeo	11	17	12	11	8	8	8	9	6	8
Austin-Healey	9	15	15	14	15	15	18	16	27	26

Source: From Automotive News, 1969 Almanac Issue, Apr. 28 1969.

K. BUSINESS FAILURES OF NEW-CAR DEALERS IN THE UNITED STATES, 1954–68

Year	Number of franchised new-car dealer failures	Average liability per dealer	Number of franchised new-car dealer failures as a percent of all retail trade failures
1954	176	$65,000	3.2
1955	101	48,000	1.9
1956	146	55,000	2.3
1957	139	65,000	2.0
1958	250	76,000	3.3
1959	122	57,000	1.8
1960	166	108,800	2.2
1961	196	97,000	2.4
1962	119	62,000	1.6
1963	89	88,000	1.3
1964	97	123,000	1.6
1965	85	208,000	1.4
1966	112	126,000	1.8
1967	117	169,000	2.1
1968	59	182,000	1.4

Source: From Automotive News, 1969 Almanac Issue, Apr. 28, 1969; cited to Dun & Bradstreet, Inc.

L. STATISTICAL DATA ON U.S. TRUCK OUTLETS

(NOTE.—The tables in this appendix are from Automotive News, 1967, 1968 and 1969 Almanac Issues, are copyrighted by Automotive News, and are used here by permission.)

1. *Number of truck outlets in the United States, 1961–69*

Date	Number of outlets	Percent change from previous year
Jan. 1, 1961	27,733	
Jan. 1, 1962	27,275	−1.65
Jan. 1, 1963	27,047	−.84
Jan. 1, 1964	25,734	−4.85
Jan. 1, 1965	25,621	−.44
Jan. 1, 1966	25,354	−1.04
Jan. 1, 1967	24,862	−1.94
Jan. 1, 1968	24,495	−1.48
Jan. 1, 1969	24,233	−1.07

Source: From Automotive News, 1969 Almanac Issue, Apr. 28, 1969.

2. *Numbers of sales outlets for trucks, by make, 1966–69*

SALES OUTLETS FOR TRUCKS

	Retail Jan. 1, 1967 [1]	Outlets [2] Jan. 1, 1966 [1,3]
Brockway	64	60
Chevrolet	6,507	6,596
Diamond T	191	180
Divco	65	70
Dodge	3,183	3,128
Ford	6,170	6,264
FWD	100	95
GMC	2,885	2,849
International	4,073	4,460
Jeep	1,860	2,015
Kenworth	42	52
Mack	290	285
Peterbilt	38	36
Reo	108	105
White [4]	250	257
Miscellaneous	124	125
Total	25,950	26,577
Adjustment for multiple franchising	1,074	1,223
Net total	24,876	25,354

	Retail Jan. 1, 1968 [5]	Outlets [2] Jan. 1, 1967 [3,5]
Brockway	60	49
Chevrolet	6,410	6,507
Diamond Reo	192	290
Divco	60	65
Dodge	3,346	3,183
Ford	6,036	6,170
FWD	90	84
GMC	2,875	2,885
International	4,073	4,168
Jeep	1,717	1,858
Kenworth	54	47
Mack	222	216
Peterbilt	44	48
White [4]	241	245
Miscellaneous	105	120
Total	25,525	25,935
Adjustment for multiple franchising	1,056	1,073
Net total	24,469	24,862

	Retail Jan. 1, 1969 [6]	Outlets [2] Jan. 1, 1968 [3,6]
Brockway	61	51
Chevrolet	6,365	6,410
Diamond Reo	193	191
Divco	55	60
Dodge	3,414	3,300
Ford	5,936	6,036
FWD	107	87
GMC	2,894	2,891
International	3,866	4,073
Jeep	1,636	1,720
Kenworth	60	48
Mack	310	296
Peterbilt	48	53
White [4]	241	242
Miscellaneous	104	105
Total	25,290	25,563
Adjustment for multiple franchising	1,057	1,068
Net total	24,233	24,495

[1] From Automotive News, 1967 Almanac Issue.
[2] Retail outlets include dealerships, distributorships, and factory-owned outlets.
[3] Revised.
[4] White includes Autocar and Freightliner.
[5] From Automotive News, 1968 Almanac Issue.
[6] From Automotive News, 1969 Almanac Issue.

3. Average numbers of truck sales per outlet, 14 (or 15) principal makes, 1960–68

U.S. TRUCK SALES PER OUTLET

1966 Rank	1966 Sales	Make	1965 sales[1]	1964 sales	1963 sales	1962 sales	1961 sales	1960 sales
1	90	Chevrolet	86	73	63	54	44	46
2	85	Ford	76	64	59	50	43	42
3	83	Kenworth	55	(2)	(2)	(2)	63	82
3	83	White[3]	74	58	47	47	41	44
5	62	Peterbilt	56	35	34	(2)	(2)	(2)
6	52	Mack	46	47	44	38	31	38
7	40	GMC	42	35	31	28	24	29
8	38	Dodge	37	32	26	22	15	16
8	38	International	33	33	30	27	24	23
10	29	Divco	31	29	28	30	28	35
11	23	Jeep	21	21	24	20	23	22
12	22	Reo	(2)	(2)	(2)	(2)	(2)	(2)
13	20	Brockway	17	28	29	31	30	35
14	15	Diamond T	14	10	11	8	8	12
15	6	FWD	6	3	3	5	4	4

[1] Revised.
[2] Not available.
[3] White includes Autocar and Freightliner and, prior to 1966, Reo as well.

Source: From Automotive News, 1967 Almanac Issue, Apr. 24, 1967.

1967 Rank	1967 Sales	Make	1966 sales[1]	1965 sales	1964 sales	1963 sales	1962 sales	1961 sales
1	86	Chevrolet	90	86	73	63	54	44
2	82	Ford	85	76	64	59	50	43
3	72	White[2]	84	74	58	47	47	41
4	59	Mack	70	46	47	44	38	31
5	54	Kenworth	74	55	(3)	(3)	(3)	63
6	51	Peterbilt	49	56	35	34	(3)	(3)
7	39	GMC	40	42	35	31	28	24
8	37	International	37	33	33	30	27	24
9	30	Dodge	38	37	32	26	22	15
10	23	Jeep	23	21	21	24	20	23
11	20	Brockway	26	17	28	29	31	30
11	20	Diamond Reo	18	(3)	(3)	(3)	(3)	(3)
13	19	Divco	29	31	29	28	30	28
14	5	FWD	7	6	3	3	5	4

[1] Revised.
[2] White includes Autocar and Freightliner and, prior to 1966, Reo as well.
[3] Not available.

Source: From Automotive News, 1968 Almanac Issue, Apr. 29, 1968.

1968 Rank	1968 Sales	Make	1967 sales	1966 sales	1965 sales	1964 sales	1963 sales	1962 sales
1	105	Ford	82	85	76	64	59	50
2	98	Chevrolet	86	90	86	73	63	54
3	83	White[1]	72	84	74	58	47	47
4	67	Kenworth	54	74	55	(2)	(2)	(2)
5	63	Peterbilt	51	49	56	35	34	(2)
6	48	Mack	59	70	46	47	44	38
7	46	GMC	39	40	42	35	31	28
8	40	Dodge	30	38	37	32	26	22
9	36	International	37	37	33	33	30	27
10	24	Jeep	23	23	21	21	24	20
11	21	Brockway	20	26	17	28	29	31
12	18	Diamond Reo	20	18	(2)	(2)	(2)	(2)
13	5	FWD	5	7	6	3	3	5
14	1	Divco	19	29	31	29	28	30

[1] White includes Autocar and Freightliner and, prior to 1966, Reo as well.
[2] Not available.

Source: From Automotive News, 1969 Almanac Issue, Apr. 28, 1969.

M. ARTICLE, "IS THE LEASING TAIL WAGGING THE DOG?"

[From Car Dealer Newsletter, July 21, 1969]

IS THE LEASING TAIL WAGGING THE DOG?

It is entirely possible that the tail is now wagging the dog in the automobile business. We make this statement because the industry may have reached that point in its development where leasing is more important to the profit of a retail dealership than retail itself.

We quote a press release received here in full: "Cle-Ware Industries, Inc. (OTC) Cleveland, Ohio, has announced the acquisition of the business and assets of B. W. Blauschild Motors-Mayfield, Inc. (Private), also of Cleveland. The purchase was made for an undisclosed amount of cash. The acquired company, a leading Dodge dealership in the Cleveland area, will be operated as Cle-Ware Dodge, Inc. Cle-Ware Dodge will serve as a wholly-owned subsidiary of Cle-Ware Leasing Corp., a subsidiary of Cle-Ware Industries. Cle-Ware Leasing is a Chrysler Leasing Corporation Licensee.

"In making the announcement," the release continues, "Gerald Levine, chairman and president of Cle-Ware Industries said, 'This acquisition further integrates our leasing company operation and provides us with ideal facilities for serving our customers.' According to Mr. Levine, Sy Safier will be president of Cle-Ware Dodge. Mr. Safier also serves as president of Cle-Ware Leasing Corp. Cle-Ware Industries is a major distributor of automotive products and accessories through more than 1500 discount stores. The company currently operates warehouses in Cleveland, Atlanta, New York and San Juan, Puerto Rico."

The OTC referred to above means that Cle-Ware is traded Over The Counter, but more about that later. In a conversation with Sy Safier, the Newsletter ascertained the following: Cle-Ware Leasing is approximately 1,000 cars strong, including a fair amount of trucks up to two and a half tons; Cle-Ware Leasing is expanding, and in fact now has a New York office "and we will be expanding to several other cities around the country soon, and at this time we do have cars and trucks operating in about 40 states."

Up to this time, the usual state of affairs in the automobile retail business has been that an automobile retail dealership will own and organize a leasing company. Not so with Cle-Ware. According to Safier: "We have a unique situation here. We have what you might say is the tail wagging the dog. Normally a leasing company is owned by the automobile sales company. But in this instance we have Cle-Ware Leasing Company owning Cle-Ware Dodge, and also absorbing about 75% of the total overhead of Cle-Ware Dodge based on the generation of sales to the leasing company and the service facilities which we have here."

Many months ago the Newsletter revealed that a number of automobile and truck dealerships were part of publicly-held corporations. It is believed that Cle-Ware Dodge is the first such Chrysler Corporation dealership in this category, although it is reported that there are some Ford dealerships and one or two GMC dealerships in this position.

Recognizing that most publicly-held corporations cannot, for fear of stockholder criticism, tolerate the low fractional percentage net returns shown by the average automobile dealer, Safier noted that the Cle-Ware Leasing operation would assume so much of the overhead burden of Cle-Ware Dodge because of its heavy reliance upon the dealership for both vehicles and services. As opposed to the average net on sales reported by dealers of some 1.2% to an optimistic 4% in good sales years, Safier told the Newsletter he believes his dealership will be able to register a net somewhere in the vicinity of 5% to 7%, because of the business that will be furnished through the dealership from the leasing company.

There has been a great deal of interest evidenced by dealers who are interested in the mechanics of going public with their operations and, this is the first time it has been so clearly sketched, and from our investigations it is fairly typical of the few that exist. In this instance, as noted above 100% of the stock in Cle-Ware Dodge is held by Cle-Ware Leasing, in turn 100% of the stock of Cle-Ware Leasing is held by Cle-Ware Industries, Inc., which is traded Over The Counter. The other operations we have investigated have also involved holding companies that controlled 100% of the stock of the dealership involved. There are several others in the planning stages right now under similar plans.

In this regard Safier noted: "Where a publicly-held corporation is the parent of a leasing company and an automobile dealership, the primary concern of Chrysler who is on paragraph two of the automobile agreement and at that point they want qualified automobile people." Safier's background seems to eminently

qualify him in this respect. "The Corporation looks to deal with whomever is on that paragraph," he said.

All of the above poses some interesting speculation. If a dealership will actually develop net in the area of 5 to 7% because of the pressures being exerted by publicly held management, is this necessarily bad for the industry? Is leasing the tail that is going to finally wag the dog? Can leasing actually generate sales that will provide a 5 to 7 percent net? Is there a definitive trend toward going public and are the factories going to encourage or discourage this trend? Is it to their benefit in the long run? And does a management conscious of a broadly based stockholder ownership respond more readily to increased profits, therefore in the long run benefiting the industry?

There is another trend in the leasing industry which gives evidence that the tail is really beginning to wag the dog and we will discuss this next week.

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N. ARTICLE, "TRY TO INTEREST NADER IN DEALER PROBLEMS"

[From Car Dealer Newsletter, July 28, 1969]

TRY TO INTEREST NADER IN DEALER PROBLEMS

Ralph Nader made one of his quiet but incipiently pregnant visits to the West Coast recently, and the Newsletter has learned that serious efforts were made to contact him and solicit his interest in the problems of the independent automobile dealer. Ironically, Nader himself asked Raphael Cohen, chairman of the MIDCRA, at last year's Senator Nelson-Senator Morse combined hearings on monopoly in the auto business, why he (Cohen) felt the automobile dealer was disappearing from the small business scene so rapidly.[1] We hasten to add that the two incidents are not in any way related. In the eyes of many, asking Nader to intervene is a serious step, almost a last ditch one. But it is being made, or attempted on the West Coast. Why?

One of the men involved in this attempt told us: "We'd like to show Nader around this community," referring to one of the major metropolitan areas in California, "where 15 of the 20 dealerships are either DE or at least in factory owned facilities. Not all are factory run, but the ones that are haven't shown a profit in the last two years. These are beautiful facilities the factory has constructed, but their existence gives the lie to the factory's contention they wouldn't do this if they could interest private capital. Private capital won't and can't compete against losing situations, so most of this is just propaganda." This happened to be a Dodge dealer, discussing the situation in a 50-mile radius of his dealership, but if we were to substitute a Ford dealer in the above about the only change in the conversation would be numbers.

The incidence of factory ownership or control of facilities is especially high in the West. A Chrysler dealer lamented "one of the reasons we don't have the kind of action groups here that you have in the East is because we face two problems. One is the average dealer is not a second or third generation dealer as are so many East Coast dealers, and secondly the factory either owns the vast majority of dealerships or at least owns the property and leases it back, which means their control is pretty complete in this area. I'm speaking of both Ford and Chrysler Corp., and therefore, most dealers who should be talking are understandably frightened. The factory, when it owns the facilities and leases them back to the dealer, literally holds a gun at the head of that dealer, and he knows it, so he clams up."

The situation is not dissimilar in other sections of the country, although percentages change some. In Los Angeles and Orange Counties, it is estimated that 40% of all Chrysler Corp. dealers are DE or lease-back. We are told that in Boston, four out of six Chrysler dealerships are company owned. In Chicago, we are told that at last count there were some 13 DD dealers out of the 90 Ford dealers in the Chicago district, the highest incidence of such operations in the

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[1] Editorial note.—Mr. Nader and Mr. Cohen did not appear together at the hearing referred to, so this statement is inaccurate. However, Mr. Nader did answer an inquiry by Senator Morse, at that hearing, about the reasons for the declining number of franchised dealers. See Hearings before Subcommittees of the Senate Small Business Committee on "Planning, Regulation, and Competition: Automobile Industry—1968," 90th Congress, 2d session, p. 446 (1968).

country. No one in that city wants to hazard a guess as to how many Americo lease-back facilities exist among these same 90 dealers. In Allegheny County, Pa., it is on the record that DE deals account for some 60 percent of the dealership population, and for about 56% of the vehicle registrations for Dodge. This was revealed in the Mt. Lebanon case. In the five counties of New York City, it is estimated that Chrysler Corp. controls through DE or lease-back about 25% of its dealers. In Nassau County it is estimated Chrysler controls about 30% of its dealership body in the same manner. Ford occupies about the same relative percentages, it is estimated in both the five counties of New York and in Nassau county. With the exception of Boston, all the localities we have discussed so far are within the 15 top counties in auto registrations, an indication of how easily the manufacturer can assume control of a market. Although Boston itself is not within the top 15, Middlesex county, just outside, is and obviously sales from that city reach into this important market.

Additional signs abound. In New Jersey, Ford controls, it is estimated by dealers, somewhere between 20 and 25% of the dealerships through DE and lease-back in the Newark district. More important is the fact that it is estimated that two counties, Bergen and Essex account for about 25% of the new car sales in that state. They are also adjacent to New York City. In addititon it is estimated that 7 counties in NJ account for about 80% of all registrations in that state. Therefore, as a dealer appraised the situation, "Ford only has to control a small nub of dealers to control our market, and they are very close to that situation now. Obviously, all we have to do to find out how they will control our market, is to ask some of our brethren out on the West Coast how it happens. The hour draws late. The handwriting is on the wall, and yet dealers feel there is no threat to their future in this situation," he signed.

A dealer caught in the vortex of change in California told us: "I would have no objection to any of this, if the factory had clear lines of purchase on these leased facilities. But it's quite apparent almost from the beginning, that they could care less whether a man finally buys them out. Look at what Ray Cohen said in his presentation to Senator Nelson's committee—that Chrysler is spending $2 million a week on real estate. It's a safe bet Ford is doing the same, and you wonder how much longer GM will stay out of this picture. Ford and Chrysler have been hot on facilities since the early 1960's. Just like GM stayed away from fleet subsidies until they could plead competition as a legal protection, you can bet they are pretty close to entering the facility sweepstakes through Motors Holding, or some other avenue, because excessive competition is going to hurt them soon. You'd think the GM dealers would be trying to contact Nader and not us."

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O. ARTICES ON MANUFACTURERS' COMPUTER-ACCOUNTING SYSTEMS FOR DEALERS

1. *Article, "Is Ford's New Computer Test Last Arm of Octopus To Strangle Independent Dealer?"*

[From Car Dealer Newsletter, June 23, 1968]

IS FORD'S NEW COMPUTER TEST LAST ARM OF OCTOPUS TO STRANGLE INDEPENDENT DEALER?

The Newsletter hears that Ford is about to test a new concept in a few dealerships in Baltimore and Washington which involves the use of computers to "print-out" information similar to the information now being sold to dealers by CARS in the Mid-West. According to our usually reliable sources, the dealers participating in this test will print out a tape each evening which will be picked up by the Ford computer during the night and will return to the dealership a tape which will give the "boss a complete idea of what his profit picture is, what his inventory is like, whether or not the computer automatically ordered parts because certain items had fallen below the usual 30 days inventory status, what his personnel costs are, what his tax costs are, how many service orders were written and how much were written and how much were spent by the customs, etc."

We emphasize that this will be a test, our sources say. There is no indication of what direction this will eventually take although dealers who have used the CARS set-up have been extremely enthusiastic about it. There is one catch in

this situation. If this becomes accepted on a national scale, Ford would then be plugged into every single dealer's daily operation, and there are those dealers who feel that since Ford is in direct competition with them through its factory stores, is already entirely too knowledgeable about their business, and they would look upon this intrusion into their business affairs as another major assault upon their franchise. As one dealer stated "After all, there has to be some privileged information in every dealership. I think the basic idea is great, but I don't believe the manufacturer should be so intimately involved. This gives him one leg up on us, even if he is entirely ethical in his actions."

"Well now, let's count the ways the manufacturer loves us," commented another dealer. "He has his pre-delivery centers, he has his diagnostic centers, he has his factory stores, he already has his monthly financial statements and his auctions, and apparently that isn't enough for him, he now wants a daily report on us. He has his special fleet and lease discounts, and a number of these lessors are now authorized to do their own warranty work. They don't have to bring the cars back to us, they simply establish their own service operations and do the work themselves, submit their claims direct, etc. Now, the next step is to add computer terminals to our operations, and we feed them daily information on how our business is going.

"I think the theory is basically sound," this dealer continued. "I honestly believe that every dealer must move into the future as far as record keeping is concerned, but I must say, at first glance, I object to the manufacturer being the computer owner and record keeper for us. Not only will the manufacturer then be in a stronger position from the point of view of releasing his inventory to us, but also he will be in a stronger day to day position to know what our profit pictures are, which gives him the clout he will need to push us for smaller profits and higher volume. Right now, he is at least in the position of doing some educated guessing. Once we're on tape, and he scans our operation daily, there will be little he has to guess at."

Dealers who have commented on this newest move, have all been disturbed by the total picture. The general consensus is: "Every move they make seems aimed at further erosion of the franchise. Look at it this way. It's only one little step from authorizing lessors to do their own warranty to authorizing independent outlets to do the same. We only beat back such a suggestion by the skin of our teeth in Boston a few years ago. Once the computer is in complete control of the administrative steps in our business, the factory really only needs a manager on the spot. Why do they need a dealer? Why do they really need private capital if they are going to control the computer? In my view they don't. They have enough real estate around, and their holdings are expanding so rapidly it appears to be only a matter of time before they begin appointing us dealers as managers. Perhaps we're entering a new era in which the franchise will be changed to the point where it is no longer an instrument for getting private capital to assume the huge burden of retailing but rather is more like an employment contract in which the dealer runs the operation for the factory on a profit paticipation basis. I think we'd find lots of takers in this business for that kind of arrangement, but I'm not one of them."

In almost every instance, there is agreement among dealers that many of these factory director programs are excellent in theory, but in practice a wash-out from their point of view, only because in the interests of expediency, (which can probably be translated as the factory's desire to get a competitive edge by using the most modern administrative and merchandising techniques) the tendency is to by-pass private investment in favor of factory participation at all levels "because we have better control of the situation and can implement faster." However, dealers are becoming increasingly conscious of the octopus which is slowly but surely entangling their businesses in a variety of forces and methods which squeeze control from their own hands.

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2. Article, "GM vs. Ford Approach To Computerizing"

[From Car Dealer Newsletter, July 14, 1969]

GM vs. Ford Approach to Computerizing

Further research and some fast developments relative to the article done here several weeks ago on the Ford approach to computerizing their dealers, has

revealed some interesting facts on just how far this project has gone, and how differently General Motors plans its future in this same area. Just as a refresher, we revealed that Ford is about to launch a test in the Baltimore-Washington area of a computerized technique that can be expected to eventually cover every facet of the dealer's operation from parts inventory (where it is expected to start) to accounting and profit-loss statements, etc.

Dealers who have been watching the erosion of their equity over the last several years, and the rise of the factory owned or dominated retail establishment have commented that this latest foray on the part of Ford into more sophisticated business methods is just one more nail in the coffin of the retail automobile franchise as it exists today, or what is left of it. A profitable, old-line dealer in the Central states told the Newsletter: "What I am concerned about, and what every Ford dealer I talk to has mentioned, is that the factory committed Ford dealer, the man who owes his building or his facilities, or even his entry into the business to Ford, through DD or a facility lease, will have no choice about whether he wants to go into this program or not. Let's face it, whenever Ford has their big hand on the dealer's shoulder, he is bound to ask himself the question, 'How can I stay out of the Ford accounting system, if they own my buildings and remind me that my lease is coming up for renegotiation and they'd like my cooperation in their computer program?' "

"In point of fact," dealers reason, "there is nothing overtly illegal about that kind of persuasion. But you can't ignore the fact that this is their usual ploy and it will no doubt be used in this instance as well." Attorney Alexander Hammond, speaking before Senator Gaylord Nelson's Senate Small Business Subcommittee on Monopoly said in support of this reasoning: "Dealers whose existence naturally depends upon the renewal of the leases for their facilities and upon the amount of rent they must pay are obviously subject to continuing domination and control."

Now dealers express concern lest they become just general managers and suppliers of risk capital under a Ford computer plan taken to its obvious end. There are those dealers already using outside computer services to do the job Ford is contemplating establishing. "Yet, how long can a man committed to Ford stay away from any plan the company puts into the works," a middle sized computer firm asked the Newsletter. "We have no illusions about this. We know the strangle-hold Ford has on its dealers, and we know what they can force them to do. If Ford decides to give their program away for the first 30–60–90 days, other computer companies of any size won't be able to compete. We have watched this activity of Ford's over the past year throughout the U.S. with interest. Several years ago, they did quite a lengthy study of several of our customers, and without question copied many of the features of our service in order to prepare their system."

Within this new controversy we have another classic illustration of the differences in approach to competition within the detail end of the market between Ford and GM. The latter has been experimenting with computer services for its dealers also. At this writing, several very large GM dealers on the West Coast are tied into a computer parts inventory program that developes virtual over-night delivery of parts, as opposed to the old 10–12 day lag. What began as a five dealer test with an independent computer company at the helm is expected to go full tilt within the next few months and be available to all dealers up and down the West Coast. The important difference being that GM will have no company interest in the program. It is being devised and promoted privately. In fact, the Newsletter has learned from reliable sources that the "GM legal department has noted that it would be dangerous from a legal point of view for the corporation to get into the computer business in competition to other computer firms already in the business. Therefore, computer firms already involved in data processing, specializing in automobile dealership accounting services and inventory systems, can work in full confidence of not being undercut by GM."

Ford is obviously once again taking the opposite view. In the same way that Ford and Chrysler (and they are in this movement as well) have moved into the retail ownership of facilities, into auto auctions, into the special discounts to fleet/lease/rental operators, both companies are now giving serious consideration to moving into the computer field as a "service" to their dealers. A number of

smaller computer firms, and some of the large ones have called the Newsletter expressing similar concern to that expressed by dealers in this situation.

Apropos of the danger inherent in computerized systems owned and operated by the manufacturer is part of the statement by Raphael Cohen, Chairman of the Metropolitan Independent Dodge Crysler Dealer Association in his testimony before the Subcommittee investigating monopoly mentioned earlier, when he said: "Exhibit VIII is a blank copy of a financial statement that is required by Chrysler each and every month. Ford and General Motors have the same requirement. This statement breaks down my entire operation and supplies the manufacturer, in the most minute detail. . . . every area of my operation. Now keep in mind that the same corporation has retail outlets, so by contract, I am forced to supply my competition with my operating statement." Once computerized, and fed through factory data processing equipment, which one computer company epitomizes as "some of the best in the EDP industry," the manufacturer can literally supply himself with daily reports on dealer operations, making his endeavours to "get more volume" relatively easier, with all of its consequences.

Why manufacturer's are willing to operate retail outlets at a loss.—At the same Subcommittee hearing on monopoly dealer attorney Alexander Hammond also notes: "The incentive, as well as the ability, to engage in loss retail operations is the product of unusually large manufacturing profits. In effect, manufacturers' prices are administered by General Motors, and there is no price competition at the wholesale level. The manufacturers' profit per car is so large that they can afford to lose money at the retail level if even a small increase in sales volume occurs. This is true because the extra additional units sold yield a much larger profit than the average profit of the preceding units. With all of the overhead met by a given volume, the gross profit on extra units becomes almost net profit after the cost of labor and materials. There have been estimates that the cost of labor and materials to manufacture a car runs from $500 to $1000. In any event, the profit on the extra units is tremendous. Thus, a manufacturer can profitably operate or finance retail operations at large losses and can engage in anticompetitive pricing practices, if at the same time retail sales volume is increased. Because of the unusually large manufacturing profits on the extra units, the combined retail and manufacturing operations result in a larger overall profit."

Adding insult to injury the Newsletter has heard of an incident, like many others, in which one of the factory subsidized dealers with all good intent to "buy them out as quickly as possible," found himself in a sliding position and had parted with upwards of $45,000 of his own money in less than six months before his voting partner (the factory who retains full voting powers until bought out 100%) "replaced" him by vote of the dealership corporation in which he had just lost his life's savings.

Will GM be in the retail business soon? There are those dealers who feel it is only a matter of time before GM is forced by Ford and Chrysler competitive actions at the retail level, to retaliate by moving into the retail business itself. Supporting this view was Alexander Hammond, mentioned above, at the Subcommittee hearings on monopoly last week who said: "About 6 years ago Chrysler started to sell fleet and lease cars at hundreds of dollars under dealer cost by way of special discounts, guaranteed used car prices, and other devices. Unlike other manufacturers, General Motors could ignore for a time the resulting diversion of its traditional share of this business. But General Motors had to react; and after waiting a sufficient number of years to allow it to claim a legal defense of a bona fide meeting of competition, it met the much lower fleet prices of its competitors last fall. Similarly, General Motors can be expected in the near future to be forced to react to the competition of the other manufacturers at the retail level, after again waiting to allow it to claim this legal defense. It has already done so in some large cities, such as New York. When General Motors joins the other manufacturers in retail distribution on a large scale, the dealers' opportunities for profits will be further reduced or destroyed, and there will be a wholesale elimination of private capital and independent dealers."

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P. ARTICLE BY BOB FENDELL, "FORD DEALER SUIT SEEKS TO BAR FACTORY RETAILING"

[From Automotive News, Sept. 1, 1969]

FORD DEALER SUIT SEEKS TO BAR FACTORY RETAILING

(By Bob Fendell)

NEW YORK.—A suit apparently aimed at factory retailing has been filed in Superior Court of New Jersey.

The Ford Dealer Alliance, Inc., is seeking to permanently enjoin Ford Motor Co. from directly or indirectly contacting any retail or wholesale customer of any FDA member.

A co-plaintiff against Ford is Semmes Motors, Inc., Scarsdale, N.Y., a dealership owned by Bill Semmes, former president of the Northeast Regional Ford Dealer Council.

The suit appears to be aimed directly at company stores and Dealer Development programs. It utilizes the warranty policies of Ford since 1960 as an argument.

It is considered an historic action in its possible implications and in fact that is the first time in modern auto history that dealers have moved en masse into the courts against their franchisor.

A Ford Motor Co. spokesman said Ford had no comment on the suit "at this time."

FDA was organized earlier this month as an independent dealer line organization by Ford dealers in the Newark and New York districts.

The FDA suit was filed in Chancery Division, Middlesex County, and service was made on an official of the Ford assembly plant in that county. AUTOMOTIVE NEWS learned that the suit, because it was filed in Superior Court, could come to trial before the end of the year.

Semmes Motors joined the suit as an individual corporation because it was subject to audit and wished to move individually against Ford for specific restraining orders although, as an FDA member, it was automatically a party to the suit.

The complaint has two counts. The heart of the first is as follows:

"In 1960, the defendant (Ford) as a means of inducing purchases by ultimate retail customers, commenced advertising and promotion of an extended warranty covering parts and labor for purchasers of its products.

"Said extended warranty was announced and promulgated by the defendant without regard to its own quality control of its manufacturing process and further without regard to the inadequate number of trained mechanics available for employment in automobile dealerships.

"Said warranty was further extended in 1966 to cover defendant's automobiles for 24,000 miles or 24 months and the power train therein for 5 years or 50,000 miles.

"The warranty extensions were accomplished without consultation or negotiation with Ford dealers upon whom defendant imposed its obligation to perform the manufacturer's warranty.

"Said extended warranties were thrust upon the dealers by virtue of the enormous economic leverage enjoyed by the defendant in relation to each of its dealers.

"Schedules were promulgated by the defendant setting forth reimbursement rates to be allowed by the defendant to the dealers for work performed in remanufacturing defendant's product or in correcting defects in defendant's product covered by the extended warranties.

"Said schedules were and are unfair in that they provide an inadequate reimbursement for labor and wholly omit certain items resulting from careless or defective manufacture."

This count goes on to state that Ford's warranty reimbursement procedure is so difficult it "results in substantial delay or inaction with respect to many of the dealer's warranty claims."

This in turn causes "dissatisfaction among dealers and their customers," the suit says.

Then comes the key to the whole argument against Ford. The complaint, prepared by Wilentz, Goldman and Spitzer, FDA attorneys, argues that Ford "has acknowledged for the purposes of the warranty program and presently maintains that the ultimate retail customer is the customer of the particular dealer from whom the car was purchased and that it has no contractual liability to any such customer.

"This position has been maintained by the defendant in its literature directed to dealers and in various instances where litigation has been commenced by a retail customer who had purchased an automobile from a dealer with an alleged manufacturing defect which caused injury . . ."

The facts of the Semmes case, as presented in this count, indicate that Ford told Semmes it was going to contact his customers while making an audit of his past year's warranty claims. (Semmes was the only Newark-New York Ford Dealer Council official who did not participate in the famous walkout several months ago.)

The case also indicates that Ford told Semmes that if he prohibited such surveys of his customers, the prohibition might constitute grounds for termination of the sales agreement.

Ford stated that "it intends to contact customers of many of its dealers as and when it sees fit," according to the complaint.

FDA and Semmes claim that any such contact, no matter if it is only for such an apparently innocuous thing as getting base statistics to judge the success of a Ford credit card, would hurt the customer-dealer relationship, would create suspicion of the particular dealer and scare off the customer.

The second count alleges that Ford "has engaged in an ever-increasing invasion of the retail distribution of Ford automobiles" via company stores and its Dealer Development Program.

It argues that, because Ford is in direct competition, its attempt to contact Semmes customers is an unfair method of competition, "an unwarranted extension of defendant's contractual rights" and a deliberate abuse of both Semmes' and any FDA dealer's contractual rights and competitive position because Semmes and any other dealer is "coerced by defendant's overwhelming economic superiority and threats of termination."

Victory by Semmes and FDA in this suit would mean that Ford, its advertising agency, its market research firms or anyone working for Ford could not make any kind of survey of Ford owners.

More important, it would establish more firmly the principle that Ford (or any U.S. car manufacturer) is a supplier only and can not engage anyplace in selling cars to any customer other than its franchised dealer.

Thus, some see in this suit the opening legal gambit in a dealer war on complaints other than warranty reimbursement and company stores.

These would include lease and fleet subsidies.

Appendix III

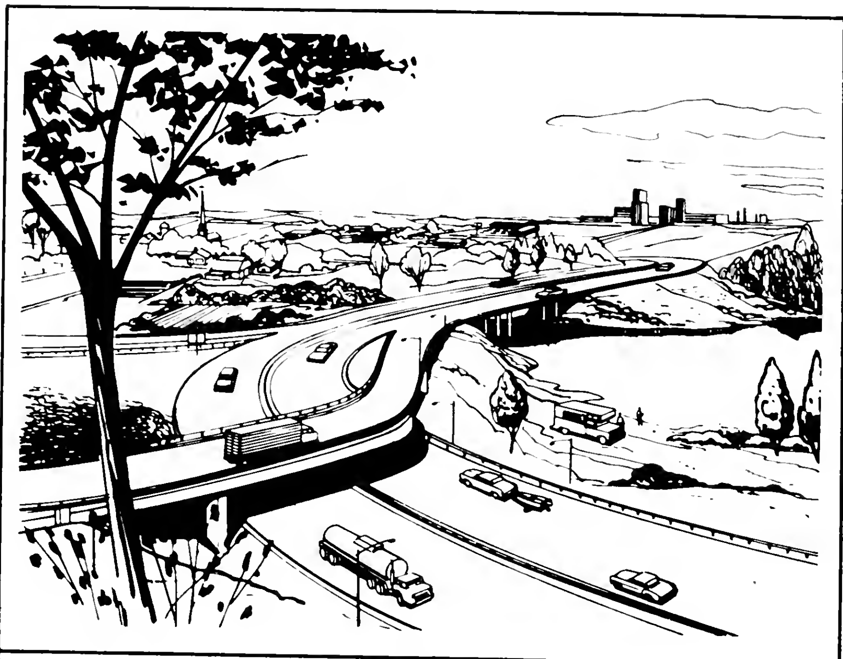
Automobile Manufacturers Association Publications on Economic Importance of Motor Vehicles in the Several States of the United States

A. Note

In the course of his testimony on July 9 and 10, 1969, Thomas C. Mann, President, Automobile Manufacturers Association, Inc., submitted copies of 48 pamphlets published by the association, one for each of the 48 continental United States, which explain in detail the contributions of the automobile industry and its related industries to the economies of the States. Six of these pamphlets are reproduced below; the remainder are retained in the committee's files. Copies may be obtained from Automobile Manufacturers Association, Inc., at its Detroit, Washington or New York offices. The addresses of those offices appear on the association's letterhead at the beginning of the pamphlets reproduced below.

32-493 O—69—pt. 1A——5

B. MOTOR VEHICLES IN ALABAMA



MOTOR VEHICLES IN ALABAMA

AUTOMOBILE MANUFACTURERS ASSOCIATION

MOTOR VEHICLES IN ALABAMA

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AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.

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AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.

320 NEW CENTER BUILDING · DETROIT, MICHIGAN 48202 · TRINITY 2 4311 AREA 313

ARJAY MILLER, CHAIRMAN
THOMAS C MANN, PRESIDENT
RUSSELL E MACCLEERY, ADMINISTRATIVE VICE PRESIDENT

Gentlemen:

Americans now own more than 100 million cars, trucks and buses -- nearly half the world total -- or about one vehicle for every two persons in the country.

Motor vehicles -- their manufacture, sale, servicing and commercial use -- represent one of the most dynamic forces affecting our national economy. One American business in six is automotive related. About 13,500,000 Americans -- one of every seven employed persons -- work in highway transportation industries.

Motor vehicle producers maintain plant, office, warehouse or test facilities in nearly every state and in addition purchase materials, parts and services from some 40,000 independent suppliers.

Directly and indirectly the industry contributes a large share of taxes to national, state and local governments. Automotive stock is now held by nearly three million Americans.

To highlight the importance of motor vehicles the Automobile Manufacturers Association has prepared reports summarizing significant facts concerning the automotive industry for the various states. I hope that you will find the attached report for your state interesting.

Cordially,

Thomas C. Mann

HIGHLIGHTS

THE MOTOR VEHICLE INDUSTRY IN ALABAMA

Employment

The manufacture, distribution, maintenance, and commercial use of motor vehicles in Alabama provides employment for 264,000 workers. (Page 15)

Automotive Businesses

Firms primarily engaged in the manufacture, distribution, and servicing of motor vehicles in Alabama operated 5,600 different establishments employing 43,900 people. Annual payrolls exceeded $204 million. In addition, for-hire trucking employed 12,400 workers with an annual payroll of $62 million. (Pages 5, 10)

Motor Vehicle Manufacturers

Manufacturers of motor vehicles in Alabama, not including independent suppliers,:

- Operate 18 plants or offices
- Employ 2,800 workers
- Disburse $25 million in annual wages and salaries
- Pay more than $1 million a year in taxes to state and local governments

(Page 3)

Suppliers

Motor vehicle manufacturers purchase more than $87 million worth of goods and services from more than 350 different firms in Alabama (Page 3)

Dealers

In Alabama there are:

- 523 new car and truck dealers
- With an investment of $56 million
- Employing 12,200 workers
- Paying $65 million in annual wages and salaries

(Page 3)

Stockholders

About 16,000 residents in Alabama own stock in automotive firms. (Page 3)

Vehicle Taxes

Highway users in Alabama paid $140 million in special state vehicle taxes. Motor vehicle, fuel, and license taxes accounted for 23 percent of total state tax revenues. (Page 13)

Federal automotive excise taxes paid by users in Alabama amounted to an additional $93 million. (Page 13)

Motor trucks in Alabama -- 18 percent of vehicles registered -- paid 39 percent of total special state vehicle taxes. (Page 14)

Vehicle Registrations

Total vehicles registered in Alabama amounted to 1,785,000 in 1968 -- 1,435,000 were automobiles and 350,000 were commercial vehicles. (Page 4)

Twenty-four percent of trucks are on farms. (Page 14)

New Vehicle Registrations

Passenger cars newly registered in Alabama in 1967 totaled 117,100 and 27,600 new motor trucks were also registered. (Page 4)

Drivers

There are 1,598,288 licensed drivers in Alabama or 0.93 driver per registered vehicle. (Page 4)

The Economy of Alabama and the Motor Vehicle Industry

A special study of motor vehicle manufacturers provides some new measures of the importance of the motor vehicle industry to the economy of the State of Alabama:

> Manufacturers of motor vehicles, not including independent suppliers, operate 18 different plants or offices in the state. They employ 2,800 workers, with an annual payroll of $25 million. Annual taxes paid to state and local governments by these manufacturers exceed $1 million.
>
> An incomplete count of suppliers to the industry who are located in the state shows more than 350 different firms from whom the industry purchases more than $87 million per year.
>
> Some 16,000 persons in the state are stockholders of automotive firms.
>
> There are 523 new car and truck dealers in the state, with a total investment of $56 million. They employ 12,200 people and pay $65 million in wages and salaries.

SOURCE: Special studies by Automobile Manufacturers Association.

REGISTRATIONS IN ALABAMA

Total Vehicle Registrations

Motor Vehicles	1967	Estimated 1968
Automobiles........................	1,397,923	1,435,000
Trucks and Buses..................	337,256	350,000
Total............................	1,735,179	1,785,000

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

Trucks-Special Type	1967
Truck-Tractor................	17,866
Diesel Trucks................	10,298
Diesel Buses.................	770

Motor Buses	1967
School.......................	6,353
Commercial...................	1,190
Total........................	7,543

Commercial Trailers	1967
Full Trailers................	-
Semi-Trailers................	28,137
Total Truck-Trailers..........	28,127

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

New Motor Vehicle Registrations	1966	1967
Passenger Cars...............	129,693	117,111
Motor Trucks.................	30,018	27,620
Total........................	159,711	144,731

SOURCE: R.L. Polk & Company

* * * * *

Number of Licensed Drivers in 1967.......	1,598,288
Drivers per Private Motor Vehicle........	0.93

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

AUTOMOTIVE BUSINESSES IN ALABAMA

1 9 6 7

SUMMARY

Type of Business	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Businesses in Alabama			
Manufacturing	55	9,096	$ 58,984
Wholesale Trade	531	4,779	24,868
Retail Trade	3,883	25,083	102,144
Services	1,123	4,943	18,712
Transportation, Highways	1,154	15,016	73,220
Total Automotive Businesses*	6,746	58,917	$ 277,928
All Businesses in Alabama**	50,790	727,128	$3,399,804
Automotive Businesses as Percent of all Businesses in Alabama	13.3	8.1	8.2
Automotive Related Businesses***(not included above, partial list)	615	8,082	$ 39,672

* - Some automotive businesses are not included in this analysis. Self-employed persons in the automotive business are not included. Persons employed in automotive departments of establishments, such as department stores whose principal business is in non-automotive products, would also be omitted.

** - Does not include agriculture, government, railroads, or persons in domestic service or who are self-employed.

*** - Petroleum extraction, refining, and wholesale distribution; highway and street construction; trailer parks. (See page 11)

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from <u>County Business Patterns, 1967</u>, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN ALABAMA

1 9 6 7

MANUFACTURING

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Manufacturing Businesses in Alabama			
Tires and Inner Tubes..........................	7	5,507	$ 40,680
Electrical Products, N.E.C. Engine Electrical Equipment.......	2	D	D
Motor Vehicles and Equipment..............	37	3,589	18,304
Truck and Bus Bodies	15	606	2,856
Truck Trailers....................	6	D	D
Motor Vehicles and Parts..........	2	D	D
Trailer Coaches..................	9	D	D
Total Automotive Manufacturing	55	9,096*	$ 58,984*
All Manufacturing Businesses in Alabama.......	4,666	293,852	$1,588,428
Automotive Manufacturing as Percent of all Manufacturing Businesses in Alabama......	1.2	3.1	3.7

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
D - Withheld to avoid disclosure.
N.E.C. - Not elsewhere classified.
* - Partial total.

SOURCE: Compiled by Automobile Manufacturers Association from _County Business Patterns, 1967_, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN ALABAMA

1 9 6 7

WHOLESALE TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Wholesale Businesses in Alabama			
Motor Vehicles & Automotive Equipment......	531	4,779	$ 24,868
Automobiles & Other Motor Vehicles...	78	1,320	8,224
Automotive Equipment.................	416	3,026	14,184
Tires and Tubes.....................	36	402	2,288
Total Automotive Wholesale......	531	4,779	$ 24,868
All Wholesale Businesses in Alabama..............	4,207	47,932	$ 270,932
Automotive Wholesale as Percent of all Wholesale Businesses in Alabama...........	12.6	10.0	9.2

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN ALABAMA

1 9 6 7

RETAIL TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Retail Businesses in Alabama			
Automotive Dealers & Service Stations......	3,883	25,083	$ 102,144
New and Used Car Dealers.............	445	10,926	56,852
Used Car Dealers.....................	330	1,274	4,772
Tire Battery and Accessory Dealers...	524	3,350	13.480
Gasoline Service Stations............	2,443	8,717	23,500
Miscellaneous Automotive Dealers.....	123	743	3,272
Total Automotive Retail.........	3,883	25,083	$ 102,144
All Retail Trade Businesses in Alabama..........	16,397	130,288	$ 413,312
Automotive Retail Trade as Percent of all Retail Trade in Alabama....................	23.7	19.3	24.7

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN ALABAMA

1 9 6 7

SERVICES

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Service Businesses in Alabama			
Automobile Repair, Services & Garages.........	1,123	4,943	$ 18,712
Automobile Rentals without Drivers........	82	678	3,356
Automobile Parking.......................	50	356	772
Automobile Repair Shops..................	948	3,374	12,864
Top and Body Repair Shops..............	107	361	1,324
Battery and Ignition Repair Shops......	22	72	304
Radiator Repair Shops..................	37	127	480
Tire Retreading and Repair Shops.......	129	575	2,238
Paint Shops............................	43	225	944
Glass Replacement and Repair Shops.....	11	55	240
General Automobile Repair Shops........	493	1,522	5,380
Automobile Repair Shops N.E.C..........	105	434	1,976
Automobile Service, Except Repairs*.........	43	535	1,720
Total Automotive Services.........	1,123	4,943	$ 18,712
All Service Businesses in Alabama	12,643	100,058	$326,412
Automotive Services as Percent of all Services in Alabama.....................	8.9	4.9	5.7

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
* - Automobile laundries, driving instruction, towing, etc.
N.E.C. - Not elsewhere classified.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN ALABAMA

1 9 6 7

HIGHWAY TRANSPORTATION

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Highway Transportation Businesses in Alabama			
Local Passenger Transportation..................	147	2,555	$ 10,696
Local and Suburban Transportation............	31	1,019	4,588
Local and Suburban Transit................	19	956	4,368
Local Passenger Transportation N.E.C.	12	63	216
Taxicabs....................................	77	810	1,916
Intercity Highway Transportation............	14	545	3,828
School Buses................................	12	74	104
Bus Terminal and Service Facilities..........	11	88	252
Bus Terminal Facilities..................	11	88	252
Trucking Local and Long Distance*..............	1,007	12,461	62,524
Trucking without Storage*....................	945	11,401	58,876
Local Trucking and Storage*..................	62	1,060	3,648
Total Highway Transportation........	1,154	15,016	$ 73,220
All Transportation and Other Public Utilities Businesses in Alabama..........................	1,929	46,678	$ 264,108
Highway Transportation as Percent of all Transportation and Other Public Utilities Businesses in Alabama..........................	59.8	32.2	27.7

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
N.E.C. - Not elsewhere classified.
* - Data shown for reporting units, employment, and payrolls of trucking firms are substantially understated. The source data does not include establishments operated by self-employed persons. Furthermore, firms operating trucks but whose principal business may fall into some other business category are not included in these totals. See Page 15 for Trucking Employment.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN ALABAMA

1 9 6 7

RELATED BUSINESSES

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Mining			
Crude Petroleum and Natural Gas	11	101	$ 672
Contract Construction			
Highway and Street Construction	192	5,483	25,968
Manufacturing			
Petroleum Refining	6	D	D
Paving Mixtures and Blocks	13	D	D
Wholesale Trade			
Petroleum Bulk Stations & Terminals	360	2,370	12,772
Services			
Trailer Parks	39	128	260

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

D - Withheld to avoid disclosure.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

MOTOR VEHICLE MANUFACTURERS' PLANTS IN ALABAMA, MARCH, 1968

Car and Truck Assembly Plants

City	Company or Division	Make and Type of Vehicle
Evergreen	Flxible Southern Co.	City and suburban coaches, parcel delivery bodies, mobile campers

Parts Manufacturing Other Than Assembly Plants

City	Company or Division	Automotive Products
Sheffield	Ford: Engine & Foundry	Aluminum automatic transmission and engine parts

Parts Depots of Motor Vehicle Manufacturers

City	Company or Division
Birmingham	GM: Buick, Cadillac, Chevrolet Pontiac, Oldsmobile

SOURCE: Automobile Manufacturers Association.

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AUTOMOTIVE TAXES, ALABAMA

Highway User Revenues in Alabama	Estimated 1968
Motor Fuel Tax	$ 103,661,000
Motor Vehicle Registration Fees	30,200,000
Other Motor Vehicle Fees	6,488,000
Motor Carrier Fees	262,000
Miscellaneous	117,000
Total	$ 140,728,000

NOTE: These are preliminary data on a calendar year basis.

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

Special Motor User Taxes	Estimated 1968
State Tax on Motor Vehicle Fuels	$ 102,674,000
State License Tax on Motor Vehicles	20,591,000
State License Tax on Vehicle Operators	3,339,000
Total Motor Vehicle, Fuel and License Taxes	$ 126,604,000
Total State Tax Revenue	$ 531,662,000
Percent Motor Vehicle is to Total State Taxes	23.8%

NOTE: These are preliminary data on a fiscal year basis.

SOURCE: U.S. Department of Commerce, Bureau of the Census, State Tax Collections: 1968

* * * * *

Federal Automotive Excise Tax Collection from Alabama	Estimated 1967
Passenger Cars and Motorcycles	$ 20,552,000
Trucks, Buses, Trailers	8,276,000
Parts and Accessories	1,122,000
Tires, Tubes, Tread Rubber	8,280,000
Motor Fuel	52,834,000
Lubricating Oil	976,000
Motor Vehicle Use (1)	1,774,000
Total	$ 93,814,000

(1) Tax at $3.00 per 1,000 pounds per year on vehicle with taxable G.V.W. over 26,000 pounds operated on the highways.

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

MOTOR TRUCK DATA, ALABAMA

Truck Taxes in Alabama, 1967

		Truck Percent of Total
Registration Fees........................	$10,602,000	39.4
Miscellaneous Receipts..................	3,479,000	53.7
Motor Fuel Taxes........................	38,127,000	38.5
Motor Carrier Taxes.....................	32,000	12.4
Total User Taxes........................	$52,240,000	39.4

* * * * *

Truck Registrations, 1967.............................. 315,257
Trucks as Percent of Total Registrations................ 18.2%

SOURCE: "Truck Taxes by States - Seventeenth Annual Edition," American Trucking Associations, Inc.

* * * * *

Farm Trucks in Alabama, 1964

Motor Trucks on Farms................. 69,515
Percent of Privately Owned Trucks..... 24.6%

SOURCE: U.S. Department of Commerce, Bureau of the Census, Census of Agriculture, 1964.

* * * * *

Truck Dealers in Alabama as of February 1, 1968

Exclusive Truck Dealers...................... 69
Total Truck Dealers.......................... 309

SOURCE: R.L. Polk & Co.

MISCELLANEOUS ALABAMA DATA

Employment in Highway Transport Industries, Alabama

Motor Vehicle and Parts Manufacturers	9,096
Petroleum Industry	2,370
Automotive Sales and Servicing	34,805
Road Construction and Maintenance	19,906
Truck Drivers*	196,594
Motor Bus and Taxi Employment	1,517
Total Alabama	264,288

* - Including maintenance, shipping, and other trucking employees.

SOURCE: Estimated by Automobile Manufacturers Association on basis of latest Federal Government data by states.

* * * * *

Road and Street Mileage, 1967

Non-surfaced	7,669
Surfaced	70,181
Total	77,850

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

Auto and Truck Rental Business, 1963

Number of Establishments	104
Receipts	$11,668,000

SOURCE: U.S. Department of Commerce, Bureau of the Census, 1963 Census of Business.

MOTOR VEHICLES IN CALIFORNIA

AUTOMOBILE MANUFACTURERS ASSOCIATION

FIVE PARTS
MANUFACTURING
PLANTS
TWENTY THREE
PARTS DEPOTS
TWELVE
ASSEMBLY
PLANTS
THREE
PROVING
GROUNDS

MOTOR VEHICLES IN CALIFORNIA

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Highlights

EMPLOYMENT

The manufacture, distribution, maintenance, and commercial use of motor vehicles in California provides employment for 1,600,000 workers. (Page 17)

AUTOMOTIVE BUSINESSES

Firms *primarily* engaged in the manufacture, distribution, and servicing of motor vehicles in California operated 31,200 different establishments employing 286,000 people. Annual payrolls exceeded $1.7 billion. In addition, for-hire trucking employed 77,000 workers with an annual payroll of $550 million. (Page 6, 11)

MANUFACTURERS

Manufacturers of motor vehicles in California, not including independent suppliers:

Operate 185 *plants* or *offices*

Employ 33,400 workers

Disburse $267 million in annual *wages* and *salaries*

Pay almost $32 million a year *in taxes to state and local governments*

Assemble nearly 900,000 new vehicles in the state

(Page 4)

SUPPLIERS

Motor vehicle manufacturers *purchase* more than $280 million worth of goods and services from almost 3,900 different *firms* in California. (Page 4)

DEALERS

In California there are:

2,361 new car and truck *dealers*

With an *investment* of $386 million

Employing 78,000 workers

Paying $599 million in annual *wages* and *salaries*

(Page 4)

STOCKHOLDERS

About 244,000 residents in California *own stock* in automotive firms. (Page 4)

TAXES

Highway users in California paid $1,050 million in special state vehicle taxes. Motor vehicle, fuel, and license taxes accounted for 18 percent of total state tax revenues. (Page 13)

Federal automotive excise taxes paid by users in California amounted to an additional $556 million. (Page 13)

Motor trucks in California—15 percent of vehicles registered—paid 30 percent of total special state vehicle taxes. (Page 16)

REGISTRATIONS

Total vehicles registered in California amounted to 11,215,000 in 1968—9,398,000 were automobiles and 1,817,000 were commercial vehicles. (Page 5)

Nine percent of trucks are on farms. (Page 16)

NEW REGISTRATIONS

Passenger cars newly registered in California in 1967 totaled 809,000 and 136,000 new motor trucks were also registered. (Page 5)

DRIVERS

There are 10,688,000 licensed drivers in California or 1.00 driver per registered vehicle. (Page 5)

Economy

A special study of motor vehicle manufacturers provides some new measures of the importance of the motor vehicle industry to the economy of the State of California:

> Manufacturers of motor vehicles, not including independent suppliers, operate 185 different *plants or offices* in the state. They *employ* 33,400 workers, with an annual *payroll* of $267 million. Annual *taxes paid to state and local governments* by these manufacturers approach $32 million.
>
> An incomplete count of *suppliers* to the industry who are located in the state shows almost 3,900 different *firms* from whom the industry *purchases* more than $280 million per year.
>
> Some 244,000 persons in the state are *stockholders* of automotive firms.
>
> There are 2,361 new car and truck *dealers* in the state, with a total *investment* of $386 million. They *employ* 78,000 people and pay $599 million in *wages* and *salaries*.

SOURCE: Special studies by Automobile Manufacturers Association.

MOTOR VEHICLE PRODUCTION IN CALIFORNIA

	Number Produced	**Percent of Total U.S. Production**
Passenger Cars (Model Year)		
1966	768,058	8.9
1967	684,088	8.9
1968	651,598	7.8
Motor Trucks (Calendar Year)		
1966	164,417	9.4
1967	175,643	11.1

SOURCE: Ward's 1968 Automotive Yearbook.

Registrations

TOTAL VEHICLE REGISTRATIONS

Motor Vehicles	1967	Estimated 1968
Automobiles	9,088,947	9,398,000
Trucks and Buses	1,760,567	1,817,000
Total	10,849,514	11,215,000

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

Trucks-Special Type	1967
Truck-Tractor	58,426
Diesel Trucks	50,783
Diesel Buses	7,291

Motor Buses	1967
School	10,332
Commercial	9,506
Total	19,838

Commercial Trailers	1967
Full Trailers	82,161
Semi-Trailers	83,549
Total	165,719

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

New Motor Vehicle Registrations	1966	1967
Passenger Cars	832,338	809,217
Motor Trucks	150,927	136,275
Total	983,265	945,492

SOURCE: R. L. Polk & Company.

Drivers	
Number of Licensed Drivers in 1967	10,688,074
Drivers per Private Motor Vehicle	1.00

SOURCE: U.S. Department of Transportation, Bureau of Public Roads

Automotive Businesses

SUMMARY

Type of Business	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Businesses in California			
Manufacturing	600	51,248	$ 369,680
Wholesale Trade	2,348	28,924	198,984
Retail Trade	20,371	162,268	923,652
Services	7,905	43,663	218,636
Transportation, Highway	5,847	105,554	719,304
Total Automotive Businesses*	37,071	391,657	$ 2,430,256
All Businesses in California**	336,112	4,943,842	$31,982,080
Automotive Businesses as Percent of all Businesses in California	11.0%	7.9%	7.6%
Automotive Related Businesses*** (not included above, partial list)	3,317	55,253	$ 451,948

#—Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

*—Some automotive businesses are not included in this analysis. Self-employed persons in the automotive business are not included. Persons employed in automotive departments of establishments, such as department stores whose principal business is in non-automotive products, would also be omitted.

**—Does not include agriculture, government, railroads, or persons in domestic service or who are self-employed.

***—Petroleum extraction, refining, and wholesale distribution; highway and street construction; trailer parks. (See page 11)

SOURCE: Compiled by Automobile Manufacturers Association from *County Business Patterns, 1967*, U.S. Department of Commerce, Bureau of the Census.

MANUFACTURING

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Manufacturing Businesses in California			
Tires and Inner Tubes	32	7,799	$ 60,192
Electrical Products, N.E.C.*			
Storage Batteries	31	2,007	14,616
Engine Electrical Equipment	26	964	5,548
Motor Vehicles and Equipment	383	35,151	260,984
Truck and Bus Bodies	77	2,608	18,336
Truck Trailers	28	2,216	17,732
Motor Vehicle and Parts	278	30,327	224,916
Trailer Coaches	128	5,327	28,340
Total Automotive Manufacturing	600	51,248	$ 369,680
All Manufacturing Businesses in California	30,241	1,538,269	$11,956,424
Automotive Manufacturing as Percent of all Manufacturing Businesses in California	2.0	3.3	3.1

#—Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

*N.E.C.—Not elsewhere classified.

SOURCE: Compiled by Automobile Manufacturers Association from *County Business Patterns, 1967*, U.S. Department of Commerce, Bureau of the Census.

Automotive Businesses

WHOLESALE TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Wholesale Businesses in California			
Motor Vehicles & Automotive Equipment	2,348	28,924	$ 198,984
Automobiles & Other Motor Vehicles	311	7,740	61,264
Automotive Equipment	1,840	18,841	121,472
Tires and Tubes	191	2,295	16,080
Total Automotive Wholesale	2,348	28,924	$ 198,984
All Wholesale Businesses in California	25,498	366,331	$ 2,745,304
Automotive Wholesale as Percent of all Wholesale Businesses in California	9.2	7.9	7.2

#—Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from *County Business Patterns, 1967,* U.S. Department of Commerce, Bureau of the Census.

RETAIL TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Retail Businesses in California			
Automotive Dealers & Service Stations	20,371	162,268	$ 923,652
New and Used Car Dealers	2,050	70,264	538,164
Used Car Dealers	1,172	4,662	25,616
Tire Battery and Accessory Dealers	1,742	13,875	81,968
Gasoline Service Stations	14,422	67,854	246,564
Miscellaneous Automotive Dealers	962	5,507	30,864
Total Automotive Retail	20,371	162,268	$ 923,652
All Retail Trade Businesses in California	95,992	987,844	$4,467,988
Automotive Retail Trade as Percent of all Retail Trade in California	21.2	16.4	20.7

#—Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from *County Business Patterns, 1967*, U.S. Department of Commerce, Bureau of the Census.

Automotive Businesses

SERVICES

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Service Businesses in California			
Automobile Repair, Services & Garages	7,905	43,663	$ 218,636
Automobile Rentals without Drivers	445	4,763	31,524
Automobile Parking	345	4,149	16,092
Automobile Repair Shops	6,227	23,582	141,004
Top and Body Repair Shops	1,063	4,962	32,508
Battery and Ignition Repair Shops	142	562	3,124
Radiator Repair Shops	259	597	3,528
Tire Retreading and Repair Shops	282	1,807	11,148
Paint Shops	347	2,010	10,600
Glass Replacement and Repair Shops	147	518	3,656
General Automobile Repair Shops	3,024	10,000	57,812
Automobile Repair Shops N.E.C.*	962	3,125	18,620
Automobile Service, Except Repairs**	886	11,141	29,904
Total Automotive Services	7,905	43,663	$ 218,636
All Service Businesses in California	106,029	985,868	$5,132,788
Automotive Services as Percent of all Services in California	7.5	4.4	4.3

#—Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

*N.E.C.—Not elsewhere classified.

**—Automobile laundries, driving instruction, towing, etc

SOURCE: Compiled by Automobile Manufacturers Association from *County Business Patterns, 1967,* U.S. Department of Commerce, Bureau of the Census.

HIGHWAY TRANSPORTATION

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Highway Transportation Businesses in California			
Local Passenger Transportation....	650	28,661	$ 164,624
Local and Suburban Transportation.............	243	12,279	80,196
Local and Suburban Transit	50	9,800	69,384
Local Passenger Transportation N.E.C.*.	193	2,479	10,828
Taxicabs....................	259	9,170	36,316
Intercity Highway Transportation.............	46	5,199	40,992
Transportation Charter Service.	22	383	1,292
Local Passenger Charter Service.............	11	247	880
School Buses................	45	1,396	4,800
Bus Terminal and Service Facilities..................	22	171	752
Bus Terminal Facilities....	17	86	276
Trucking Local and Long Distance**	5,188	76,893	554,680
Trucking without Storage**...	4,586	68,600	505,916
Local Trucking and Storage**.	598	8,206	48,064
Trucking Terminal Facilities.......	9	D	D
Total Highway Transportation........	5,847	105,554	$ 719,304
All Transportation and Other Public Utilities Businesses in California......	9,833	389,340	$2,931,012
Highway Transportation as Percent of all Transportation and Other Public Utilities Businesses in California.....	59.5	27.1	24.5

#—Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

*N.E.C.—Not elsewhere classified.

**—Data shown for report ng un ts, employment, and payroll of truck ng firms are substantially understated. The source data does not include establishments operated by self-employed persons. Furthermore, firms operating trucks but whose principal business may fall into some other business category are not included in these totals. See page 16 for Trucking Employment.

D—Withheld to avoid disclosure.

SOURCE: Compiled by Automobile Manufacturers Association from *County Business Patterns, 1967,* U.S. Department of Commerce, Bureau of the Census.

Automotive Businesses

RELATED BUSINESSES

Industry	Total Report-ing Units	Number of Em-ployees, March 1967	Total Payrolls, 1967# (000)
Mining			
Crude Petroleum and Natural Gas...	360	10,386	$ 85,876
Contract Construction			
Highway and Street Construction...	1,052	18,312	157,708
Manufacturing			
Petroleum Refining................	74	13,414	118,356
Paving Mixtures and Blocks....	66	934	9,336
Lubricating Oils and Greases...	33	596	4,336
Wholesale Trade			
Petroleum Bulk Stations & Terminals.	806	9,115	69,196
Services			
Trailer Parks....................	926	2,496	7,140

#—Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from *County Business Patterns, 1967,* U.S. Department of Commerce, Bureau of the Census.

Taxes

Highway User Revenues in California	Estimated 1968
Motor Fuel Tax	$ 585,719,000
Motor Vehicle Registration Fees	415,200,000
Other Motor Vehicle Fees	10,654,000
Motor Carrier Fees	22,610,000
Miscellaneous	16,000,000
Total	$1,050,183,000

NOTE: These are preliminary data on a calendar year basis.

SOURCE: U. S. Department of Transportation, Bureau of Public Roads.

Special Motor User Taxes	Estimated 1968
State Tax on Motor Vehicle Fuels	$ 580,675,000
State License Tax on Motor Vehicles	230,752,000
State License Tax on Vehicle Operators	9,810,000
Total Motor Vehicle, Fuel and License Taxes	$ 821,237,000
Total State Tax Revenue	$4,663,369,000
Percent Motor Vehicle is to Total State Taxes	17.6%

NOTE: These are preliminary data on a fiscal year basis.

SOURCE: U.S. Department of Commerce, Bureau of the Census, *State Tax Collections: 1968.*

Federal Automotive Excise Tax Collections from California	Estimated 1967
Passenger Cars and Motorcycles	$ 142,017,000
Trucks, Buses, Trailers	41,405,000
Parts and Accessories	6,469,000
Tires, Tubes, Tread Rubber	47,756,000
Motor Fuel	304,010,000
Lubricating Oil	5,617,000
Motor Vehicle Use (1)	8,743,000
Total	$ 556,017,000

(1) Tax at $3.00 per 1,000 pounds per year on vehicle with taxable G.V.W. over 26,000 pounds operated on the highways.

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

Manufacturers

CAR AND TRUCK ASSEMBLY PLANTS

City	Company or Division	Make and Type of Vehicle
Fremont	GM : GM Assembly	Buick, Chevrolet, Oldsmobile, Pontiac—cars; Chevrolet, GMC—trucks
Hayward	Gillig Bros.	Gillig coach—integral school buses
Hayward	Mack	Mack—trucks
Van Nuys	GM Chevrolet	Chevrolet—cars
Los Angeles	Chrysler	Dart, Dodge, Plymouth, Valiant—cars
Los Angeles	Crown Coach Corp.	Crown—motor coaches, fire engines
Los Angeles	Ford	Ford, Thunderbird—cars
Newark	Peterbilt Motors	Peterbilt—heavy duty diesel trucks
Pomona	Freightliner	White-Freightliner—trucks
San Jose	Ford	Mustang, Cougar—cars Ford—trucks
San Leandro	International Harvester	International—heavy duty trucks
South Gate	GM : GM Assembly	Buick, Chevrolet, Oldsmobile, Pontiac—cars

PARTS MANUFACTURING OTHER THAN ASSEMBLY PLANTS

City	Company or Division	Product
Anaheim	GM: Delco-Remy	Batteries
Hayward	Gillig Bros.	Gillig coach—integral school bus
Los Angeles	Crown Coach	Parts for buses and fire apparatus
Van Nuys	GM: Fisher Body	Chevrolet bodies
Newark	Peterbilt Motors	Heavy duty diesel trucks

PARTS DEPOTS OF MOTOR VEHICLE MANUFACTURERS

City	Company
Alhambra	Checker Motors (Cab Service & Parts Corp.)
Berkeley	GM : United Motors Service
Brisbane	KAISER Jeep

City	Company or Division
Hayward	Gillig Bros.
Los Angeles	American Motors
Los Angeles	Crown Coach
Los Angeles	Ford
Los Angeles	GM : Cadillac
Los Angeles	GM : United Motors Service
Los Angeles	Gillig Bros.
Los Angeles	Mack Trucks
Los Angeles	White Trucks
Los Angeles	KAISER Jeep
Newark	Peterbilt
Oakland	Crane Carrier Oakland
Oakland	GM : Buick, Cadillac, Chevrolet, Pontiac, Oldsmobile
Oakland	GMC Truck & Coach
Oakland	Parts and Service-Crane Carriers Industries
Richmond	International Harvester
San Francisco	American Motors
San Francisco	Ford
San Leandro	Chrysler Corporation
Van Nuys	GM : Buick, Chevrolet, Pontiac, Oldsmobile

PROVING GROUNDS OF MOTOR VEHICLE MANUFACTURERS

El Segundo	General Motors Corporation, California Vehicle Emission Laboratory
Hayward	Gillig Bros.
Los Angeles	Crown Coach Corporation

SOURCE: Automobile Manufacturers Association.

Motor Truck

TRUCK TAXES IN CALIFORNIA, 1967

		Truck Percent of Total
Registration Fees	$113,141,000	29.0
Miscellaneous Receipts	8,014,000	33.1
Motor Fuel Taxes	154,984,000	27.8
Motor Carrier Taxes	20,202,000	90.0
Total User Taxes	$296,305,000	29.8

Truck Registration, 1967	1,651,412
Trucks as Percent of Total Registrations	14.9%

SOURCE: *Truck Taxes by States—Seventeenth Annual Edition,* American Trucking Associations, Inc.

FARM TRUCKS IN CALIFORNIA, 1964

Motor Trucks on Farms	126,119
Percent of Privately Owned Trucks	8.7%

SOURCE: U.S. Department of Commerce, Bureau of the Census, *Census of Agriculture, 1964.*

TRUCK DEALERS IN CALIFORNIA AS OF FEBRUARY 1, 1968

Exclusive Truck Dealers	388
Total Truck Dealers	1,228

SOURCE: R.L. Polk & Co.

Motor Vehicle and Parts Manufacturers	51,248
Petroleum Industry	[illegible]2,529
Automotive Sales and Servicing	334,855
Road Construction and Maintenance	[illegible]
Truck Drivers*	[illegible]234
Motor Bus and Taxi Employment	[illegible]
Total California	[illegible]

*—Including maintenance, shipping, and other trucking [illegible]

SOURCE: Estimated by Automobile Manufacturers [illegible] ment data by states.

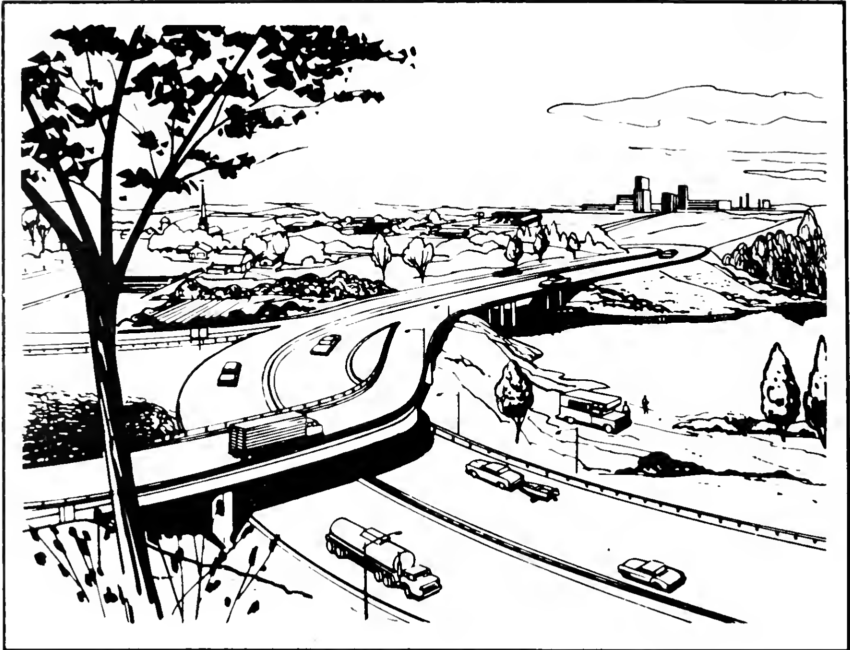
Non-surfaced	[illegible]
Surfaced	115,[illegible]
Total	[illegible]

SOURCE: U.S. Department of Transportation, [illegible]

Number of Establishments	[illegible]
Receipts	$138,[illegible]

SOURCE: U.S. Department of Commerce, Bureau of the [illegible]

D. MOTOR VEHICLES IN FLORIDA



MOTOR VEHICLES IN FLORIDA

AUTOMOBILE MANUFACTURERS ASSOCIATION

MOTOR VEHICLES IN FLORIDA

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AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.

ARJAY MILLER, CHAIRMAN
THOMAS C. MANN, PRESIDENT
RUSSELL E. MACCLEERY, ADMINISTRATIVE VICE PRESIDENT

320 NEW CENTER BLDG., DETROIT, MICHIGAN 48202

WASHINGTON
1619 MASSACHUSETTS AVENUE N.W.

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AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.

320 NEW CENTER BUILDING • DETROIT, MICHIGAN 48202 • TRINITY 2-4311 AREA 313

ARJAY MILLER, CHAIRMAN
THOMAS C. MANN, PRESIDENT
RUSSELL E. MacCLEERY, ADMINISTRATIVE VICE PRESIDENT

Gentlemen:

Americans now own more than 100 million cars, trucks and buses -- nearly half the world total -- or about one vehicle for every two persons in the country.

Motor vehicles -- their manufacture, sale, servicing and commercial use -- represent one of the most dynamic forces affecting our national economy. One American business in six is automotive related. About 13,500,000 Americans -- one of every seven employed persons -- work in highway transportation industries.

Motor vehicle producers maintain plant, office, warehouse or test facilities in nearly every state and in addition purchase materials, parts and services from some 40,000 independent suppliers.

Directly and indirectly the industry contributes a large share of taxes to national, state and local governments. Automotive stock is now held by nearly three million Americans.

To highlight the importance of motor vehicles the Automobile Manufacturers Association has prepared reports summarizing significant facts concerning the automotive industry for the various states. I hope that you will find the attached report for your state interesting.

Cordially,

Thomas C. Mann

HIGHLIGHTS

THE MOTOR VEHICLE INDUSTRY IN FLORIDA

Employment

The manufacture, distribution, maintenance, and commercial use of motor vehicles in Florida provides employment for 403,000 workers. (Page 15)

Automotive Businesses

Firms primarily engaged in the manufacture, distribution, and servicing of motor vehicles in Florida operated 11,200 different establishments employing 79,600 people. Annual payrolls exceeded $387 million. In addition, for-hire trucking employed 19,300 workers with an annual payroll of $98 million. (Pages 5, 10)

Motor Vehicle Manufacturers

Manufacturers of motor vehicles in Florida, not including independent suppliers,:

- Operate 54 plants or offices
- Employ 2,000 workers
- Disburse almost $16 million in annual wages and salaries
- Pay more than $1 million a year in taxes to state and local government

(Page 3)

Suppliers

Motor vehicle manufacturers purchase more than $86 million worth of goods and services from more than 700 different firms in Florida. (Page 3)

Dealers

In Florida there are:

- 856 new car and truck dealers
- With an investment of $128 million
- Employing 26,000 workers
- Paying $164 million in annual wages and salaries

(Page 3)

Stockholders

About 101,000 residents in Florida own stock in automotive firms. (Page 3)

Vehicle Taxes

Highway users in Florida paid $314 million in special state vehicle taxes. Motor vehicle, fuel, and license taxes accounted for 29 percent of total state tax revenues. (Page 13)

Federal automotive excise taxes paid by users in Florida amounted to an additional $185 million. (Page 13)

Motor trucks in Florida -- 11 percent of vehicles registered -- paid 24 percent of total special state vehicle taxes. (Page 14)

Vehicle Registrations

Total vehicles registered in Florida amounted to 3,537,000 in 1968 -- 3,085,000 were automobiles and 452,000 were commercial vehicles. (Page 4)

Eleven percent of trucks are on farms. (Page 14)

New Vehicle Registrations

Passenger cars newly registered in Florida in 1967 totaled 307,100 and 44,100 new motor trucks were also registered. (Page 14)

Drivers

There are 3,335,861 licensed drivers in Florida or 1.00 driver per registered vehicle.

The Economy of Florida and the Motor Vehicle Industry

A special study of motor vehicle manufacturers provides some new measures of the importance of the motor vehicle industry to the economy of the State of Florida:

> Manufacturers of motor vehicles, not including independent suppliers, operate 54 different plants or offices in the state. They employ 2,000 workers, with an annual payroll of almost $16 million. Annual taxes paid to state and local governments by these manufacturers exceed $1 million.
>
> An incomplete count of suppliers to the industry who are located in the state shows close to 700 different firms from whom the industry purchases more than $86 million per year.
>
> Some 101,000 persons in the state are stockholders of automotive firms.
>
> There are 856 new car and truck dealers in the state, with a total investment of $128 million. They employ 26,000 people and pay $164 million in wages and salaries.

SOURCE: Special studies by Automobile Manufacturers Association.

4

REGISTRATIONS IN FLORIDA

Total Vehicle Registrations

Motor Vehicles	1967	Estimated 1968
Automobiles	2,960,086	3,085,000
Trucks and Buses	432,575	452,000
Total	3,392,661	3,537,000

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

Trucks-Special Type	1967
Truck-Tractor	32,343
Diesel Trucks	28,612
Diesel Buses	1,806

Motor Buses	1967
School	5,162
Commercial	2,005
Total	7,167

Commercial Trailers	1967
Full Trailers	-
Semi-Trailers	33,576
Total Truck-Trailers	33,576

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

New Motor Vehicle Registrations	1966	1967
Passenger Cars	329,216	307,155
Motor Trucks	45,905	44,176
Total	375,121	351,331

SOURCE: R. L.Polk & Co.

* * * * *

Number of Licensed Drivers in 1967	3,335,861
Drivers per Private Motor Vehicle	1.00

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

AUTOMOTIVE BUSINESSES IN FLORIDA

1 9 6 7

SUMMARY

Type of Business	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Businesses in Florida			
Manufacturing	120	2,932	$ 15,332
Wholesale Trade	957	9,795	54,916
Retail Trade	7,759	54,860	262,568
Services	2,380	12,013	54,888
Transportation, Highway	1,963	26,444	129,312
Total Automotive Businesses*	13,179	106,044	$ 517,016
All Businesses in Florida**	120,158	1,461,875	$ 7,053,220
Automotive Businesses as Percent of all Businesses in Florida	11.0	7.3	7.3
Automotive Related Businesses*** (not included above, partial list)	1,395	19,264	$ 104,560

* - Some automotive businesses are not included in this analysis. Self-employed persons in the automotive business are not included. Persons employed in automotive departments of establishments, such as department stores whose principal business is in non-automotive products, would also be omitted.

** - Does not include agriculture, government, railroads, or persons in domestic service or who are self-employed.

*** - Petroleum extraction, refining, and wholesale distribution; highway and street construction; trailer parks. (See page 11)

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN FLORIDA

1 9 6 7

MANUFACTURING

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Manufacturing Businesses in Florida			
Electrical Products, N.E.C. Storage Batteries.................	15	717	$ 4,564
Motor Vehicles and Equipment..............	63	D	D
Truck and Bus Bodies	11	189	996
Truck Trailers....................	3	D	D
Motor Vehicles and Parts..........	2	D	D
Trailer Coaches..................	42	2,026	9,772
Total Automotive Manufacturing	120	2,932*	$ 15,332*
All Manufacturing Businesses in Florida.......	7,499	285,297	$ 1,670,944
Automotive Manufacturing as Percent of all Manufacturing Businesses in Florida.....	1.6	1.0	0.9

* - Partial total.
\# - Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
D - Withheld to avoid disclosure.
N.E.C. - Not elsewhere classified.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN FLORIDA

1 9 6 7

WHOLESALE TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Wholesale Businesses in Florida			
Motor Vehicles & Automotive Equipment......	957	9,795	$ 54,916
Automobiles & Other Motor Vehicles...	152	3,102	19,708
Automotive Equipment.................	750	6,210	32,168
Tires and Tubes......................	53	463	2,924
Total Automotive Wholesale......	957	9,795	$ 54,916
All Wholesale Businesses in Florida...........	9,280	113,676	$ 666,740
Automotive Wholesale as Percent of all Wholesale Businesses in Florida..........	10.3	8.6	8.2

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN FLORIDA

1 9 6 7

RETAIL TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Retail Businesses in Florida			
Automotive Dealers & Service Stations......	7,759	54,860	$ 262,568
New and Used Car Dealers.............	704	22,854	144,404
Used Car Dealers.....................	481	2,132	10,296
Tire Battery and Accessory Dealers...	634	5,463	26,392
Gasoline Service Stations............	5,341	20,988	64,268
Miscellaneous Automotive Dealers.....	581	3,319	16,716
Total Automotive Retail.........	7,759	54,860	$ 262,568
All Retail Trade Businesses in Florida.........	33,496	354,714	$ 1,253,784
Automotive Retail Trade as Percent of all Retail Trade in Florida..................	23.2	15.5	20.9

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from _County Business Patterns, 1967_, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN FLORIDA

1 9 6 7

SERVICES

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Service Businesses in Florida			
Automobile Repair Services & Garages.........	2,380	12,013	$ 54,888
Automobile Rentals without Drivers........	243	2,850	16,048
Automobile Parking.......................	100	723	2,028
Automobile Repair Shops..................	1,852	7,033	32,984
Top and Body Repair Shops.............	282	1,092	5,476
Battery and Ignition Repair Shops......	66	208	860
Radiator Repair Shops.................	83	224	924
Tire Retreading and Repair Shops.......	102	753	3,556
Paint Shops...........................	153	915	4,640
Glass Replacement and Repair Shops.....	28	133	716
General Automobile Repair Shops........	884	2,719	11,944
Automobile Repair Shops N.E.C..........	254	989	4,848
Automobile Service, Except Repairs *.........	185	1,407	3.828
Total Automotive Services.........	2,380	12,013	$ 54.888
All Service Businesses in Florida...............	35,635	321,745	$ 1.259,944
Automotive Services as Percent of all Services in Florida......................	6.7	3.7	4.4

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
N.E.C. - Not elsewhere classified.
* - Automobile laundries, driving instruction, towing, etc.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN FLORIDA

1 9 6 7

HIGHWAY TRANSPORTATION

Industry	Total Reporting Units	of Employees, March 1967	Total Payrolls, 1967# (000)
Highway Transportation Businesses in Florida			
Local Passenger Transportation.................	412	7,108	$ 30,912
Local and Suburban Transportation...........	65	2,005	9,544
Local and Suburban Transit...............	21	963	5,188
Local Passenger Transportation N.E.C.....	44	1,042	4,352
Taxicabs.................................	232	3,164	8,048
Intercity Highway Transportation...........	20	1,492	12,020
School Buses..............................	65	138	244
Trucking Local and Long Distance*..............	1,551	19,336	98,400
Trucking without Storage*...................	1,329	16,070	86,484
Local Trucking and Storage*.................	222	3,266	11,920
Total Highway Transportation........	1,963	26,444	$ 129,312
All Transportaion and Other Public Utilities Businesses in Florida.........................	3,848	112,419	$ 740,660
Highway Transportation as Percent of all Transportation and Other Public Utilities Businesses in Florida.........................	51.0	23.5	17.5

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
N.E.C. - Not elsewhere classified.

* - Data shown for reporting units, employment, and payrolls of trucking firms are substantially understated. The source data does not include establishments operated by self-employed persons. Furthermore, firms operating trucks but whose principal business may fall into some other business category are not included in these totals. See Page 15 for Trucking Employment.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINFSSES IN FLORIDA

1 9 6 7

RELATED BUSINESSES

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Mining			
Crude Petroleum and Natural Gas................	13	D	$ D
Contract Construction			
Highway and Street Construction...............	455	12,683	68,628
Manufacturing			
Petroleum Refining...........................	5	123	644
Paving Mixtures and Blocks.................	19	448	2,876
Wholesale Trade			
Petroleum Bulk Stations & Terminals..........	429	4,627	28,216
Services			
Trailer Parks................................	474	1,383	4,196

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

D - Withheld to avoid disclosure.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

MOTOR VEHICLE MANUFACTURERS' PLANTS IN FLORIDA IN MARCH, 1968

Parts Depots of Motor Vehicle Manufacturers

City	Company or Division
Jacksonville	American Motors
Jacksonville	Chrysler Corporation
Jacksonville	Ford
Jacksonville	GM: Buick, Cadillac, Chevrolet, Pontiac, Oldsmobile

Proving Grounds of Motor Vehicle Manufacturers

City	Company or Division
Homestead	General Motors Corporation Research Staff - Florida Test Field

SOURCE: Automobile Manufacturers Association.

AUTOMOTIVE TAXES, FLORIDA

Highway User Revenues in Florida	Estimated 1968
Motor Fuel Tax	$ 193,022,000
Motor Vehicle Registration Fees	101,071,000
Other Motor Vehicle Fees	16,707,000
Motor Carrier Fees	1,373,000
Miscellaneous	2,100,000
Total	$ 314,273,000

NOTE: These are preliminary data on a calendar year basis.

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

Special Motor User Taxes	Estimated 1968
State Tax on Motor Vehicle Fuels	$ 190,460,000
State License Tax on Motor Vehicles	89,428,000
State License Tax on Vehicle Operators	7,608,000
Total Motor Vehicle, Fuel and License Taxes	$ 287,496,000
Total State Tax Revenue	$ 973,130,000
Percent Motor Vehicle is to Total State Taxes	29.5%

NOTE: These are preliminary data on a fiscal year basis.

SOURCE: U.S. Department of Commerce, Bureau of the Census, State Tax Collections: 1968

* * * * *

Federal Automotive Excise Tax Collection from Florida	Estimated 1967
Passenger Cars and Motorcycles	$ 53,906,000
Trucks, Buses, Trailers	13,549,000
Parts and Accessories	2,045,000
Tires, Tubes, Tread Rubber	15,100,000
Motor Fuel	95,944,000
Lubricating Oil	1,770,000
Motor Vehicle Use (1)	2,784,000
Total	$ 185,098,000

(1) Tax at $3.00 per 1,000 pounds per year on vehicle with taxable G.V.W. over 26,000 pounds operated on the highways.

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

MOTOR TRUCK DATA, FLORIDA

Truck Taxes in Florida, 1967

		Truck Percent of Total
Registration Fees................	$24,408,000	25.1
Miscellaneous Receipts...........	3,921,000	26.9
Motor Fuel Taxes.................	43,713,000	23.8
Motor Carrier Taxes..............	1,089,000	79.5
Total User Taxes.................	$73,131,000	24.6

* * * * *

Truck Registrations, 1967......................	395,267
Trucks as Percent of Total Registrations.......	11.6%

SOURCE: "Truck Taxes by States - Seventeenth Annual Edition," American Trucking Associations, Inc.

* * * * *

Farm Trucks in Florida, 1964

Motor Trucks on Farms................	40,554
Percent of Privately Owned Trucks....	11.4%

SOURCE: U.S. Department of Commerce, Bureau of the Census, Census of Agriculture, 1964.

* * * * *

Truck Dealers in Florida as of February 1, 1968

Exclusive Truck Dealers..............	80
Total Truck Dealers..................	349

SOURCE: R. L. Polk & Co.

MISCELLANEOUS FLORIDA DATA

Employment in Highway Transport Industries, Florida

Motor Vehicle and Parts Manufacturers	2,932
Petroleum Industry	4,750
Automotive Sales and Servicing	76,668
Road Construction and Maintenance	29,578
Truck Drivers*	284,250
Motor Bus and Taxi	4,941
Total Florida	403,119

* Including maintenance, shipping, and other trucking employees.

SOURCE: Estimated by Automobile Manufacturers Association on basis of latest Federal Government data by states.

* * * * *

Road and Street Mileage, 1967

Non-surfaced	25,627
Surfaced	57,271
Total	82,898

SOURCE: U.S. Department of Transportation, Burau of Public Roads.

* * * * *

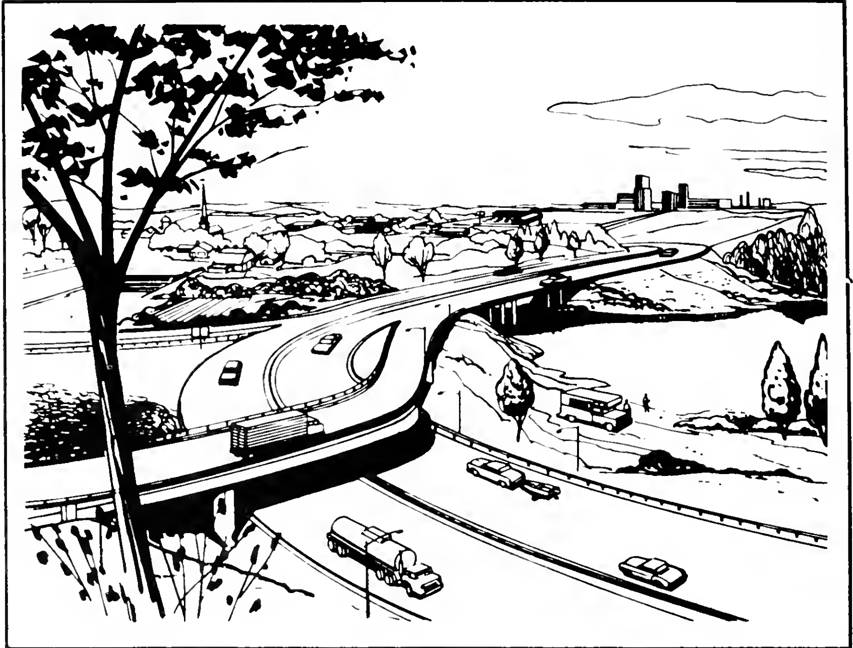
Auto and Truck Rental Business, 1963

Number of Establishments	336
Receipts	$60,132,000

SOURCE: U.S. Department of Commerce, Burau of the Census, 1963 Census of Business.

* * * * *

E. MOTOR VEHICLES IN MICHIGAN



MOTOR VEHICLES IN MICHIGAN

AUTOMOBILE MANUFACTURERS ASSOCIATION

MOTOR VEHICLES IN MICHIGAN

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AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.
ARJAY MILLER, CHAIRMAN
THOMAS C MANN, PRESIDENT
RUSSELL E MACCLEERY, ADMINISTRATIVE VICE PRESIDENT
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AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.

320 NEW CENTER BUILDING • DETROIT, MICHIGAN 48202 • TRINITY 2-4311 AREA 313

ARJAY MILLER CHAIRMAN
THOMAS C MANN PRESIDENT
RUSSELL E MacCLEERY, ADMINISTRATIVE VICE PRESIDENT

Gentlemen:

Americans now own more than 100 million cars, trucks and buses -- nearly half the world total -- or about one vehicle for every two persons in the country.

Motor vehicles -- their manufacture, sale, servicing and commercial use -- represent one of the most dynamic forces affecting our national economy. One American business in six is automotive related. About 13,500,000 Americans -- one of every seven employed persons -- work in highway transportation industries.

Motor vehicle producers maintain plant, office, warehouse or test facilities in nearly every state and in addition purchase materials, parts and services from some 40,000 independent suppliers.

Directly and indirectly the industry contributes a large share of taxes to national, state and local governments. Automotive stock is now held by nearly three million Americans.

To highlight the importance of motor vehicles the Automobile Manufacturers Association has prepared reports summarizing significant facts concerning the automotive industry for the various states. I hope that you will find the attached report for your state interesting.

Cordially,

Thomas C. Mann

HIGHLIGHTS

THE MOTOR VEHICLE INDUSTRY IN MICHIGAN

Employment

The manufacture, distribution, maintenance, and commercial use of motor vehicles in Michigan provides employment for 816,000 workers. (Page 19)

Automotive Businesses

Firms primarily engaged in the manufacture, distribution, and servicing of motor vehicles in Michigan operated 12,900 different establishments employing 445,000 people. Annual payrolls exceeded $3.4 billion. In addition, for-hire trucking employed 36,600 workers with an annual payroll of $281 million. (Pages 5, 10)

Motor Vehicle Manufacturers

Manufacturers of motor vehicles in Michigan, not including independent suppliers,:

Operate 274 plants or offices

Employ 449,000 workers

Disburse $4 billion in annual wages and salaries

Pay more than $202 million a year in taxes to state and local governments

Assemble over 3,000,000 new vehicles in the state
(Page 3)

Suppliers

Motor vehicle manufacturers purchase almost $4 billion worth of goods and services from more than 15,100 different firms in Michigan. (Page 3)

Dealers

In Michigan there are:

1,475 new car and truck dealers

With an investment of $165 million

Employing 33,600 workers

Paying $247 million in annual wages and salaries
(Page 3)

Stockholders

About 301,000 residents in Michigan own stock in automotive firms. (Page 3)

Vehicle Taxes

Highway users in Michigan paid $294 million in special state vehicle taxes. Motor vehicle, fuel, and license taxes accounted for 20 percent of total state tax revenues. (Page 17)

Federal automotive excise taxes paid by users in Michigan amounted to an additional $274 million (Page 17)

Motor trucks in Michigan -- 12 percent of vehicles registered -- paid 31 percent of total special state vehicle taxes. (Page 18)

Vehicle Registrations

Total vehicles registered in Michigan amounted to 4,275,000 in 1968 -- 3,705,000 were automobiles and 570,000 were commercial vehicles. (Page 4)

Eighteen percent of trucks are on farms. (Page 8)

New Vehicle Registrations

Passenger cars newly registered in Michigan in 1967 totaled 516,000 and 70,000 new motor trucks were also registered. (Page 4)

Drivers

There are 4,513,847 licensed drivers in Michigan or 1.11 driver per registered vehicle. (Page 4)

The Economy of Michigan and the Motor Vehicle Industry

A special study of motor vehicle manufacturers provides some new measures of the importance of the motor vehicle industry to the economy of the State of Michigan:

- Manufacturers of motor vehicles, not including independent suppliers, operate 274 different plants or offices in the state. They employ 449,000 workers, with an annual payroll of $4,065 million. Annual taxes paid to state and local governments by these manufacturers exceed $202 million.

- An incomplete count of suppliers to the industry who are located in the state shows more than 15,100 different firms from whom the industry purchases more than $3,950 million per year.

- Some 301,000 persons in the state are stockholders of automotive firms.

- There are 1,475 new car and truck dealers in the state, with a total investment of $165 million. They employ 33,600 people and pay $247 million in wages and salaries.

SOURCE: Special studies by Automobile Manufacturers Association.

* * * * * * *

Motor Vehicle Production in Michigan

	Number Produced	Percent of Total U.S. Production
Passenger Cars (Model Year)		
1966	3,054,303	35.5
1967	2,619,167	34.2
1968	2,933,995	35.0
Motor Trucks (Calendar Year)		
1966	514,606	29.3
1967	459,082	28.9
1968	511,078	26.4

SOURCE: *Ward's Automotive Reports*

4.

REGISTRATIONS IN MICHIGAN

Total Vehicle Registrations

Motor Vehicles	1967	Estimated 1968
Automobiles	3,587,441	3,705,000
Trucks and Buses	545,987	570,000
Total	4,133,428	4,275,000

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

Trucks-Special Type	1967
Truck-Tractor	37,827
Diesel Trucks	11,899
Diesel Buses	1,832

Motor Buses	1967
School	9,544
Commercial	2,879
Total	12,423

Commercial Trailers	1967
Full Trailers	5,368
Semi-Trailers	57,769
Total Truck-Trailers	63,137

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

New Motor Vehicle Registrations	1966	1967
Passenger Cars	571,363	515,692
Motor Trucks	71,630	69,780
Total	642,993	585,472

SOURCE: R.L.Polk & Company

Number of Licensed Drivers in 1967	4,513,847
Drivers per Private Motor Vehicle	1.11

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

AUTOMOTIVE BUSINESSES IN MICHIGAN

1 9 6 7

SUMMARY

Type of Business	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Businesses in Michigan			
Manufacturing	470	347,091	$ 2,883,692
Wholesale Trade	1,166	18,735	147,168
Retail Trade	8,866	63,353	330,596
Services	2,422	15,476	66,340
Transportation, Highway	2,744	46,536	329,760
Total Automotive Businesses*	15,668	491,191	$ 3,757,556
All Businesses in Michigan**	131,722	2,399,272	$15,830,580
Automotive Businesses as Percent of All Businesses in Michigan	11.9	20.5	23.7
Automotive Related Businesses***(not included above, partial list)	1,289	13,024	98,052

* - Some automotive businesses are not included in this analysis. Self-employed persons in the automotive business are not included. Persons employed in automotive departments of establishments, such as department stores whose principal business is in non-automotive products, would also be omitted.

** - Does not include agriculture, government, railroads, or persons in domestic service or who are self-employed.

*** - Petroleum extraction, refining, and wholesale distribution; highway and street construction; trailer parks. (See Page 11)

\# - Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

6.

AUTOMOTIVE BUSINESSES IN MICHIGAN

1 9 6 7

MANUFACTURING

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Manufacturing Businesses in Michigan			
Tires and Inner Tubes	6	6,388	$ 48,976
Electrical Products, N.E.C.			
Storage Batteries	9	632	4,728
Engine Electrical Equipment	25	6,639	48,752
Motor Vehicles and Equipment	366	330,598	2,767,020
Truck and Bus Bodies	19	1,070	6,140
Truck Trailers	6	225	1,620
Motor Vehicles and Parts	341	329,303	2,759,260
Trailer Coaches	64	2,834	14,216
Total Automotive Manufacturing	470	347,091	$2,883,692
All Manufacturing Businesses in Michigan	13,665	1,139,830	$9,200,900
Automotive Manufacturing as Percent of all Manufacturing Businesses in Michigan	3.4	30.5	31.3

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
N.E.C. - Not elsewhere classified.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN MICHIGAN

1 9 6 7

WHOLESALE TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Wholesale Businesses in Michigan			
Motor Vehicles & Automotive Equipment......	1,166	18,735	$ 147,168
Automobiles & Other Motor Vehicles...	186	4,147	37,480
Automotive Equipment.................	904	13,734	103,380
Tires and Tubes......................	73	754	5,536
Total Automotive Wholesale......	1,166	18,735	$ 147,168
All Wholesale Businesses in Michigan...........	10,819	140,572	$ 1,069,816
Automotive Wholesale as Percent of all Wholesale Businesses in Michigan..........	10.8	13.3	13.8

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

8.

AUTOMOTIVE BUSINESSES IN MICHIGAN

1 9 6 7

RETAIL TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Retail Businesses in Michigan			
Automotive Dealers & Service Stations......	8,866	63,353	$ 330,596
New and Used Car Dealers.............	1,289	29,564	209,116
Used Car Dealers.....................	429	1,389	6,764
Tire Battery and Accessory Dealers...	572	4,132	22,028
Gasoline Service Stations............	6,206	26,621	84,864
Miscellaneous Automotive Dealers.....	366	1,636	7,772
Total Automotive Retail.........	8,866	63,353	$ 330,596
All Retail Trade Businesses in Michigan........	41,249	415,041	$1,579,232
Automotive Retail Trade as Percent of all Retail Trade in Michigan..................	21.5	15.3	20.9

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN MICHIGAN

1 9 6 7

SERVICES

Industry	Total Reporting Units	Total of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Service Businesses in Michigan			
Automobile Repair, Services & Garages..........	2,422	15,476	$ 66,340
Automobile Rentals without Drivers........	168	1,583	10,820
Automobile Parking.......................	138	1,251	4,624
Automobile Repair Shops..................	1,726	6,780	39,144
Top and Body Repair Shops............	402	1,650	10,108
Battery and Ignition Repair Shops.....	43	128	636
Radiator Repair Shops................	58	160	852
Tire Retreading and Repair Shops......	40	323	1,892
Paint Shops..........................	160	776	4,328
Glass Replacement and Repair Shops....	67	283	1,768
General Automobile Repair Shops.......	720	2,517	14,284
Automobile Repair Shops N.E.C.	246	943	5,260
Automobile Service, Except Repairs*...........	389	5,818	11,724
Total Automotive Services.........	2,422	15,476	$ 66,340
All Service Businesses in Michigan................	36,023	341,821	$1,464,436
Automotive Services as Percent of all Services in Michigan.....................	6.7	4.5	4.5

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
* - Automobile laundries, driving instruction, towing, etc.
N.E.C. - Not elsewhere classified.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN MICHIGAN

1 9 6 7

HIGHWAY TRANSPORTATION

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Highway Transportation Businesses in Michigan			
Local Passenger Transportation	520	9,721	$ 47,560
Local and Suburban Transportation	66	3,425	24,440
Local and Suburban Transit	23	3,027	23,024
Local Passenger Transportation NEC	42	392	1,396
Taxicabs	400	4,959	13,724
Intercity Highway Transportation	22	1,033	8,328
Trucking Local and Long Distance*	2,217	36,627	280,788
Trucking without Storage*	2,097	34,672	269,212
Local Trucking and Storage*	120	1,955	11,608
Trucking Terminal Facilities	7	188	1,412
Total Highway Transportation	2,744	46,536	$ 329,760
All Transportation and Other Public Utilities Businesses in Michigan	3,996	121,925	$ 899,520
Highway Transportation as Percent of all Transportation and Other Public Utilities Businesses in Michigan	68.7	38.2	36.7

- Annual rate, based on taxable Payrolls, Jan.-Mar., 1967.
N.E.C. - Not elsewhere classified.
* - Data shown for reporting units, employment, and payrolls of trucking firms are substantially understated. The source data does not include establishments operated by self-employed persons. Furthermore, firms operating trucks but whose principal business may fall into some other business category are not included in these totals. See Page 19 for Trucking Employment.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN MICHIGAN

1 9 6 7

RELATED BUSINESSES

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Mining			
Crude Petroleum and Natural Gas	98	726	$ 4,876
Contract Construction			
Highway and Street Construction	296	3,081	23,192
Manufacturing			
Petroleum Refining	14	1,833	16,484
Paving Mixtures and Blocks	17	D	D
Lubricating Oils and Greases	22	D	D
Wholesale Trade			
Petroleum Bulk Stations & Terminals	685	7,013	52,156
Services			
Trailer Parks	157	371	1,344

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

D - Withheld to avoid disclosure.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

MOTOR VEHICLE MANUFACTURERS PLANTS IN MICHIGAN, MARCH 1968

Car and Truck Assembly Plants

City	Company or Division	Make and Type of Vehicle
Detroit	GM Cadillac	Cadillac - cars
Detroit	Chrysler Jefferson Assembly	Chrysler, Dodge, Imperial-cars
Detroit	Lynch Road Assembly	Dodge, Plymouth -cars
Detroit (Warren)	Divco Truck Division	Multi-stop retail delivery trucks
Detroit (Dearborn)	Ford	Mustang, Cougar - cars
Detroit	Hamtramck Assembly	Dart, Charger, Valiant, Barracuda - cars
Detroit (Highland Park)	Ford	M-151 Military vehicles; tractors
Detroit	Warren Truck Assembly Plant	Dodge - trucks
Detroit (Wayne)	Ford	Mercury, Ford - cars
Detroit (Wayne)	Ford: Michigan Truck	Ford - trucks; Bronco
Detroit (Wixom)	Ford	Lincoln Continental, Thunderbird - cars
Flint	GM: Buick	Buick - cars
Flint	GM: Chevrolet	Chevrolet - cars and trucks
Kalamazoo	Checker	Checker - taxicab; Marathon - cars, station wagons, Aerobuses, limousines
Lansing	Diamont T	Diamond T - trucks
Lansing	Duplex Division Warner & Swasey	Heavy duty trucks, crane carriers, fire chassis, lift trucks, loaders, etc.
Lansing	GM: Oldsmobile	Oldsmobile - cars
Lansing	Reo .	Reo - trucks
Pontiac	GMC Truck and Coach	GMC - trucks, commercial vehicles and coaches and Chevrolet trucks
Pontiac	GM: Pontiac	Pontiac - cars
Ypsilanti (Willow Run)	GM: Chevrolet	Chevrolet - cars

Parts Manufacturing Other Than Assembly Plants

City	Company or Division	Automotive Products
Bay City	GM: Chevrolet	Carburetors, die castings
Detroit	Chrysler: Amplex-Harper	Powdered metal products
Detroit*	Chrysler: Amplex-Trenton	Powdered metal products
Detroit	Chrysler: Detroit Universal	Universal joints; drive train components
Detroit	Chrysler: Eight Mile	Automotive body parts
Detroit	Chrysler: Lynch Road Forge	Forgings

* Included in Detroit Area: Dearborn, Hamtramck, Highland Park, Livonia, Northville, Sterling Township. (Utica), Trenton and Wayne.

Parts Manufacturing Other Than Assembly Plants - Con'd

City	Company or Division	Automotive Products
Detroit	Chrysler: Hamtramck Foundry	Engine castings
Detroit*	Chrysler: Chemical Div.	Adhesives, chemical products
Detroit*	Chrysler: Highland Park	Automotive stampings; parts
Detroit*	Chrysler: Eldon Ave.	Automotive parts; axles
Detroit	Chrysler: Mack Stamping	Automotive stampings
Detroit	Chrysler: McGraw Glass	Glass fabricating
Detroit	Chrysler: Mound Road Engine	V-8 car and truck engines
Detroit	Chrysler: Warren Stamping	Automotive stampings
Detroit	Chrysler: Outer Drive Stamping	Automotive stampings
Detroit	Chrysler: Sterling Stamping	Automotive stampings
Detroit*	Chrysler: Trenton Engine	Car and truck engines
Detroit	Chrysler: Vernor Trim	Automotive interior trim
Detroit	Chrysler: Vernor Tool and Die	Construction dies; jigs; fixtures
Detroit	Chrysler: Huber Foundry	Castings
Detroit	Chrysler: Warren Tool and Die	Dies; jigs; fixtures
Detroit	Chrysler: Winfield Foundry	Castings
Detroit	Chrysler: Wyoming Plant	Export packaging
Detroit*	Ford: Engine & Foundry	Castings
Detroit*	Ford: Engine & Foundry	Engines
Detroit*	Ford: Engine & Foundry	Valves; radiators
Detroit*	Ford: Glass	Glass windshields
Detroit*	Ford: Metal Stamping	Frames
Detroit*	Ford: Metal Stamping	Stampings
Detroit*	Ford: Steel	Hot and cold rolled sheets; spring flats
Detroit*	Ford: Transmission & Chassis	Automatic and standard transmissions
Detroit*	Ford: Transmission & Chassis	Rear axle, front end suspension assemblies; drive shafts
Detroit	GM: Chevrolet - Detroit Forge	Forgings
Detroit*	GM: Chevrolet - Detroit Gear & Axle	Automotive axles; sundry chassis parts; past model axle service parts
Detroit*	GM: Chevrolet	Springs, bumpers, stampings
Detroit	GM: Detroit Diesel	Diesel engines for light and heavy duty trucks
Detroit	GM: Fisher Body - Die & Machine Plant	Dies for stampings
Detroit	GM: Fisher Body - Fleetwood Plant	Cadillac bodies; trim fabrication
Detroit	GM: Fisher Body Plant 21	Cadillac bodies; past model service parts, tooling and fixtures (all GM car lines)

*Included in Detroit Area: Dearborn,Hamtramck,Highland Park, Livonia, Northville, Sterling Twp. (Utica), Trenton and Wayne.

Parts Manufacturing Other Than Assembly Plants - Con't

14.

City	Company or Division	Automotive Products
Detroit	GM: Fisher Body - Plant 37	Die tryout
Detroit*	GM: Fisher Body - Cut and Sew Plant	Trim fabrication
Detroit	GM: Ternstedt	Automobile body hardware and trim
Flint	GM: AC Spark Plug	Spark plugs; oil filters; instrument panels; fuel pumps and other automotive equipment
Flint	GM: Chevrolet Engine Plant	Engines
Flint	GM: Chevrolet Metal Fabrication Plant	Sheet metal
Flint	GM: Chevrolet - Flint Mfg - Motor Plant	Six-cylinder engines
Flint	GM: Chevrolet - Flint Mfg. - Pressed Metal Plant	Passenger car & truck sheet metal
Flint	GM: Fisher Body - Plant No. 1	Buick bodies; metal fabrication
Flint	GM: Fisher Body - Plant No. 2	Chevrolet bodies
Flint	GM: Ternstedt	Automobile body hardware and trim
Grand Blanc	GM: Fisher Body	Metal fabrication
Grand Rapids	GM: Diesel Equipment	Fuel injectors; valve lifters; cold formed precision parts
Grand Rapids	GM: Fisher Body - Plant No. 1	Metal fabrication
Grand Rapids	GM: Fisher Body - Plant No.2	Trim fabrication
Kalamazoo	GM: Fisher Body	Metal fabrication
Lansing	GM: Fisher Body	Oldsmobile bodies
Lansing	The Warner & Swasey Co. Duplex Div.	Crane carriers, heavyduty trucks, fire chassis, lift trucks, loaders, etc.
Lansing	White: Lansing Division	Vehicle parts
Lyons	Chrysler: Lyons Trim Plant	Automotive trim
Monroe	Ford: Metal Stamping	Wheels; coil springs; hub caps; bumpers
Mt.Clemens	Ford: Industrial Chemical Products	Chemicals; vinyl products
Owosso	Ford: General Parts	Batteries
Plymouth	Ford: General Parts	Heaters; air conditioners
Pontiac	GM: Fisher Body	Pontiac bodies
Saginaw	GM: Central Foundry - Saginaw Malleable Iron Plant	Arma Steel and malleable iron castings
Saginaw	GM: Chevrolet - Saginaw Foundries	Grey and nodular iron castings
Saginaw	GM: Chevrolet - Saginaw Service Mfg.	Past model service parts; water pumps and transmission controls
Saginaw	GM: Chevrolet - Saginaw Transmission	Standard shift transmissions

*Included in Detroit Area: Dearborn, Hamtramck, Highland Park, Livonia, Northville, Sterling Township. (Utica), Trenton and Wayne.

Parts Manufacturing Other Than Assembly Plants - Con't

City	Company or Division	Automotive Products
Saginaw	GM: Saginaw Steering Gear	Power and manual steering systems; energy absorbing steering columns front drive axles; propeller shafts; steering linkages; suspension units; air pumps for exhause emission control
Saline	Ford: General Parts	Plastic parts; instrument clusters; speedometer gauges
Tecumseh	GM: Fisher Body	Trim fabrication
Utica	Ford: Automotive Assembly	Automotive trim
Warren	GM: Chevrolet	Automotive wheels; steering; axles; other parts
Woodhaven	Ford: Metal Stamping	Stampings
(Ypsilanti (Willow Run)	GM: Hydra-Matic	Automatic transmissions
Ypsilanti (Willow Run)	GM: Fisher Body	Chevrolet bodies
Ypsilanti	Ford: General Parts	Generators; horns; distributors; transistorized ignition system components; shock absorbers; starters; voltage regulators; ignition coils
Ypsilanti (Rawsonville)	Ford: General Parts	Carburetors; powdered metal parts; alternators; small motors; temperature senders; fuel senders, master brake cylinders

Parts Depots of Motor Vehicle Manufacturers

City	Company
Detroit	American Motors
Detroit (Allen Park)	Chrysler Corporation
Detroit	Chrysler Corporation
(Center Line)	Chrysler Corporation
Detroit	Checker Motors (Cab Service & Parts Corp.
Detroit	GM: Cadillac
Detroit	GM: Buick, Chevrolet, Pontiac, Oldsmobile
Detroit	GM: United Motors Service
Detroit (Livonia)	Ford
Detroit	Ford
Flint	GM: AC Spark Plug
Flint	GM: Buick
Flint	GM: Chevrolet
Kalamazoo	Checker Motors (Cab Service & Parts Corp.)

Parts Depots of Motor Vehicle Manufacturers - Con't

City	Company
Lansing	GM: Oldsmobile
Lansing	The Warner & Swasey Co. Duplex Div.
Marysville	Chrysler Corporation
Plymouth	KAISER Jeep CORPORATION
Pontiac	GM: GMC Truck & Coach
Pontiac	GM: Pontiac
Wayne	GM: Detroit Diesel Engine

Proving Grounds of Motor Vehicle Manufacturers

City	Company or Division
Chelsea	Chrysler Corporation
Dearborn	Ford Motor Company
Kalamazoo	Checker Motors Corporation
Lansing	The Warner & Swasey Co. Duplex Div.
Milford	General Motors Corporation
Romeo	Ford Motor Company
Warren	General Motors Corporation Technical Center

SOURCE: Automobile Manufacturers Association.

AUTOMOTIVE TAXES, MICHIGAN

Highway User Revenues in Michigan		Estimated 1968
Motor Fuel Tax	$	243,569,000
Motor Vehicle Registration Fees		86,022,000
Other Motor Vehicle Fees		9,565,000
Motor Carrier Fees		1,842,000
Miscellaneous		3,250,000
Total	$	344,248,000

NOTE: These are preliminary data on a calendar year basis.

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

Special Motor User Taxes		Estimated 1968
State Tax on Motor Vehicle Fuels	$	215,589,000
State License Tax on Motor Vehicles		105,054,000
State License Tax on Vehicle Operators		7,398,000
Total Motor Vehicle, Fuel and License Taxes	$	328,041,000
Total State Tax Revenue	$	1,885,629,000
Percent Motor Vehicle is to Total State Taxes		17.4%

NOTE: These are preliminary data on a fiscal year basis.

SOURCE: U.S. Department of Commerce, Bureau of the Census, State Tax Collections: 1968

* * * * *

Federal Automotive Excise Tax Collections From Michigan		Estimated 1967
Passenger Cars and Motorcycles	$	90,504,000
Trucks, Buses, Trailers		21,096,000
Parts and Accessories		2,827,000
Tires, Tubes, Tread Rubber		20,873,000
Motor Fuel		132,678,000
Lubricating Oil		2,450,000
Motor Vehicle Use (1)		3,495,000
Total	$	273,923,000

(1) Tax at $3.00 per 1,000 pounds per year on vehicle with taxable G.V.W. over 26,000 pounds operated on the highways.

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

MOTOR TRUCK DATA, MICHIGAN

18.

Truck Taxes in Michigan, 1967

		Truck Percent of Total
Registration Fees........................	$ 39,432,000	47.7
Miscellaneous Receipts..................	1,563,000	12.0
Motor Fuel Taxes........................	50,289,000	25.2
Motor Carrier Taxes.....................	1,684,000	97.2
Total User Taxes........................	$ 92,968,000	31.3

* * * * *

Truck Registrations, 1967..............................	499,946
Trucks as Percent of Total Registrations................	12.0%

SOURCE: "Truck Taxes by States - Seventeenth Annual Edition," American Trucking Associations, Inc.

* * * * *

Farm Trucks in Michigan, 1964

Motor Trucks on Farms.................	80,489
Percent of Privately Owned Trucks.....	17.7%

SOURCE: U.S. Department of Commerce, Bureau of the Census, Census of Agriculture, 1964.

* * * * *

Truck Dealers in Michigan as of February 1, 1968

Exclusive Truck Dealers.......................	292
Total Truck Dealers...........................	1,105

SOURCE: R.L. Polk & Co.

MISCELLANEOUS MICHIGAN DATA

Employment in Highway Transport Industries, Michigan

Motor Vehicle and Parts Manufacturers	347,091
Petroleum Industry	8,846
Automotive Sales and Servicing	97,564
Road Construction and Maintenance	20,713
Truck Drivers*	335,566
Motor Bus and Taxi Employment	5,992
Total	815,772

* - Including maintenance, shipping and other trucking employees.

SOURCE: Estimated by Automobile Manufacturers Association on basis of latest Federal Government data by states.

* * * * * * *

Road and Street Mileage, 1967

Non-surfaced	18,876
Surfaced	95,019
Total	113,895

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * * * *

Auto and Truck Rental Business, 1963

Number of Establishments	370
Receipts	$55,961,000

SOURCE: U.S. Department of Commerce, Bureau of the Census, *1963 Census of Business*.

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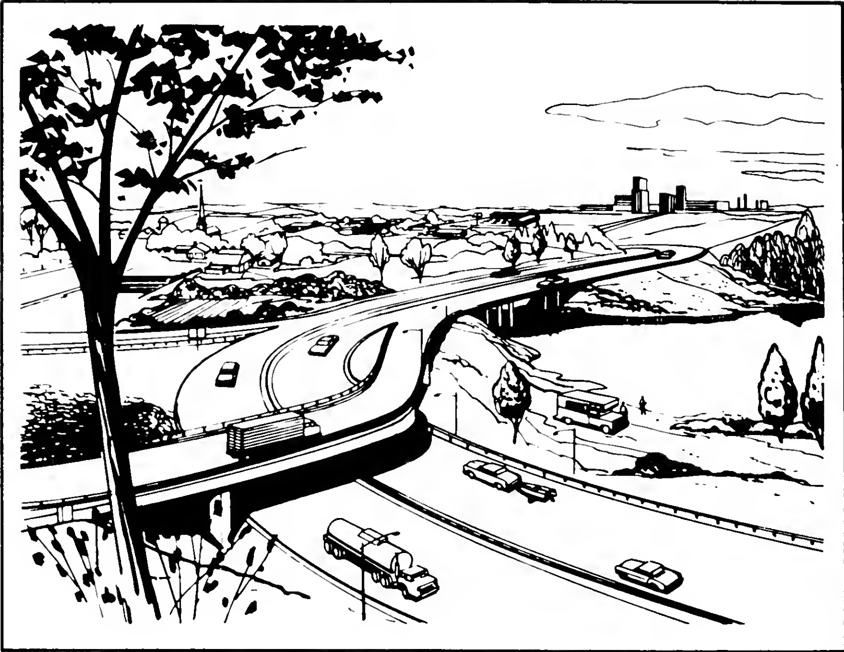
F. MOTOR VEHICLES IN NEVADA



MOTOR VEHICLES IN NEVADA

AUTOMOBILE MANUFACTURERS ASSOCIATION

MOTOR VEHICLES IN NEVADA

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AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.

ARJAY MILLER, CHAIRMAN
THOMAS C. MANN, PRESIDENT
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Gentlemen:

Americans now own more than 100 million cars, trucks and buses -- nearly half the world total -- or about one vehicle for every two persons in the country.

Motor vehicles -- their manufacture, sale, servicing and commercial use -- represent one of the most dynamic forces affecting our national economy. One American business in six is automotive related. About 13,500,000 Americans -- one of every seven employed persons -- work in highway transportation industries.

Motor vehicle producers maintain plant, office, warehouse or test facilities in nearly every state and in addition purchase materials, parts and services from some 40,000 independent suppliers.

Directly and indirectly the industry contributes a large share of taxes to national, state and local governments. Automotive stock is now held by nearly three million Americans.

To highlight the importance of motor vehicles the Automobile Manufacturers Association has prepared reports summarizing significant facts concerning the automotive industry for the various states. I hope that you will find the attached report for your state interesting.

Cordially,

Thomas C. Mann

HIGHLIGHTS

THE MOTOR VEHICLE INDUSTRY IN NEVADA

<u>Employment</u>

The manufacture, distribution, maintenance, and commercial use of motor vehicles in Nevada provides employment for 58,000 workers. (Page 13)

<u>Automotive Businesses</u>

Firms <u>primarily</u> engaged in the manufacture, distribution, and servicing of motor vehicles in Nevada operated 960 different establishments employing 6,800 people. Annual payrolls exceeded $33 million. In addition, for-hire trucking employed 1,200 workers with an annual payroll of almost $10 million. (Pages 5,9)

<u>Dealers</u>

In Nevada there are:

. 80 new car and truck <u>dealers</u>

. With an <u>investment</u> of $10 million

. <u>Employing</u> 1,700 workers

. Paying $12 million in annual <u>wages</u> <u>and</u> <u>salaries</u>

(Page 3)

<u>Stockholders</u>

About 2,800 residents in Nevada <u>own</u> <u>stock</u> in automotive firms. (Page 3)

<u>Vehicle Taxes</u>

Highway users in Nevada paid $25 million in special state vehicle taxes. Motor vehicle, fuel, and license taxes accounted for 25 percent of total state tax revenues. (Page 11)

Federal automotive excise taxes paid by users in Nevada amounted to an additional $17 million. (Page 11)

Motor trucks in Nevada -- 22 percent of vehicles registered -- paid 48 percent of total special state vehicle taxes. (Page 12)

Vehicle Registrations

Total vehicles registered in Nevada amounted to 295,000 in 1968 -- 222,000 were automobiles and 73,000 were commercial vehicles. (Page 4)

Seven percent of trucks are on farms. (Page 12)

New Vehicle Registrations

Passenger cars newly registered in Nevada in 1967 totaled 18,600 and 5,300 new motor trucks were also registered. (Page 4)

Drivers

There are 337,856 licensed drivers in Nevada or 1.22 driver per registered vehicle. (Page 4)

The Economy of Nevada

and the

Motor Vehicle Industry

A special study of motor vehicle manufacturers provides some new measures of the importance of the motor vehicle industry to the economy of the State of Nevada:

- Manufacturers of motor vehicles, not including independent suppliers, operate 2 different plants or offices in the state. They employ 60 workers, with an annual payroll of $419 thousand. Annual taxes paid to state and local governments by these manufacturers exceed $25 thousand.

- An incomplete count of suppliers to the industry who are located in the state shows more than 25 different firms from whom the industry purchases more than $70 thousand per year.

- Some 2,800 persons in the state are stockholders of automotive firms.

- There are 80 new car and truck dealers in the state, with a total investment of $10 million. They employ 1,700 people and pay $12 million in wages and salaries.

SOURCE: Special studies by Automobile Manufacturers Association.

REGISTRATIONS IN NEVADA

Total Vehicle Registrations

Motor Vehicles	1967	Estimated 1968
Automobiles	216,298	222,000
Trucks and Buses	70,339	73,000
Total	286,637	295,000

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

Trucks-Special Type	1967
Truck-Tractor	1,700
Diesel Trucks	2,299
Diesel Buses	68

Motor Buses	1967
School	431
Commercial	199
Total	630

Commercial Trailers	1967
Full Trailers	760
Semi-Trailers	2,000
Total Truck-Trailers	2,760

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

New Motor Vehicle Registrations	1966	1967
Passenger Cars	19,352	18,684
Motor Trucks	5,580	5,315
Total	24,932	23,999

SOURCE: R. L.Polk & Co.

* * * * *

Number of Licensed Drivers in 1967	337,856
Drivers per Private Motor Vehicle	1.22

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

AUTOMOTIVE BUSINESSES IN NEVADA

1 9 6 7

SUMMARY

Type of Business	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Businesses in Nevada			
Wholesale Trade	60	983	$ 2,296
Retail Trade	695	4,653	24,728
Services	209	1,156	6,036
Transportation, Highways	158	2,798	17,664
Total Automotive Businesses*	1,122	9,590	$ 50,724
All Businesses in Nevada**	9,250	122,685	$ 742,912
Automotive Businesses as Percent of all Businesses in Nevada	12.1	7.8	6.8
Automotive Related Businesses***(not included above, partial list)	166	1,154	$ 8,748

* - Some automotive businesses are not included in this analysis. Self-employed persons in the automotive business are not included. Persons employed in automotive departments of establishments, such as department stores whose principal business is in non-automotive products, would also be omitted.

** - Does not include agriculture, government, railroads, or persons in domestic service or who are self-employed.

*** - Petroleum extraction, refining, and wholesale distribution; highway and street construction; trailer parks. (See page 10)

\# - Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from _County Business Patterns, 1967_, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN NEVADA

1 9 6 7

WHOLESALE TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Wholesale Businesses in Nevada			
Motor Vehicles & Automotive Equipment......	60	983	$ 2,296
Automotive Equipment.................	42	418	2,808
Tires and Tubes.....................	10	98	772
Total Automotive Wholesale......	60	983	$ 2,296
All Wholesale Businesses in Nevada..............	636	4,465	$ 31,736
Automotive Wholesale as Percent of all Wholesale Businesses in Nevada.............	9.4	22.0	7.2

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN NEVADA

1 9 6 7

RETAIL TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Retail Businesses in Nevada			
Automotive Dealers & Service Stations......	695	4,653	$ 24,728
New and Used Car Dealers.............	80	1,716	12,660
Used Car Dealers.....................	33	150	648
Tire Battery and Accessory Dealers...	39	220	1,264
Gasoline Service Stations............	492	2,290	8,792
Miscellaneous Automotive Dealers.....	49	272	1,348
Total Automotive Retail........	695	4,653	$ 24,728
All Retail Trade Businesses in Nevada...........	2,636	23,113	$ 104,256
Automotive Retail Trade as Percent of all Retail Trade in Nevada....................	26.4	20.1	23.7

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN NEVADA

1 9 6 7

SERVICES

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Service Businesses in Nevada			
Automobile Repair Services & Garages.........	209	1,156	$ 6,036
Automobile Rentals without Drivers........	21	146	920
Automobile Parking........................	15	205	760
Automobile Repair Shops..................	154	613	3,680
Top and Body Repair Shops..............	33	147	1,060
General Automobile Repair Shops........	78	282	1,536
Automobile Repair Shops N.E.C..........	18	65	356
Automobile Service, Except Repairs*..........	19	192	676
Total Automotive Services.........	209	1,156	$ 6,036
All Service Businesses in Nevada................	3,149	57,681	$ 330,128
Automotive Services as Percent of all Services in Nevada........................			

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
* - Automobile laundries, driving instruction, towing, etc.
N.E.C. - Not elsewhere classified.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN NEVADA

1 9 6 7

HIGHWAY TRANSPORTATION

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Highway Transportation Businesses in Nevada			
Local Passenger Transportation	32	1,518	$ 7,716
Local and Suburban Transportation	9	D	D
Local Passenger Transportation N.E.C.	7	114	524
Taxicabs	15	928	3,688
Intercity Highway Transportation	6	351	2,812
Trucking Local and Long Distance*	126	1,280	9,948
Trucking without Storage*	114	1,127	9,020
Local Trucking and Storage*	11	144	880
Total Highway Transportation	158	2,798	$ 17,664
All Transportation and Other Public Utilities Businesses in Nevada	334	9,154	$ 63,480
Highway Transportation as Percent of all Transportation and Other Public Utilities Businesses in Nevada	47.3	30.1	27.8

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
D - Withheld to avoid disclosure.
N.E.C. - Not elsewhere classified.
* - Data shown for reporting units, employment, and payrolls of trucking firms are substantially understated. The source data does not include establishments operated by self-employed persons. Furthermore, firms operating trucks but whose principal business may fall into some other business category are not in these totals. See Page 13 for Trucking Employment.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN NEVADA

1 9 6 7

RELATED BUSINESSES

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Contract Construction			
Highway and Street Construction..................	46	756	$ 6,500
Wholesale Trade			
Petroleum Bulk Stations & Terminals...............	59	279	1,916
Services			
Trailer Parks....................................	61	119	332

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967

SOURCE: Compiled by Automobile Manufacturers Association from <u>County Business Patterns, 1967</u>, U. S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE TAXES, NEVADA

Highway User Revenues in Nevada	Estimated 1968
Motor Fuel Tax	$ 17,779,000
Motor Vehicle Registration Fees	3,335,000
Other Motor Vehicle Fees	347,000
Motor Carrier Fees	3,194,000
Miscellaneous	410,000
Total	$ 25,065,000

NOTE: These are preliminary data on a calendar year basis.

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

Special Motor User Taxes	Estimated 1968
State Tax on Motor Vehicle Fuels	$ 16,829,000
State License Tax on Motor Vehicles	9,044,000
State License Tax on Vehicle Operators	*
Total Motor Vehicle, Fuel and License Taxes	$ 25,873,000
Total State Tax Revenue	$103,528,000
Percent Motor Vehicle is to Total State Taxes	25.0%

* - Included under "State License Tax on Motor Vehicles."

NOTE: These are preliminary data on a fiscal year basis.

SOURCE: U.S. Department of Commerce, Bureau of the Census, State Tax Collection: 1968.

* * * * *

Federal Automotive Excise Tax Collection from Nevada	Estimated 1967
Passenger Car and Motorcycles	$ 3,279,000
Trucks, Buses, Trailers	1,644,000
Parts and Accessories	212,000
Tires, Tubes, Tread Rubber	1,567,000
Motor Fuel	10,197,000
Lubricating Oil	189,000
Motor Vehicle Use (1)	345,000
Total	$ 17,433,000

(1) Tax at $3.00 per 1,000 pounds per year on vehicle with taxable G.V.W. over 26,000 pounds operated on the highways.

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

MOTOR TRUCK DATA, NEVADA

Truck Taxes in Nevada, 1967

		Truck Percent of Total
Registration Fees................	$1,669,000	51.9
Miscellaneous Receipts...........	230,000	39.9
Motor Fuel Taxes.................	6,817,000	39.3
Motor Carrier Taxes..............	3,079,000	97.2
Total User Taxes.................	$11,795,000	48.5

* * * * *

Truck Registrations, 1967...................... 62,955
Trucks as Percent of Total Registrations....... 21.9%

SOURCE: "Truck Taxes by States - Seventeenth Annual Edition," American Trucking Associations, Inc.

* * * * *

Farm Trucks in Nevada, 1964

Motor Trucks on Farms................ 4,478
Percent of Privately Owned Trucks.... 7.3%

SOURCE: U.S. Department of Commerce, Bureau of the Census, *Census of Agriculture, 1964*.

* * * * *

Truck Dealers in Nevada as of February 1, 1968

Exclusive Truck Dealers.............. 16
Total Truck Dealers.................. 65

SOURCE: R. L. Polk & Co.

MISCELLANEOUS NEVADA DATA

Employment in Highway Transport Industries, Nevada

Petroleum Industry	279
Automotive Sales and Servicing	6,792
Road Construction and Maintenance	3,000
Truck Drivers*	46,782
Motor Bus and Taxi Employment	1,279
Total Nevada	58,132

* - Including maintenance, shipping, and other trucking employees.

SOURCE: Estimated by Automobile Manufacturers Association on basis of latest Federal Government data by states.

* * * * *

Road and Street Mileage, 1967

Non-surfaced	32,075
Surfaced	14,723
Total	46,798

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

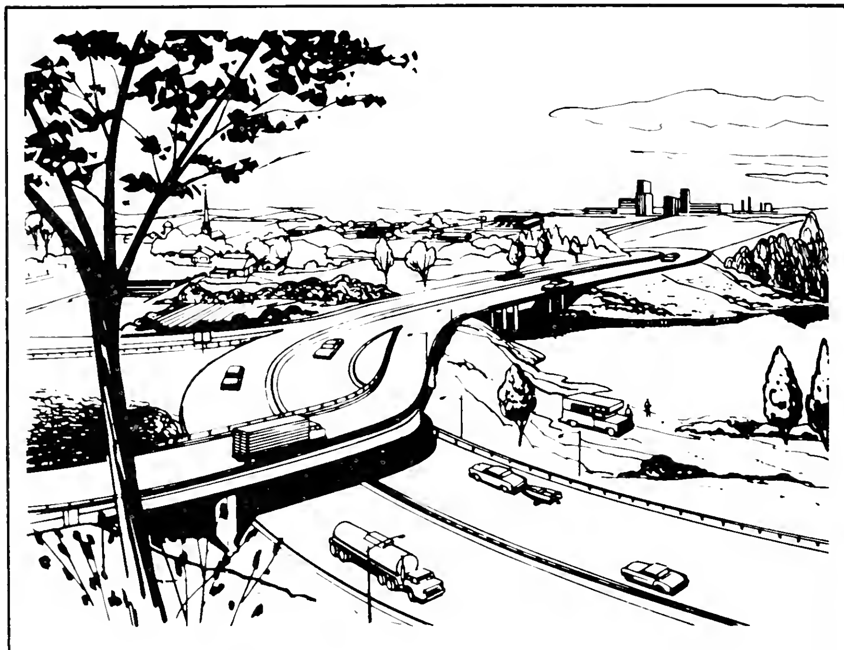
Auto and Truck Rental Business, 1963

Number of Establishments	29
Receipts	$3,589,000

SOURCE: U.S. Department of Commerce, Bureau of the Census, 1963 Census of Business.

* * * * *

G. MOTOR VEHICLES IN NEW YORK



MOTOR VEHICLES IN NEW YORK

AUTOMOBILE MANUFACTURERS ASSOCIATION

MOTOR VEHICLES IN NEW YORK

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Directly and indirectly the industry contributes a large share of taxes to national, state and local governments. Automotive stock is now held by nearly three million Americans.

To highlight the importance of motor vehicles the Automobile Manufacturers Association has prepared reports summarizing significant facts concerning the automotive industry for the various states. I hope that you will find the attached report for your state interesting.

Cordially,

Thomas C. Mann

HIGHLIGHTS

THE MOTOR VEHICLE INDUSTRY IN NEW YORK

Employment

The manufacture, distribution, maintenance, and commercial use of motor vehicles in New York provides employment for 685,000 workers. (Page 16)

Automotive Businesses

Firms primarily engaged in the manufacture, distribution, and servicing of motor vehicles in New York operated 19,000 different establishments employing 183,000 people. Annual payrolls exceeded $1.1 billion. In addition, for-hire trucking employed 73,000 workers with an annual payroll of $481 million. (Page 5, 10)

Motor Vehicle Manufacturers

Manufacturers of motor vehicles in New York, not including independent suppliers,:

. Operate 149 plants or offices

. Employ 47,000 workers

. Disburse $410 million in annual wages and salaries

. Pay more than $25 million a year in taxes to state and local governments

. Assemble nearly 200,000 new vehicles in the state

(Page 3)

Suppliers

Motor vehicle manufacturers purchase more than $1.4 billion worth of goods and services from more than 5,900 different firms in New York. (Page 3)

Dealers

In New York there are:

. 2,388 new car and truck dealers

. With an investment of $257 million

. Employing 48,900 workers

. Paying $343 million in annual wages and salaries

(Page 3)

Stockholders

About 451,000 residents in New York own stock in automotive firms. (Page 3)

Vehicle Taxes

Highway users in New York paid $526 million in special state vehicle taxes. Motor vehicle, fuel, and license taxes accounted for 12 percent of total state tax revenues. (Page 14)

Federal automotive excise taxes paid by users in New York amounted to an additional $380 million. (Page 14)

Motor trucks in New York -- 10 percent of vehicles registered -- paid 21 percent of total special state vehicle taxes. (Page 15)

Vehicle Registrations

Total vehicles registered in New York amounted to 6,195,000 in 1968 -- 5,523,000 were automobiles and 672,000 were commercial vehicles. (Page 4)

Eleven percent of trucks are on farms. (Page 15)

New Vehicle Registrations

Passenger cars newly registered in New York in 1967 totaled 764,757 and 69,633 new motor trucks were also registered. (Page 4)

Drivers

There are 7,903,000 licensed drivers in New York or 1.33 driver per registered vehicle. (Page 4)

The Economy of New York and the Motor Vehicle Industry

A special study of motor vehicle manufacturers provides some new measures of the importance of the motor vehicle industry to the economy of the State of New York:

> Manufacturers of motor vehicles, not including independent suppliers, operate 149 different plants or offices in the state. They employ 47,000 workers, with an annual payroll of $410 million. Annual taxes paid to state and local governments by these manufacturers approach $25 million.
>
> An incomplete count of suppliers to the industry who are located in the state shows more than 5,900 different firms from whom the industry purchases more than $1,440 million per year.
>
> Some 451,000 persons in the state are stockholders of automotive firms.
>
> There are 2,388 new car and truck dealers in the state, with a total investment of $257 million. They employ 48,900 people and pay $343 million in wages and salaries.

SOURCE: Special studies by Automobile Manufacturers Association.

* * * * *

Motor Vehicle Production in New York

	Number Produced	Percent of Total U. S. Production
Passenger Cars		
1966	182,330	2.1
1967	159,830	2.1
Motor Trucks		
1966	53,690	3.1
1967	37,710	2.4

SOURCE: _Ward's 1968 Automotive Yearbook_.

REGISTRATIONS IN NEW YORK

Total Vehicle Registrations

Motor Vehicles	1967	Estimated 1968
Automobiles	5,409,386	5,523,000
Trucks and Buses	651,105	672,000
Total	6,060,491	6,195,000

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

Trucks-Special Type	1967
Truck-Tractor	32,530
Diesel Trucks	21,762
Diesel Buses	9,819

Motor Buses	1967
School	16,463
Commercial	10,718
Total	27,181

Commercial Trailers	1967
Full Trailers	-
Semi-Trailers	42,614
Total Truck-Trailers	42,614

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

New Motor Vehicle Registrations	1966	1967
Passenger Cars	776,136	764,757
Motor Trucks	67,353	69,633
Total	843,489	834,390

SOURCE: R.L. Polk & Company

* * * * *

Number of Licensed Drivers in 1967	7,903,004
Drivers per Private Motor Vehicle	1.33

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

AUTOMOTIVE BUSINESSES IN NEW YORK

1 9 6 7

SUMMARY

Type of Business	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Businesses in New York			
Manufacturing	172	47,428	$ 363,716
Wholesale Trade	1,838	22,538	161,624
Retail Trade	12,014	81,856	453,012
Services	5,405	31,307	161,088
Transportation, Highway	7,500	157,707	1,015,392
Total Automotive Businesses*	26,929	340,836	$ 2,154,832
All Businesses in New York**	371,950	5,792,242	$ 36,188,412
Automotive Businesses as Percent of all Businesses in New York	7.2	5.9	6.0
Automotive Related Businesses***(not included above, partial list)	1,511	22,285	$ 182,556

* - Some automotive businesses are not included in this analysis. Self-employed persons in the automotive business are not included. Persons employed in automotive departments of establishments, such as department stores whose principal business is in non-automotive products, would also be omitted.

** - Does not include agriculture, government, railroads, or persons in domestic service or who are self-employed.

*** - Petroleum extraction, refining, and wholesale distribution; highway and street construction; trailer parks. (See Page 11)

\# - Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN NEW YORK

1 9 6 7

MANUFACTURING

Industry	Total Reporting Units	Number of Employees, March 1967		Total Payrolls, 1967# (000)
Automotive Manufacturing Businesses in New York				
Tires and Inner Tubes	2	D	$	D
Electrical Products, N.E.C. Engine Electrical Equipment	20	4,563		26,220
Motor Vehicles and Equipment	150	42,925		337,496
Truck and Bus Bodies	40	1,088		6,444
Truck Trailers	3	D		D
Motor Vehicles and Parts	107	41,667		329,956
Total Automotive Manufacturing	172	47,428	$	363,716
All Manufacturing Businesses in New York	41,675	1,952,365	$	13,405,452
Automotive Manufacturing as Percent of all Manufacturing Businesses in New York	0.4	2.4		2.7

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
D - Witheld to avoid disclosure.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN NEW YORK

1 9 6 7

WHOLESALE TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Wholesale Businesses in New York			
Motor Vehicles & Automotive Equipment......	1,838	22,538	$ 161,624
Automobiles & Other Motor Vehicles...	344	8,084	68,668
Automotive Equipment................	1,333	11,821	73,460
Tires and Tubes.....................	160	2,631	19,500
Total Automotive Wholesale......	1,838	22,538	$ 161,624
All Wholesale Businesses in New York...........	37,652	483,297	$ 3,802,860
Automotive Wholesale as Percent of all Wholesale Businesses in New York..........	4.9	4.7	4.3

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN NEW YORK

1 9 6 7

RETAIL TRADE

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Retail Businesses in New York			
Automotive Dealers & Service Stations......	12,014	81,856	$ 453,012
New and Used Car Dealers............	2,044	40,828	274,076
Used Car Dealers....................	508	2,249	12,860
Tire Battery and Accessory Dealers...	881	6,836	35,680
Gasoline Service Stations...........	8,134	30,084	120,984
Miscellaneous Automotive Dealers.....	427	1,742	8,724
Total Automotive Retail.........	12,014	81,856	$ 453,012
All Retail Trade Businesses in New York........	97,741	934,835	$ 3,969,112
Automotive Retail Trade as Percent of all Retail Trade in New York..................	12.3	8.8	11.4

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN NEW YORK

1 9 6 7

SERVICES

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Automotive Service Businesses in New York			
Automobile Repair, Service & Garages.........	5,405	31,307	$ 161,088
Automobile Rentals without Drivers........	448	5,918	40,464
Automobile Parking........................	976	6,248	28,668
Automobile Repair Shops...................	3,452	14,704	80,696
Top and Body Repair Shops..............	847	3,564	19,732
Battery and Ignition Repair Shops......	98	316	1,600
Radiator Repair Shops..................	95	345	1,516
Tire Retreading and Repair Shops.......	94	878	4,928
Paint Shops............................	213	1,007	5,216
Glass Replacement and Repair Shops.....	102	345	2,024
General Automobile Repair Shops........	1,551	6,065	32,324
Automobile Repair Shops N.E.C..........	451	2,179	3,392
Automobile Service, Except Repairs*..........	521	4,049	11,196
Total Automotive Services.........	5,405	31,307	$ 161,088
All Service Businesses in New York	98,234	1,159,158	$6,087,004
Automotive Services as Percent of all Services in New York.....................	5.6	2.7	2.6

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.
* - Automobile laundries, driving instruction, towing, etc.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN NEW YORK

1 9 6 7

HIGHWAY TRANSPORTATION

Industry	Total Report-ing Units	Number of Em-ployees, March 1967	Total Payrolls, 1967# (000)
Highway Transportation Businesses in New York			
Local Passenger Transportation	1,667	84,157	$ 533,064
Local and Suburban Transportation	359	51,607	393,680
Local and Suburban Transit	89	48,447	381,604
Local Passenger Transportation NEC	270	3,160	12,080
Taxicabs	975	22,385	93,092
Intercity Highway Transportation	41	2,548	17,240
Transportation Charter Service	14	215	916
Local Passenger Charter Service	9	133	648
School Buses	256	6,972	26,028
Bus Terminal and Service Facilities	10	354	1,820
Trucking Local and Long Distance	5,820	73,353	481,000
Trucking without Storage	5,409	67,167	446,160
Local Trucking and Storage	411	6,186	34,848
Trucking Terminal Facilities	13	197	1,328
Total Highway Transportation	7,500	157,707	$ 1,015,392
All Transportation and Other Public Utilities Businesses in New York	11,529	462,118	$ 3,478,584
Highway Transportation as Percent of all Transportation and Other Public Utilities Businesses in New York	65.1	34.1	29.2

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from _County Business Patterns, 1967_, U.S. Department of Commerce, Bureau of the Census.

AUTOMOTIVE BUSINESSES IN NEW YORK

1 9 6 7

RELATED BUSINESSES

Industry	Total Reporting Units	Number of Employees, March 1967	Total Payrolls, 1967# (000)
Contract Construction			
Highway and Street Construction...............	667	7,790	$ 62,148
Manufacturing			
Petroleum Refining............................	11	670	5,796
Paving Mixtures and Blocks.................	79	769	6,148
Lubricating Oils and Greases...............	22	346	2,728
Wholesale Trade			
Petroleum Bulk Stations & Terminals...........	654	12,564	105,160
Services			
Trailer Parks.................................	78	146	576

- Annual rate, based on taxable payrolls, Jan.-Mar., 1967.

SOURCE: Compiled by Automobile Manufacturers Association from County Business Patterns, 1967, U.S. Department of Commerce, Bureau of the Census.

MOTOR VEHICLE MANUFACTURERS' PLANTS IN NEW YORK, MARCH 1968

Car and Truck Assembly Plants

City	Company or Division	Make and Type of Vehicle
Cortland	Brockway	Brockway-Trucks
Elmira Hts.	Ward LaFrance	Ward LaFrance- fire trucks, special purpose vehicles
Tarrytown	GM: Chevrolet	Chevrolet - cars and trucks
Voorheesville	Walter Motor	Walter - snow removal equipment and aircraft rescue

Parts Manufacturing Other Then Assembly Plants

City	Company or Division	Automotive Products
Buffalo	Ford: Metal Stamping	Stampings
Buffalo	GM: Chevrolet	Axles; brake components
Buffalo	GM: Harrison Radiator	Defrosters; heaters
Elmira Hts.	Ward LaFrance Truck	Chassis, cab, bodies
Green Island	Ford: Engine & Foundry	Radiators; transitional springs
Lockport	GM. Harrison Radiator	Thermostats; heat exchangers; car and truck radiators; defroster and heater components; air conditioning systems; transmission components
Massena	GM: Chevrolet	Aluminum castings
Rochester	GM: Delco Products	Electrical actuator motors; windshield wiper systems and washers
Rochester	GM: Rochester Products	Carburetors; locks & keys; cigarette lighters; steel tubings
Syracuse	Chrysler: New Process (Gear 3 Plants)	Transmissions; axle parts
Syracuse	GM: Ternstedt	Automobile body hardware and trim
Tarrytown	GM: Fisher Body	Chevrolet bodies
Tonawanda	GM: Chevrolet Forge	Forgings
Tonawanda	GM: Chevrolet Foundry	Grey iron castings
Tonawanda	GM: Chevrolet Motor	Six and eight cylinder engines; clutch and break parts
Voorheesville	Walter Motor Truck	Snow removal equipment and aircraft rescue

Parts Depots of Motor Vehicle Manufacturers

City	Company or Division
Albany	International Harvester
Bethpage, L.I.	GM: Buick, Chevrolet, Pontiac, Oldsmobile
Bronx	GM: Cadillac
Buffalo	American Motors
Buffalo	GM: Buick, Cadillac, Chevrolet, Pontiac, Oldsmobile

Parts Depots of Motor Vehicle Manufacturers

City	Company or Division
Buffalo	KAISER Jeep CORPORATION
Elmira Hts.	Ward LaFrance
New York	American Motors
New York	Checker Motors (Cab Service & Parts Corp.)
Voorheesville	Walter Motor Truck
W. Nyack	KAISER Jeep CORPORATION

Proving Grounds of Motor Vehicle Manufacturers

City	Company or Division
Elmira Hts.	Ward LaFrance Truck Corporation
Voorheesville	Walter Motor Truck Company

AUTOMOTIVE TAXES, NEW YORK

Highway User Revenue in New York	Estimated 1967
Motor Fuel Gallonage Tax	$ 279,172,000
Motor Vehicle Registration Fees	194,347,000
Other Motor Vehicle Fees	16,914,000
Motor Carrier Fees	22,621,000
Miscellaneous	12,990,000
Total	$ 526,044,000

NOTE: These are preliminary data on a calendar year basis.

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

* * * * *

Special Motor User Taxes	Estimated 1967
State Tax on Motor Vehicle Fuels	$ 275,808,000
State License Tax on Motor Vehicles	199,277,000
State License Tax on Vehicle Operators	10,901,000
Total Motor Vehicle, Fuel and License Taxes	$ 485,986,000
Total State Tax Revenue	$4,056,275,000
Percent Motor Vehicle is to Total State Taxes	12.0%

NOTE: These are preliminary data on a fiscal year basis.

SOURCE: U.S. Department of Commerce, Bureau of the Census, State Tax Collections: 1967.

* * * * *

Federal Automotive Excise Tax Collection from New York	Estimated 1967
Passenger Cars and Motorcycles	$ 134,215,000
Trucks, Buses, Trailers	20,660,000
Parts and Accessories	3,908,000
Tires, Tubes, Tread Rubber	28,849,000
Motor Fuel	183,573,000
Lubricating Oil	3,390,000
Motor Vehicle Use (1)	5,795,000
Total	$ 380,390,000

(1) Tax at $3.00 per 1,000 pounds per year on vehicle with taxable G.V.W. over 26,000 pounds operated on the highways.

SOURCE: U.S. Department of Transportation, Bureau of Public Roads.

MOTOR TRUCK DATA, NEW YORK

Truck Taxes in New York, 1967

		Truck Percent of Total
Registration Fees......................$	40,650,000	22.4
Miscellaneous Receipts.................	6,816,000	23.1
Motor Fuel Taxes.......................	39,226,000	14.1
Motor Carrier Taxes....................	22,789,000	100.0
Total User Taxes.......................$	109,481,000	21.4

* * * * *

Truck Registrations, 1967.................................... 570,946
Truck as Percent of Total Registrations...................... 9.5

SOURCE: "Truck Taxes by States - Seventeenth Annual Edition American Trucking Associations, Inc.

* * * * *

Farm Trucks in New York, 1964

Motor Trucks on Farms...................... 62,893
Percent of Privately Owned Trucks.......... 10.7

SOURCE: U.S. Department of Commerce, Bureau of the Census, Census of Agriculture, 1964.

* * * * *

Truck Dealers in New York as of February 1, 1968

Exclusive Truck Dealers........................ 370
Total Truck Dealers............................ 1,266

SOURCE: R. L. Polk & Co.

MISCELLANEOUS NEW YORK DATA

Employment in Highway Transport Industries, New York

Motor Vehicle and Parts Manufacturers	47,428
Petroleum Industry	13,234
Automotive Sales and Servicing	135,701
Road Construction and Maintenance	50,075
Truck Drivers*	406,442
Motor Bus and Taxi Employment	32,474
Total New York	685,354

*Including maintenance, shipping and other trucking employees

SOURCE: Estimated by Automobile Manufacturers Association on basis of latest Federal Government data by states.

* * * * *

Road and Street Mileage, 1966

Non-surfaced	10,168
Surfaced	91,964
Total	102,132

SOURCE: U.S. Department of Commerce, Bureau of Public Roads.

* * * * *

Auto and Truck Rental Business, 1963

Number of Establishments	688
Receipts	$195,765,000

SOURCE: U.S. Department of Commerce, Bureau of the Census, 1963 Census of Business.

* * * * *

APPENDIX IV

CORRESPONDENCE FROM AUTOMOBILE MANUFACTURERS IN RESPONSE TO POINTS AND QUESTIONS RAISED AT THE HEARINGS

(NOTE.—Additional comments of automobile manufacturers and of the witnesses at the 1967, 1968 and 1969 hearings of the Senate Small Business Subcommittee on Monopoly, on "Planning, Regulation and Competition" (1967 and 1968 hearings) and "The Role of Giant Corporations" (1969 hearings), may appear in part 2 of this record, to be published at a later date.)

A. LETTER DATED JULY 30, 1969, FROM BYRON J. NICHOLS, VICE PRESIDENT, MARKETING, CHRYSLER CORP., DETROIT, MICH., TO SENATOR NELSON

CHRYSLER CORP.,
Detroit, Mich., July 30, 1969.

Senator GAYLORD NELSON,
Chairman, Subcommittee on Monopoly, U.S. Senate, Select Committee on Small Business, Washington, D.C.

DEAR SENATOR NELSON: During Mr. Thomas C. Mann's appearance before your Subcommittee on July 9 and 10, 1969, two questions were asked Mr. Mann by the Subcommittee, one of which he said he would either answer or refer to the individual companies and the other he would submit to the individual companies.

The first question dealt with whether the practice of dealers submitting financial statements to manufacturers puts other dealers at a competitive disadvantage with a "company-owned" dealership. (R. 211) As to this first question, our Dealer Agreement states as follows:

"Direct Dealer will submit to (the manufacturer) for *confidential use* complete and accurate reports of sales and stocks of new and used passenger cars on hand and other reports, *including monthly financial reports and operating statements*, on such forms and at such times as (the manufacturer) reasonably may request.

"Direct Dealer will use and keep accurate and current at all times a uniform accounting system and will follow accounting practices, both satisfactory to (the manufacturer), that will enable (the manufacturer) to *develop comparative information*, in order, among things, *to provide business management assistance to dealers for the mutual benefit of dealers* and (the manufacturer). Direct Dealer agrees that (the manufacturer) may for *confidential use* inspect Direct Dealer's books and records for the purpose of determining whether they are kept in such manner that the data shown in them *can be used* in (the manufacturer's) business management assistance to dealers and for the purpose of verifying any invoices or other claims Direct Dealers may render to (the manufacturer)". (Emphasis added)

As you can see, the information reported by dealers on financial statements is kept in strictest confidence. Information regarding specific dealers is never revealed to other dealers, including those in which we might have a financial interest. In this connection, the dealer business management departments to whom the statements are sent are separate and distinct from the people who are responsible for dealerships in which we have an interest.

The reports submitted are used in the preparation of composite average balance sheets of all reporting dealers in an area. The composites are then shown to all dealers so they can see *on average* how the various segments of their operations compare with the average performance of their fellow dealers in the same market area. This practice can in no way put a dealer at a competitive disadvantage with a dealer in which we have a financial interest. On the contrary, the whole purpose of the program is to help dealers compete by showing them what the average performance of the other dealers is, as a group, in their areas.

Since it has never been Chrysler's intent to remain indefinitely in the automobile retailing business, and since use of financial statements to place other

dealers at a competitive disadvantage would probably demoralize the dealers in which we have no financial interest, who, by the way, comprise the vast majority of our total dealer body, such use of this data would be poor business policy. Further the competition among the manufacturers for good dealers would prohibit this type of practice.

Chrysler's resort to investment in dealerships has been necessary to regain its market penetration and to provide greater convenience in sales and service for vehicle owners. The success which we have had in recovering our market position is some measure of the merits of this program. Only after all reasonable effort to find a dealer with sufficient funds of his own have failed will Chrysler resort to the marketing investment program. By its nature, the program creates opportunities for small businessmen who lack sufficient capital to start their own business and they have a contractual right to buy out our interest. These dealerships, therefore, are not "stimulator dealerships" as suggested in the Record (p. 211).

On the contrary, they are placed in locations where we lack adequate representation, and that have the potential for a profitable business operation.

The second question (R. 216) dealt with a list of names and addresses of our dealers in the five boroughs in the City of New York and the percentage of our ownership of each of them. Placing the names and addresses of our New York dealers in the Record of these Hearings can certainly serve no useful purpose. Such information is already available to the public from many sources. However, we can say that our dealer body in New York City is comprised of 19 Dodge and 27 Chrysler-Plymouth dealers. We presently have financial interests in only four of these. These are:

	Percent
Dealer "A"	62.04
Dealer "B"	74.85
Chrysler Corp. Manhattan sales and service	100.00
Dodge Trucks, Inc., New York branch	100.00

The names of dealers "A" and "B" must be withheld in the interests of the minority shareholders.

We hope that the above information satisfactorily answers the questions your Subcommittee raised.

Sincerely,

BYRON J. NICHOLS,
Vice President—Marketing.

B. LETTER DATED AUGUST 8, 1969, FROM RODNEY W. MARKLEY, JR., VICE-PRESIDENT—WASHINGTON STAFF, FORD MOTOR CO., 815 CONNECTICUT AVE. NW., WASHINGTON, D.C. 20006, TO SENATOR NELSON

FORD MOTOR CO.,
Washington, D.C., August 8, 1969.

HON. GAYLORD NELSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR NELSON: During the July 9–10 hearings of the Subcommittee on Monopoly, you requested, in effect, that we submit to the Subcommittee replies to the following questions:

1. Does the Company's receipt of financial statements from all dealerships place a privately-owned dealership at a competitive disadvantage with a Company-owned dealership?

In our judgment, the submission of financial statements to the Company by a dealer does not place that dealer at a competitive disadvantage with a Company-owned dealership. The submission of statements is designed to strengthen, rather than weaken, the dealer's ability to compete profitably. The statements form the basis for developing and furnishing to all dealers group averages of revenues, costs, and profits so that the dealers may use them as comparisons in evaluating their own operations. These statements also are used to enable our field sales personnel to alert individual dealers to existing or potential financial or management problems. Individual dealer results are received by the Company in confidence and are never disclosed to the managers of Company-operated dealerships or to other dealers without the full knowledge and consent of the dealer involved.

Company operation of dealerships is the exception in the Company's representation plan and is employed only where the normal procedure of appointing a

qualified investor-operator cannot, at the moment, be accomplished. These Company-managed dealerships operate under the same policies as are recommended to all dealers. The Company's purpose is to develop profitable operations and to convert these dealerships to private investment whenever possible.

2. What is the name, address and Company ownership, if any, of each of the Company's authorized vehicle dealerships in the five boroughs of New York City?

Attached is a listing of our New York dealers. We have indicated those dealerships (five) where operators have made an investment and are buying out our interest under the Dealer Development Buy-Out Plan, and also these dealerships (three) which are presently owned by us and managed by salaried operators. The remaining 31 dealerships are 100% dealer-owned. We have not listed the specific percentages of ownership in the case of the five Dealer Development dealers, who are buying out the Company's interests through dealership profits because of their desire that these data be kept confidential. On the average, however, the dealer's equity in these dealerships is around 35%.

We trust that the foregoing will satisfy your inquiries.

Sincerely,

R. W. MARKLEY, Jr.,
Vice President, Washington Staff.

[Enclosure]

FORD MOTOR CO.—NEW YORK CITY DEALERSHIPS

Name and address	Franchise	Dealer development
Bronx:		
Grand Ford Inc., 393 Grand Concourse	Ford	No.
Fordham Motor Sales Inc., 545 E. Fordham Rd	do	No.
Banner Ford Inc., 2455 E. Tremont Ave	do	Yes.
Trio Motors Inc., 375 Grand Concourse	Lincoln-Mercury	No.
Dursi-Fordham Lincoln-Mercury Inc., 630 E. Fordham Rd	do	Yes.
Brooklyn:		
Premier Ford Inc., 4901 Kings Highway	Ford	Yes.
Mercer Motors Inc., 1769 86th St	do	No.
Parkway Ford Inc., 2000 Eastern Parkway	do	No.
Amerling Ford Inc., 1100 McDonald Ave	do	No.
J. J. Hart Inc., 1095 Atlantic Ave	do	No.
Barnes-Kotler Ford Inc., 147 Flatbush Ave	do	No.
Wolff Motors Co., Inc., 2505 Coney Island Ave	do	No.
Central Lincoln-Mercury Corp., 2001 Coney Island Ave	Lincoln-Mercury	No.
Bay Lincoln-Mercury, Inc., 6502 5th Ave	do	[1].
Steven Lincoln-Mercury, Inc., 5001 Glenwood	do	No.
M & S Lincoln-Mercury, 1524 Bushwick Ave	do	No.
Manhattan:		
Gotham Ford, Inc., 570 W. 42d St	Ford	[1].
Empire Lincoln-Mercury, Inc., 700 11th Ave	Lincoln-Mercury	[1].
Queens:		
Christensen & Weiss Motors Inc., 77-00 Queens Blvd., Elmhurst	Ford	No.
Di Blasi Motors Inc., 112-21 Northern Blvd., Corona	do	No.
Ted's Auto Sales Inc., 1425 Central Ave., Far Rockaway	do	No.
Monahan Ford Corp. of Flushing, 150-05 Northern Blvd., Flushing	do	No.
Dee Motors Inc., 128-10 Merrick Blvd., Springfield Gardens	do	No.
Raymond Car Sales Inc., 207-02 Northern Blvd., Bayside	do	No.
La Fres Motors Inc., 6401 Central Ave., Ridgewood	do	No.
Sol Schildkraut Inc., 164-26 Liberty Ave., Jamaica	do	No.
Universal Ford Inc., 31-08 Northern Blvd., Long Island City	do	No.
Wilford Auto Sales Inc., 91-01 Northern Blvd., Jackson Heights	do	No.
Bond Motors Inc., 160-10 Cross Bay Blvd., Howard Beach	do	No.
Queens Auto Sales Inc., 251-37 Jamaica Ave., Bellerose	do	No.
Manes-Jamaica Lincoln-Mercury Corp., 139-40 Queens Blvd., Jamaica	Lincoln-Mercury	No.
Kay Lincoln-Mercury Inc., 40-15 Northern Blvd., Long Island City	do	No.
Fiesta Motors Lincoln-Mercury Inc., 212-50 Jamaica Ave., Queens Village	do	Yes.
Berland Lincoln-Mercury Inc., 201-16 Northern Blvd., Bayside	do	No.
Parade Motors Inc., 112-20 Atlantic Ave., Richmond Hill	do	No.
Osoff Motor Sales Inc., Grand Ave. at 57th St., Maspeth	do	No.
Staten Island:		
Francis Ford Inc., 1360 Hylan Blvd	Ford	No.
Robin Ford Sales Inc., 2385 Richmond Ave	do	Yes.
Darby Lincoln-Mercury Inc., 1355 Castleton Ave	Lincoln-Mercury	No.

[1] Reflects retail outlets owned by the Ford Motor Co.

C. LETTER DATED AUGUST 29, 1969, FROM ROSS L. MALONE, VICE PRESIDENT AND GENERAL COUNSEL, GENERAL MOTORS CORP., 767 FIFTH AVE., NEW YORK, N.Y. 10022, TO SENATOR NELSON

GENERAL MOTORS CORP.,
New York, N.Y., August 29, 1969.

Hon. GAYLORD NELSON,
Chairman, Subcommittee on Monopoly, Select Committee on Small Business, U.S. Senate, Washington, D.C.

DEAR SENATOR NELSON: During the Subcommittee Hearings on July 9 and 10, certain questions were raised with Mr. Thomas C. Mann relating to auto sales locations in New York City and to dealer financial reporting (Tr. pp. 216 and 211). I have obtained the information sought by those questions and am happy to supply it herewith.

The attachment shows the New York City operations which retailed General Motors passenger cars as of July 31, 1969. The first section of the attachment shows the six General Motors passenger car retail branches in New York City. The second section shows that there were no New York City dealerships in which General Motors had a partial financial interest. The third section lists the 89 franchised passenger car dealers in New York City.

In the entire country, there are now only 14 General Motors passenger car retail branches. All of these are in the New York or Chicago metropolitan areas except for a Pontiac home plant store in Pontiac, Michigan, and a Buick home plant store in Flint, Michigan. Moreover, throughout the postwar period, the number of General Motors retail stores has been small—less than 25 at all times. It is General Motors policy to market cars through independent franchised dealers wherever reasonably possible. General Motors would not establish a new retail store unless sales representation were required and not obtainable by appointment of a new dealer. Even in New York City, General Motors retail stores play a minor role in the marketing of automobiles.

In other words, for all practical purposes, General Motors is not a competitor with its dealers. Rather, General Motors is a manufacturer-supplier while its dealers provide the retailing function. As supplier of cars to its dealers, General Motors is naturally interested in doing everything reasonably possible to help dealers improve the efficiency of their operations. It is for this reason that General Motors has gone to great efforts over the years (starting in the 1920's) to develop and promote an extensive accounting system for dealer use.

In this connection, General Motors does not merely supply the dealer with a few accounting forms but works with him closely in order to assist him in establishing and maintaining sound financial procedures by the dealership and its overall efficiency of operations. For example, General Motors provides extensive formal instruction for dealers and dealer employes (including over 7,400 classroom hours and reaching more than 16,000 people in 1968 alone), and there is continual business analysis and consultation with dealers by General Motors personnel who are experts in helping the dealers improve their operations.

In order to implement reasoned and knowledgeable assistance of this type, the dealer selling agreement provides for the reporting to General Motors of financial results of dealer operations on a monthly basis, and the dealers are encouraged to do this. However, many dealers do not report at all, and others supply only partial data.

As previously noted, these reports are made to the dealer's franchisor, and they are made in order to increase the efficiency of the dealership's operations. Moreover, General Motors recognizes the confidential nature of these dealer financial reports and protects them against disclosure to unauthorized personnel. Most important, dealer financial data are not provided to our retail branches nor their personnel.

No competitive disadvantage to the dealer results from this process. Consequently, the financial reporting by General Motors dealers is in no way inconsistent with our position expressed to you previously regarding the disclosure of confidential financial data.

I hope the above supplies the Subcommittee with the desired information.

Very truly yours,

ROSS L. MALONE,
Vice President and General Counsel.

[Enclosure]

NEW YORK CITY OPERATIONS RETAILING NEW GENERAL MOTORS PASSENGER CARS AS OF JULY 31, 1969

1. GM Passenger Car Retail Branches in New York City, New York, as of July 31, 1969:

Midtown Chevrolet-Pontiac, 1775 Broadway, Manhattan. Circle Buick, 1731 Broadway, Manhattan.

Cadillac Motor Car Division:

Manhattan Branch, 787 11th Avenue, Manhattan.
York Avenue Branch, 1113 York Avenue, Manhattan.
Brooklyn Branch, 360 Flatbush Avenue, Brooklyn.
Bronx Branch, 696 East Fordham Road, Bronx.

2. New York City, New York, Dealerships in which General Motors has a Partial Financial Interest as of July 31, 1969:

None.

3. Franchised General Motors Passenger Car Dealers in New York City, New York, as of July 31, 1969:

CHEVROLET DEALERS

Pape Chevrolet Co., Inc., 2633 E. Tremont Ave., Bronx.
S. M. Rose Corporation, 421 East 189th St., Bronx.
Tremont Chevrolet Co., Inc., 1470 Bruckner Blvd., Bronx.
University Chevrolet, Inc., 1221 Jerome Ave., Bronx.
Benjamin Chevrolet, Inc., 2025 Atlantic Ave., Brooklyn.
Benson Chevrolet, Inc., 86th St. & 16th Ave., Brooklyn.
Empire Chevrolet Sales Corp., 1 Remsen Ave., Brooklyn.
Flatbush Chevrolet Co., Inc., 2625 Bedford Ave., Brooklyn.
Grove Motor Sales Co., Inc., 1511 Bushwick Ave., Brooklyn.
Kinney Motors, Inc., 2166 Coney Island Ave., Brooklyn.
Park Slope Chevrolet, Inc., 343 Fourth Ave., Brooklyn.
Prince Chevrolet, Inc., 5323 18th Ave., Brooklyn.
Spielman Motor Sales Co., Inc., 220–224 Greenpoint Ave., Brooklyn.
H. M. Williams Co., Inc., 94–05 Northern Blvd., Corona, Queens.
Bay Chevrolet, Inc., 240–02 Northern Blvd., Douglaston, Queens.
Mel Chevrolet Sales Corp., 1414 Central Ave., Far Rockaway, Queens.
H. B. Chevrolet, Inc., 137–80 Northern Blvd., Flushing, Queens.
Luby Chevrolet Co., Inc., 105–20 Queens Blvd., Forest Hills, Queens.
Jameco Chevrolet, Inc., 179–26 Jamaica Ave., Jamaica, Queens.
Major Chevrolet, Inc., 34–14 Steinway St., Long Island City, Queens.
Haven Chevrolet, Inc., 8120 Atlantic Ave., Ozone Park, Queens.
Village Chevrolet Co., Inc., 222–22 Jamaica Ave., Queens Village, Queens.
Meyer Chevrolet, Inc., 6115 Metropolitan Ave., Ridgewood, Queens.
Frank Reid Chevrolet, Inc., 218–01 Merrick Blvd., Springfield Gardens, Queens.
Roosevelt Chevrolet Corp., Cor. 35th Ave. & 70th St., Woodside, Queens.
King Chevrolet, Inc., 478–480 Bay St., Stapleton, S.I.
Island Chevrolet Co., Inc., 1316 Castleton Ave., W. New Brighton, S.I.

PONTIAC DEALERS

Kellogg Pontiac Sales Corp., 3333 Broadway, Manhattan.
Ace Pontiac, Inc., 1921 Jerome Ave., Bronx.
Apuzzo Pontiac Corporation, 1840–58 E. Tremont Ave., Bronx.
Bates Pontiac Corporation, 353 Grand Concourse, Bronx.
Alpine Motors Corporation, 8729 18th Ave., Brooklyn.
Atlantic Pontiac Co., Inc., 975 Atlantic Ave., Brooklyn.
Flatbush Pontiac, Inc., 1332 Flatbush Ave., Brooklyn.
Montrose Motor Sales Corp., 450 Broadway, Brooklyn.
Mutual Motor Sales, Inc., 578 Manhattan Ave., Brooklyn.
Oakes Pontiac Co., 1888 Coney Island Ave., Brooklyn.
Rogers Pontiac Co., Inc., 6002 Ft. Hamilton Parkway, Brooklyn.
Wides Motor Sales Corp., 1410 Beach Channel Drive, Far Rockaway, Queens.
Breitfeller Motors, Inc., 191–20 Northern Blvd., Flushing, Queens.
Cunningham Pontiac, Inc., 102–02 Queens Blvd., Forest Hills, Queens.
Rex Pontiac Corp., 94–15 Northern Blvd., Jackson Heights, Queens.
E. Koeppel, Inc., 162–19 Hillside Ave., Jamaica, Queens.
Triangle Pontiac, Inc., 38–15 Northern Blvd., Long Island City, Queens.

PONTIAC DEALERS—continued

Myrtle Motors Corp., 61–20 to 26 Fresh Pond Rd., Maspeth, Queens.
Breitfeller's Sales, Inc., 214–50 Jamaica Ave., Queens Village, Queens.
Star Pontiac Corporation, 2582 Hylan Blvd., New Dorp, S.I.

OLDSMOBILE DEALERS

Old Reliable Oldsmobile, Inc., 1755 Second Ave., Manhattan.
Herbert Rosenstock, Inc., 275 Seventh Ave., Manhattan.
Acey Oldsmobile, Inc., 3270 Broadway, Manhattan.
Baurley Oldsmobile Corporation, 2375 E. Tremont Ave., Bronx.
Crest Oldsmobile Corporation, 1900 Jerome Ave., Bronx.
Dale Oldsmobile, Inc., 281 W. Fordham Road, Bronx.
Linder Oldsmobile, Inc., 4256–68 Bronx Blvd., Bronx.
Apex Oldsmobile, Inc., 1614 Bushwick Ave., Brooklyn.
Crystal Oldsmobile, Inc., 5901 Bay Parkway, Brooklyn.
Gaines Oldsmobile Corp., 1217 Flatbush Ave., Brooklyn.
Hall Oldsmobile, Inc., 1900 Coney Island Ave., Brooklyn.
Harper Motors Corporation, 760 Bedford Ave., Brooklyn.
Lind Motors, Inc., 5915 Fort Hamilton Parkway, Brooklyn.
Paramount Oldsmobile, Inc., Flatbush Ext. at Myrtle Ave., Brooklyn.
Golf Oldsmobile, Inc., 80–23 Queens Blvd., Elmhurst, Queens.
North Shore-Flushing, Inc., 149–04 Northern Blvd., Flushing, Queens.
Paragon Oldsmobile, Inc., 52–02 Northern Blvd., Jackson Heights, Queens.
M & M Oldsmobile, Inc., 139–03 Queens Blvd., Jamaica, Queens.
Rich-Haven Motor Sales, Inc., 137–38 Cross Bay Blvd., Ozone Park, Queens.
Cross Island Oldsmobile, Inc., 216–02 Hempstead Ave., Queens Village, Queens.
H–L Motors, Inc., 2519 Hylan Blvd., New Dorp, S.I.

BUICK–OPEL DEALERS

Bennett Buick, Inc., 3261 Broadway, Manhattan.
Argo Buick, Inc., 3510 Webster Ave., Bronx.
Rossi Buick, Inc., 2170 Jerome Ave., Bronx.
Saunders Buick, Inc., 2641 E. Tremont Ave., Bronx.
Brigante-Karl Buick, Inc., 1814 Coney Island Ave., Brooklyn.
Herbert J. Caplan, Inc., 1455 86th St., Brooklyn.
Mid-County Buick, Inc., 44 Empire Blvd., Brooklyn.
Pepper & Potter, Inc., 125 Flatbush Ave. Extension, Brooklyn.
Richard Buick, Inc., 5102 Kings Highway, Brooklyn.
Ed Di Benedetto, 204–11 Northern Blvd., Bayside, Queens.
Schroeder Buick, Inc., 239–50 Jamaica Ave., Bellerose, Queens.
Mowry Buick, Inc., 106–16 70th Ave., Forest Hills, Queens.
Strang Buick Co., Inc., 182–30 Jamaica Ave., Jamaica, Queens.
City Buick, Inc., 36–11 Northern Blvd., Long Island City, Queens.
Lichtensberg-Robbins Buick, Ltd., 137–19 Cross Bay Blvd., Ozone Park, Queens.
Robbin Reef Buick-Opel, Inc., 86 Van Duzer St., Tompkinsville, S.I.

CADILLAC DEALERS

Balmer Cadillac Corporation, 8904–5th Ave., Brooklyn.
Bay Cadillac, Inc., 209–34 Northern Blvd., Bayside, Queens.
Nachman Cadillac Corporation, 138–49 Hillside Ave., Jamaica, Queens.
Bayer Cadillac, Inc., 37–15 Northern Blvd., Long Island City, Queens.
Crest Cadillac Corporation, 438 Richmond Ave., Port Richmond, S.I.

D. LETTER DATED OCTOBER 2, 1969, FROM JOHN M. SHERIDAN, ASSISTANT CORPORATE SECRETARY AND GENERAL ATTORNEY, AMERICAN MOTORS CORP., 14250 PLYMOUTH ROAD, DETROIT, MICH. 48232, TO SENATOR NELSON

AMERICAN MOTORS CORP.,
Detroit, October 2, 1969.

Hon. GAYLORD NELSON,
Chairman, Subcommittee on Monopoly,
Senate Small Business Committee,
New Senate Office Building, Washington, D.C.

DEAR SENATOR NELSON: In response to the telephone request of Mr. Watts which, I understand, will be confirmed in writing, this is to advise you that American Motors is of the opinion that by requiring financial statements from its dealers, it does not put a dealer in a competitive disadvantage with a company-owned store.

Also, as you requested, we have included a list, complete as of August 24, 1969, of the American Motors dealers located in the Boroughs of New York, together with the information on the percentage of ownership by American Motors Sales Corp.

Very truly yours,

JOHN M. SHERIDAN,
Assistant Corporate Secretary and General Attorney.

[Enclosure]

AMC REPRESENTATION, NEW YORK

Dealer	Structure of control
Bronx Borough:	
K. & K. Auto Sales, Inc., 662 E. Fordham Road, Bronx, N.Y	Private.
Empire Rambler, Inc., 1681 Bronxdale Avenue, Bronx, N.Y	Do.
Richmond Borough:	
Richmond Rambler Sales, Inc., 340 Bay Street, Staten Island, N.Y	100 percent American Motor Sales Corp. (full dealer investment).
Queens Borough:	
Highland Motor Sales, Inc., 196–50 Northern Blvd., Flushing, N.Y	Private.
City Rambler, Inc., 77–12 Northern Blvd., Jackson Heights, N.Y	Do.
Jamaica Rambler, Inc., 144–30 Hillside Avenue, Jamaica, N.Y	Do.
Ozone Park Rambler, 103–02 Rockaway Blvd., Ozone Park, N.Y	Do.
Rigney Koehler Le Roux, Inc., 62–16 Metropolitan Avenue, Middle Village, N.Y	Do.
Diamond Rambler, Inc., 130–07 Merrick Road, Springfield Gardens, N.Y	Do.
Ranger Rambler Corp., 256–01 Jamaica Avenue, Floral Park, N.Y	Do.
Manhattan Borough:	
American Motor Sales Corp., Manhattan Division, 125 West End Avenue, New York, N.Y	100 percent American Motors Corporate Control.
K. & K. Auto Sales, Inc., 3865 10th Avenue, New York, N.Y	Private.

Dealer	Structure of control
Brooklyn Borough:	
Bay Ridge Rambler, Inc., 8801 Fourth Avenue, Brooklyn, N.Y.	Private.
Triad Motor Sales, Inc., 1366 39th Street, Brooklyn, N.Y.	Do.
Safe Auto Sales, Inc., 88 Remsen Avenue, Brooklyn, N.Y.	Do.

Source: Market Development Department, TAM/LJ, July 24, 1969.

APPENDIX V

CORRESPONDENCE AND MATERIALS ON THE AUTOMOBILE MANUFACTURERS, THEIR ECONOMIC AND SOCIAL ROLE

A. TABLE: NET INCOME AS A PERCENT OF NET WORTH FOR THE FOUR MAJOR U.S. AUTOMOBILE MANUFACTURERS: 1957–FIRST 6 MONTHS, 1968

(Prepared at the request of the subcommittee staff by Raymond M. Wiggs, Analyst in Industrial Organization and Corporation Finance, Economics Division, Legislative Reference Service, Library of Congress, October 15, 1968.)

NET INCOME AS A PERCENT OF NET WORTH FOR THE 4 MAJOR U.S. AUTOMOBILE MANUFACTURERS, 1957, 1ST 6 MONTHS, 1968

Year	American Motors	Chrysler Corp.	Ford Motor Co.	General Motors Corp.
1957	(1)	16.38	12.78	17.51
1958	18.97	[2] 4.89	5.02	12.82
1959	31.62	[2] .80	17.26	16.50
1960	21.61	4.56	14.86	16.75
1961	10.45	1.57	13.09	14.82
1962	13.72	8.50	14.06	21.94
1963	13.84	17.55	13.14	22.35
1964	9.41	19.05	12.61	22.83
1965	1.95	14.75	15.65	18.51
1966	(2)	11.12	12.98	20.55
1967	(2)	10.92	1.83	17.57
1968 (6 months)	(1)	7.61	8.07	9.93

[1] Not available.
[2] Deficit.

Source: Moody's Industrial Manual, 1964 and 1968; and, as to 1967 data, Fortune, June 15, 1968.

B. LETTER DATED OCT. 21, 1968, FROM KARL U. SMITH, PROFESSOR, DEPARTMENT OF PSYCHOLOGY, UNIVERSITY OF WISCONSIN, MADISON, WIS. 53706, TO SENATOR NELSON AND REPRESENTATIVE KASTENMEIER

THE UNIVERSITY OF WISCONSIN,
Madison, Wis., October 21, 1968.

Senator GAYLORD NELSON,
Representative BOB KASTENMEIER,
The Congress, Washington, D.C.

DEAR GAYLORD AND BOB: I would like to make a suggestion which you may wish to define in your campaigns as a future goal once you are reelected. This is the comprehensive investigation of highway and automobile safety research both in the government and in private and public research institutions. There is no doubt that the present status of such research is a scientific and public disgrace. However, the more fundamental issue is whether most of the operations in controlling and determining research in government agencies and in auto industries and universities is crooked or not. There is good evidence that the industry is influencing the nature of research through the Office of Transportation and that a number of university research centers, particularly that at the University of Michigan, are industry influenced. I can give you direct evidence that published research conclusions from the Michigan Highway Safety Research Institute must be adjusted in keeping with industry design concepts and that papers from this Institute are censored. It is very important to keep this information restricted for fear of injuring my friends and students in this Institute.

It is clear from the restricted nature and curtailment of scientific effort in this field of research in highway safety, driver training, design of driver trainers, driver testing, design of automobiles for safe driving, and of training of scientists in these fields that some artificial constraint has been leveled over this entire area. It is my belief that the auto companies, particularly General Motors and Ford have achieved this constraint by influencing all avenues through which research might be developed, including agencies of the Federal government.

Another equally significant future line of investigation is the quality of safety research and of driver training and testing. The whole field is disgraceful from a scientific point of view. For example, the Highway Safety Research Institute at the University of Michigan, which has been formed as a front for General Motors in doing contract research, was organized from a group of weapons engineers and investigators whose army project at General Motors was discontinued some years ago. This Michigan operation would be worth probing inasmuch as there have been no publications from this place since 1965 except for a recent publication put out by a student of mine.

It appears also that there are no real scientists in the highway safety research field and that qualified scientists working in scientific departments of universities have real difficulty in getting money to explore new ideas in the field. In contrast, there are endless sums for engineers and engineering hacks who know next to nothing about scientific research and who are incapable of recognizing a new idea even if they had one. This kind of situation could occur only through industry influence over the whole field.

Sincerely yours,

KARL U. SMITH, *Professor.*

(NOTE.—The foregoing letter is included in this record with the writer's express permission.)

C. ARTICLES ON GROWING MARKETS FOR U.S. AUTO MANUFACTURERS

1. Article, "Bulk Auto Sales Burn Up the Road"

[From Business Week, Oct. 12, 1968]

BULK AUTO SALES BURN UP THE ROAD

AS 1969 MODELS START MOVING OUT OF SHOWROOMS, DETROIT IS OPTIMISTIC—AND PARTLY BECAUSE OF INCREASING IMPORTANCE OF FAT SALES TO FLEET AND LEASING MARKETS

Detroit is in a buoyant mood these early fall days of the 1969 model year. Dealers report an unusual number of buyers among opening day crowds and little resistance to higher prices and lower warranties. There is no strike to slow deliveries as there was a year ago. And fleet and lease sales, a potent but partially hidden aspect of a strong market, appear headed for another robust year.

Even considering the natural exuberance of auto executives and dealers at the start of a model year, most signs point to a continuation of the red-hot sales pace of recent months. E.M. Estes, general manager of General Motors Corp.'s Chevrolet Div., says: "Our dealers wrote 174,000 new orders during the three-day announcement period, a 7% increase from last year."

Fleet and lease sales, including the relatively small taxicab volume, are expected to rise at least 8% in the 1969 model year to 950,000 units. Hertz Corp., largest of the rental companies, gave the market a boost last week when it announced plans to buy 110,000 new 1969 cars and trucks valued at approximately $420-million retail. In the 1968 model year, the company and its licensees bought about 100,000 units valued at $375-million, and in the 1967 model year it was 90,000 units. Ford Motor Co., which has an advertising arrangement with Hertz, reportedly will get about half of the 110,000-unit order. Chrysler Corp. has a similar ad hookup with Avis, Inc.

Super-growth.—The growth for Hertz is one indication of the spectacular upswing of the fleet and lease market. Albert T. Olson, assistant general manager in charge of fleet sales for Chevrolet, calls it "almost a revolution."

In the 1962 model year, total sales to this market were 436,200 units. In the next three years, fleet sales grew with the general market as Detroit boomed

to a record 9.3-million units in the 1965 model year. When the over-all market dipped in the 1966 and 1967 model years, fleet sales roared on anyway with gains in each period.

An estimated 875,000 units were sold in the just-completed 1968 model year. If sales reach the projected 950,000 units this year and the over-all market stays at 9.3-million, fleet sales will take 10% of the market—comparable to the rate at which imported car sales now are running. And Chevy's Olson calls it the "most competitive part of the whole market." One aspect of the competition: Although each company expects a very good year, only American Motors Corp, would give the percentage increase it expected (15%).

Why? Fleet and lease sales have soared for several reasons. Robert A. Smalley, Hertz president, cited "the strong and growing acceptance of the renting and leasing concept." He also pointed to the increased growth of "fly-drive" car renting—combining the use of a rental car with an air trip. And he noted that some prospective car buyers test-drive new cars by renting several before buying.

The car leasing figures speak for themselves. In the 1962 model year, leasing accounted for 48% of fleet sales. In the 1969 model year, it is expected to be about 70%, with over 600,000 units. Meanwhile, commercial fleet sales to companies that own the vehicles they use have remained fairly stable. So have sales to government. Commercial sales in the 1968 model year were 231,000 units, with the federal and state governments taking another 37,000 cars.

An increasing number of companies, auto executives say, are turning to leased fleets. Their motives:

Millions of dollars are not tied up in ownership.

In many cases, the company is free of the worry of used car prices at resale time.

Leasing can be more economical than paying mileage.

Many employees, particularly salesmen, view a leased car as an attractive fringe benefit (Chevrolet Impala-size cars are the most popular).

Leasing to individuals also has picked up, particularly among professional men, because of the status that has somehow come to leased cars. Lessors claim it costs less to lease than to own and that service is more accessible. And there is the pleasure of forgetting the search for a new car every year or two. Commented one observer: "Leasing has some of the freedom from grief that apartment renting does."

Extras.—Whether cars are rented or leased, the manufacturer benefits beyond the original sale. Thousands of potential car buyers use a manufacturer's car, perhaps for the first time. Contact is made with a dealer, and the more visibility a nameplate has the better the chance of convincing the public it's a hot item. "Police cars are good billboards," says L. E. Domagall, Ford Div.'s fleet and leasing manager. Another benefit has come from a switch in the type of car leased. Jack B. Sparkes, vice-president for marketing of Chrysler Leasing Corp., says that in the early 1960s, leasing was concentrated on low-line vehicles, while now it is centered on the top-line models loaded with options. This means greater profit for the factory and a better deal at trade-in time for the leasing company. Depreciation is a crucial factor in the leasing and rental business. Some lease companies went broke when the used car market fell apart in 1966.

Chevy vs. Ford.—The race for industry leadership in fleet sales has some familiar combatants: Chevrolet and Ford. Chevy took about 40% of the market five years ago, aided by strong resale value of its cars, but aggressive tactics by competitors to neutralize the Chevy advantage is viewed by industry observers as a key reason the race is now much closer. Ford Div. was first in the 1966 and 1967 model years with around 29% of the sales but the division slipped in the 1968 model year, when Ford workers struck for 61 days.

Each of the Big Three has moved to make its fleet and lease sales more efficient. Ford Div. reorganized such operations five years ago, and recently named some salesmen to call full-time on larger fleet buyers: territorial salesmen used to do this part-time. Chevy created Olson's title last May; previously, his duties as fleet sales chief were carried out by another assistant general sales manager. And Chrysler Leasing was formed eight years ago to sell and lease Chrysler vehicles to large fleet operators and to administer the company's system of about 300 dealer-licensees who lease to local and regional fleet operators and private individuals.

Manufacturers see a rosy future for fleet sales, particularly in three areas. One is airport rental as jumbo jets come into wide usage. Another is local rent-

ing and leasing for the family or person that needs an extra car. The third is leasing to small companies.

Over 25% of Big Three dealers rent or lease cars. Their goal is to make their dealerships into transportation centers, whether for sale, lease, or rental.

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2. *Article, "Roche Sees Huge Gain in Overseas Car Sales"*

[From the Washington Post, May 24, 1969]

ROCHE SEES HUGE GAIN IN OVERSEAS CAR SALES

DETROIT, May 23 (UPI)—Worldwide new car sales totaling 34–38 million units by 1975 were predicted today by James M. Roche, board chairman of General Motors Corp., at the annual GM stockholders meeting.

Roche said the overseas market, already outstripping the U.S. market, would grow to a solid 20.7 million units in the next five years, with domestic sales running at least 13.5 million.

"On a peak basis," said Roche, "1975 sales may be even greater—14.9 million in the United States and 22.9 million in Canada and overseas—percentage increases of 30 per cent at home and 60 per cent abroad."

Despite slightly lower industry sales in the U.S. during the first four months of 1969, Roche repeated his prediction of last December in a year-end statement, that auto sales during this year, including about 1 million imports, would reach 9.3–9.5 million units.

As Henry Ford II, board chairman of Ford Motor Co., emphasized at the Ford stockholders meeting earlier this month, Roche pinpointed the foreign market as the major market for GM.

"It is a central factor of our industry today," said Roche, "that our overseas markets are larger than those at home—and are growing faster. Growing population, increasing social mobility, expanding highway networks, high levels of economic activity, rising incomes all over the world, all point to a greater-than-ever demand for cars and trucks."

GM President Edwin N. Cole told the stockholders that GM factory sales during 1968 on a worldwide basis totaled 7.1 million cars and trucks, with sales of vehicles manufactured outside the U.S. at record levels.

Despite this, however, Cole said that of the $1.73 billion net income GM reported for 1968, after taxes, its overseas net income after taxes accounted for only $128 million of it, although that was $20 million above 1967.

"In recent years, GM's profit performance overseas has been affected by the same major factors as the those experienced in the United States—higher costs and more intense competition."

Roche and Cole defended the industry's performance in the fields of safety, servicing and pollution control.

Cole said important advances has been made in recent years in making GM cars more controllable by drivers, and more crashworthy in an accident. And he pinpointed one major new contribution coming in controllability, the switch to bias-belted tires.

On service, Roche said GM had been working since 1953 to improve training of mechanics and increase their numbers. GM training centers, he said, have spent $7.5 million a year on training. Moreover, he said, under GM encouragement, its dealers spent $680 million enlarging and equipping service facilities from 1965 through 1968.

Roche warned, however, that recent court decisions present "serious implications" on how far the company must back its products without cost to owners. He pointed out that cars are used under varying conditions with varying degrees of maintenance by owners, and by differing types of drivers over all sorts of roads.

"Any concept that the manufacturer is obligated to design, build and maintain automobiles free from trouble for their entire lifetime is wholly unrealistic," said Roche.

D. THE FEDERAL TRADE COMMISSION'S INVESTIGATION OF NEW-CAR PRICE ADVERTISING

1. Letter dated June 20, 1969, from William D. Dixon, Division of Trade Restraints, Federal Trade Commission, to Senator Bible

(NOTE.—A letter substantially identical to the following was sent by Mr. Dixon to Senator Nelson.)

FEDERAL TRADE COMMISSION,
Washington, D.C., June 20, 1969.

Re: New automobile price advertising.

Hon. ALAN BIBLE,
Chairman, Select Committee on Small Business,
U.S. Senate, Washington, D.C.

DEAR SENATOR BIBLE: In view of your Committee's continuing concern in matters relating to the automotive industry, as evinced by the Monopoly Subcommittee's resumption of public hearings this July, I am taking the liberty of writing you concerning a subject which may be of some interest to you.

As you may be aware, the Commission on May 23, 1969 issued a Notice of Public Hearing relating to new automobile price advertising. A copy of the Notice and accompanying news release are enclosed for your consideration. The hearings are currently scheduled for September 16 and 17, 1969.

As the Notice indicates, the immediate subjects of the hearing consist of five price advertising practices, which the Commission has reason to believe may be engaged in by some automobile manufacturers. The Commission has stated that these practices, if they exist, may warrant issuance of a Trade Regulation Rule or Rules prohibiting unfair and deceptive acts or practices, or other appropriate enforcement actions.

The Notice invites all interested parties to submit written data, views or arguments concerning these matters, and to orally present their views at the hearing. Should the subjects of this proceeding be of interest to you, we would be extremely pleased to have you, or members of your staff, participate either in the form of written comments, or orally at the public hearing.

Sincerely,

WILLIAM D. DIXON,
Acting Chief, Division of Trade Regulation Rules.

(Enclosure: Notice of Public Hearing)

NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO SUBMIT DATA, VIEWS, OR ARGUMENTS

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and the provisions of Part 1, Subpart B of the Commission's Procedures and Rules of Practice, 16 CFR 1.11 through 1.16, will hold a public hearing on the subject of price advertising for automobiles.

The Commission is initiating this preliminary proceeding because it has reason to believe that some automobile manufacturers may be engaged in the following practices which, if they exist, may warrant issuance of a Trade Regulation Rule or Rules prohibiting unfair and deceptive acts and practices, or other appropriate enforcement actions.

1. Announcing or advertising prices of new automobiles which make comparison, express or implied, with prices of previous corresponding models of a different year, or to corresponding models of the same model year, when such comparisons are not entirely based upon actual differences in price, but instead, at least in part, upon an undisclosed redesignation of items of standard equipment to optional at extra cost to the consumer;

2. Announcing or advertising of reduced prices on current models as compared to prices charged for previous models "comparably equipped" when such comparison is based upon a previous model differently equipped or upon a choice of certain selected items of optional equipment as predetermined by the manufacturer without a clear disclosure of the limited choices available to the consumer;

3. Announcing or advertising pricing actions with respect to new automobiles in such a manner as to conceal the fact that actual price increases, or the amount of such increases, have been hidden by concurrent reductions in warranty coverage, with resulting savings to the manufacturer and added costs to the consumers;

4. Advertising prices for new automobiles which do not include all the charges imposed for accessories depicted or described and which do not include all charges imposed for delivery, exclusive of taxes;

5. Announcing, advertising or preticketing new automobiles with prices, including manufacturer's suggested retail prices which are required to be affixed to new automobiles by the Automobile Information Disclosure Act, 72 Stat. 325 (Public Law 85–506; July 7, 1958) which appreciably exceed the highest prices at which substantial sales are made at retail, such retail prices being determined, at least in part, in order to allow fictitiously high trade-in allowances for used cars in excess of their fair market value. As a result of this practice, it would appear that manufacturers may be engaged in direct misrepresentation of prices as well as placing in the hands of dealers the means and instrumentality for deceiving consumers as to savings at the retail level.

For purposes of these proceedings:

(1) "Automobile" is defined as a motor vehicle with motive power designed primarily for carrying ten (10) persons or less.

(2) "Announcing" is defined as including statements of any kind which are intended to be made public and includes "news releases" or "press conferences" designed to be reproduced in whole or in part in news media.

(3) "Advertising" includes radio and television commercials and other oral or visual representations, newspaper nad magazine advertisements, brochures and other manuals, and all other printed, graphic or other material used in promoting the sale of new passenger cars.

(4) "Standard equipment" is defined as those parts or pieces of apparatus with which an automobile is normally equipped and which are included in the basic price of the vehicle.

(5) "Optional equipment" is defined as those parts or pieces of apparatus with which an automobile may be equipped and which may be purchased at an additional cost over and above the basic vehicle price.

(6) "Manufacturer's suggested retail price" will be interpreted as is set forth in Guide III of the Guides Against Deceptive Pricing, adopted by the Commission December 20, 1963 (16 CFR 233.3).

For the purpose of carrying out the provisions of the statutes administered by it, the Commission is empowered to promulgate rules and regulations applicable to unlawful trade practices. Such rules and regulations express the experience and judgment of the Commission, based on facts of which it has knowledge derived from studies, reports, investigations, hearings and other proceedings, or within official notice, concerning the substantive requirements of the statutes which it administers.

In this industry the Commission has taken notice of the number and variety of practices which have been brought to its attention and has determined to institute this preliminary proceeding for the purpose of affording members of the industry and other interested and affected parties, particulaly those having special knowledge of the practices listed above, with an opportunity to present orally or in writing their views with respect to such practices and with any data and evidence they may have in their possession with respect to the same. Following receipt and evaluation of this material, plus such other information as the Commission may gather from its own efforts during the pendency of these proceedings, a decision will then be reached as to the form and nature of any rule-making proceedings which may follow.

All interested persons, including the consuming public, are hereby notified that they may file written data, views or arguments concerning the practices described herein, as well as to suggest forms for rules to cover the same, with Joseph W. Shea, Secretary, Federal Trade Commission, Washington, D.C., 20580, not later than August 21, 1969. To the extent practicable, persons wishing to file written presentations in excess of two pages should submit twenty copies.

All interested parties are given notice of opportunity to orally present data, views or arguments with respect to these practices at a public hearing to be held at 10 a.m., e.d.t., on September 16 and 17, 1969, in Room 532 of the Federal Trade Commission Building, Washington, D.C.

Any person desiring to orally present his views at the hearing should so inform the Secretary not later than September 5, 1969, and state the estimated time required for his oral presentation. Reasonable limitations upon the length of time allotted to any person may be imposed. In addition, all parties desiring to deliver a prepared statement at the hearing should file such statement with the Secretary of the Commission on or before September 11, 1969.

The data, views or arguments presented with respect to the practices in question will be available for examination by interested parties at the office of the Assistant Secretary for Legal and Public Records, Federal Trade Commission, Washington, D.C., and will be considered by the Commission.

All persons, firms, corporations, or others engaged in the sale or distribution of automobiles in commerce as "commerce" is defined in the Federal Trade Commission Act will be subject to the requirement of any Trade Regulation Rules which may grow out of this proceeding, or such other regulatory action as the Commission may subsequently elect to take.

All interested parties, including the consuming public, are urged to express their views with respect to these practices, to the extent that they may exist and to submit any data or evidence which they may have or can obtain with respect to the same.

By the Commission.

JOSEPH W. SHEA,
Secretary.

Issued: May 23, 1969.

(Enclosure: Press Release)

FTC INITIATES PUBLIC HEARINGS ON PRICE ADVERTISING PRACTICES OF THE AUTOMOBILE INDUSTRY

The Federal Trade Commission today announced that it will hold public hearings on various price advertising practices utilized by automobile manufacturers and dealers.

The hearing will take place at 10:00 a.m., September 16 and 17, 1969, in Room 532 of the FTC Building, Washington, D.C.

The Commission's purpose in obtaining information during this proceeding is to determine what action it may properly take under existing statutes to remedy any prevalent deception or unfair practices.

The Commission in its notice of hearing stated that in certain instances some automobile manufacturers may be engaged in the following misleading and deceptive automobile price advertising practices which, if they exist, may require correction by a Trade Regulation Rule or Rules, or other appropriate enforcement actions.

1. SWITCH FROM "STANDARD" TO "OPTIONAL" EQUIPMENT

Manufacturers may have "gimmicked" their new car prices by the deletion of equipment or by redesignating equipment that was once "standard" as "optional" for which the purchaser must pay an extra price over and above the basic vehicle price. These switches from "standard" to "optional" have occurred from one model year to the next and even within a single model year.

In the past manufacturers have announced and advertised new car prices, price reductions or savings, and increases without advising prospective customers that equipment that was formerly "standard" has been redesignated as "optional," thus increasing the over-all price of the car, if the customer desires to purchase the equipment newly designated "optional". It appears that these practices may have resulted in the holding out to the public deceptive and misleading price comparisons, and illusory claims of lower prices.

2. SAVINGS ON COMPARABLY EQUIPPED AUTOMOBILES

Advertisements or other announcements will applaud allegedly reduced prices for a current model year, thus implying that a customer may purchase this year's model X at a price lower than last year's comparably equipped model X. Such comparisons fail to disclose that the previous year's model X had different equipment or that the advertised model is equipped only with certain selected optional accessories predetermined by the manufacturer.

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3. REDUCED WARRANTY COVERAGES

Pricing actions on new cars are advertised in such a manner as to conceal or minimize price increases. The full extent of price increases have been hidden by concurrent reductions in the warranty coverage, with resultant savings to the manufacturer and added cost to the customer. Thus while manufacturers have widely disseminated their price announcements for a new model year, they have failed to disclose that a reduction of their warranty obligation for that new model year in effect is a hidden price increase to the consumer.

4. PRICES QUOTED NOT INCLUSIVE OF ALL THE CHARGES

Advertisements have depicted a certain model at a certain price when the pictured automobile contains equipment, such as white sidewall tires, or side view mirrors, not included in the price quoted. In addition, the ad may fail to disclose that quoted price does not include charges for delivery.

5. INFLATED SUGGESTED RETAIL PRICES

Manufacturers are required by federal legislation to affix to all automobiles a sticker which sets out a "suggested retail price" on the automobile and the accessories. The federal legislation leaves it to the manufacturer as to what constitutes the suggested retail price. Some manufacturers have posted prices which may appreciably exceed the highest prices at which substantial sales are actually made at retail. The manufacturer's suggested retail price may be arrived at, at least in part, in order to allow fictitiously high trade-in allowances for used cars in excess of their fair market value. Many consumers are misled into thinking that they have been able to negotiate a trade-in value for their present automobile which is very high, when in fact such trade-in allowances are fictitious and permitted by the artificially high "suggested retail prices" posted on the automobile by the manufacturer. As a result purchasers may be led to believe that they are receiving substantial savings or price reductions when in fact they are paying the advertiser's usual selling price for the automobile. The purported savings and reductions may be nothing more than the illusion of a bargain. Consequently, it appears that manufacturers may be engaged in direct misrepresentations of prices as well as placing in the hands of automobile dealers the means and instrumentality for deceiving consumers as to savings, trade-in allowances, discounts, etc., at the retail level.

All interested persons, including members of the consuming public, are invited to submit any information pertinent to these or other aspects of the general subject of automobile price advertising as it affects the public. Particularly desired are comments as to the extent of deception which may be involved, and any suggestions as to appropriate remedial action. Such written material may be submitted to Joseph W. Shea, Secretary, Federal Trade Commission, Washington, D.C., 20580, not later than August 21, 1969. To the extent practicable, twenty copies of all written presentations in excess of two pages should be filed.

Any person desiring to give oral presentation at the hearing should so inform the Secretary not later than September 5, 1969, and state the estimated time required. Reasonable limitations upon the length of time allotted to any person may be imposed. Persons desiring to deliver a prepared statement at the hearing should file it with the Secretary on or before September 11, 1969.

Both the oral and written views expressed will be available for examination at the Commission. As soon as possible, written submissions will be placed in the public record, and a transcript of the hearing will be made public.

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2. Article by Dan Fisher, "Auto Industry Attacked on Ads"

[From the Milwaukee Journal, June 16, 1969]

AUTO INDUSTRY ATTACKED ON ADS

(By Dan Fisher, Los Angeles Times News Service)

Price advertising is the latest facet of the auto industry to come under attack by government officials.

The federal trade commission is preparing for hearings in September on price advertising as used by both manufacturers and dealers.

The attorney general's office in California has for the first time filed a suit claiming misleading advertising against an auto manufacturer. Previously the office had filed several suits against dealers.

Both announcements come when auto companies are using more price and comparison advertising. The high number of unsold new cars in dealer hands and a less than spectacular level of auto sales are spurring these "get tough" advertising approaches.

PRICE RISE EXPECTED

The FTC hearings will cover more than just price advertising, although that particular approach will be under special scrutiny. The timing of the hearings is sure to give them publicity—September is the month automakers announce prices of their new models. And prices this year, as in the last three years, are expected to rise.

The FTC will try to determine whether new legislation is required to prevent misleading advertising by automakers.

They'll look into five basic areas:

Do advertised prices include all the charges applicable to the model being sold?

Are ads claiming the current model year car is less expensive than last year's model misleading because of the selection of options used in the comparison?

Are new car prices falsely lowered by deleting some standard equipment?

Are price increases caused by warranty reductions hidden from the public?

Are suggested retail prices inflated so dealers can allow higher trade in allowances?

In the California case, the attorney general's action last week charging Chrysler Corp. with misleading advertising is significant because it demonstrates that "we're expanding our horizons," said Miles J. Rubin, senior assistant attorney general. "The ad materials come from the manufacturers so they bear the ultimate responsibility," he continued.

The Chrysler suit, filed last Tuesday in Superior court by Atty. Gen. Thomas C. Lynch, claimed that the automaker advertised its Sunbeam Alpine GT for monthly payments of $49.98 when, in fact, the complaint alleges, "a down payment of approximately $950 and monthly payments of approximately $64 for 36 months" are required.

According to Lynch a footnote explained that the monthly payment figure was "based on manufacturer's suggested retail price for Sunbeam Alpine GT, two door hardtop, east coast POE, with ⅓ down, 36 monthly payments. Interest, dealer preparation, and destination charges, state and local taxes, and other optional equipment excluded."

"UNTRUE AND MISLEADING"

Lynch said: "The defendant knew and should have known, at the time, that such representation was untrue and misleading. By use of such representation in connection with the conduct of its business, the defendant intended to deceive, induce and mislead members of the public into purchasing its motor vehicles."

Chrysler has 10 days from the date of filing to reply to the suit.

A Chrysler spokesman noted Thursday that the advertisement in question was a national ad and that it was still running in other parts of the country. He said the figures in the ad had been checked out and were accurate as explained in the footnote.

E. CONSUMER COMPLAINTS ABOUT AUTOMOBILE DEFECTS

1. Letter dated July 1, 1969, from Charles Kligman, 629 East 77th Street, Brooklyn, N.Y. 11236, to Senator Nelson (with enclosures)

BROOKLYN, N.Y., *July 1, 1969.*

Hon. SENATOR NELSON,
Senate Building,
Washington, D.C.

DEAR SENATOR NELSON: I understand that you are the leader of the Senate Small Business Subcommittee on Monopolies.

I also understand that your committee is investigating the type of product the Automobile Industry is pushing out to the public.

Enclosed are copies of letters, etc. sent to Mr. E. N. Cole, President of General Motors, regarding the "New" piece of Junk sold to me as a NEW automobile. To date I have received no reply.

I am willing to testify at ANY TIME regarding the auto I purchased.

I am also offering my services to Messrs. Ralph Nader and Gailbraith with same copies.

Your prompt attention to this matter would be greatly appreciated.

Respectfully yours,

CHARLES KLIGMAN.

cc: Mr. Ralph Nader.
Encl: as stated.

ENCLOSURE: LETTER DATED JUNE 16, 1969, FROM CHARLES KLIGMAN TO EDWARD N. COLE, PRESIDENT, GENERAL MOTORS CORP.

BROOKLYN, N.Y., *June 16, 1969.*

Mr. EDWARD N. COLE,
President, General Motors Corp.,
Martinsburg, W. Va.

DEAR MR. COLE: Please refer to the enclosed photo copy of newspaper article taken from today's "Wall St. Journal."

Based on my experience with the car I recently purchased (photo copy of invoice attached), I feel that you have NO right to speak as you did.

As a matter of fact, because of the shortchanging I received in purchasing a new car, I intend to not only send my complaints to critics and newspapers but also intend to take this matter to the Courts.

On February 25th, 1969, I purchased a "Cutlass" (photocopy of bill enclosed).

Shortly after getting the car I found the following defects:

1—A defective right rear shock absorber;
2—Left window crank broken;
3—Upholstery on lever right side torn away;
4—Leak in trunk ruining several items including a bowling ball bag;
5—Rubber gaskets on right window in need of cement; and
6—Left door had a touch-up mark of paint.

When I advised the Rich-Haven Oldsmobile Co. of the shock absorber—it was promptly checked out and was replaced after one (1) week because they did not stock the shock absorber. At that time they told me that the other items would be taken care of at my regular checkup.

However, on April 24th, 1969 I noticed an additional defect in the car. This was a noise in the transmission. This noise is a constant whine while my foot was on the accelerator. This is definitely a weakness in the pump in the transmission. I notified the Rich-Haven Oldsmobile Co. by registered mail regarding this noise. Immediately after depositing the letter at the Post Office I tried my Air Conditioner and got NO cold air at all. My personal mechanic looked at the car and discovered that a wire had not been connected. He connected the wire and the air conditioner immediately functioned properly. He then looked under the instrument panel and discovered that your factory *Neglected* to put in an air conditioning Duct on the left side. I immediately rushed over to the Rich-Haven Oldsmobile Co. and they were amazed because this was one of the items that should have been checked off. Rich-Haven Olds, ordered the duct and it took two (2) weeks to get it. It is now corrected.

On May 21st, 1969 I left my car at the Rich-Haven Olds, for service and for correction of above mentioned defects. I left it there for one (1) week.

Everything was corrected with the exception of the transmission noise and the paint job. I was given to understand that although the noise was definitely heard, that I would have to live with it. They said that some cars have it and some cars don't. That I would be covered under the warranty.

But what happens after the warranty—after all it is a defective transmission.

I was told that Oldsmobile would not warrant the expense of pulling out the transmission because of the noise alone.

In all fairness, let me advise you that at Rich-Haven, they were obliging, courteous and helpful.

But why should I have to live with an unnatural noise in a car which was purchased NEW?

If you want me to live with it (an improper operating transmission) I want your office to give me an unconditional, indefinite warranty beyond the original warranty.

After all I purchased an Oldsmobile and NOT an OLD mobile.

Your prompt attention to this matter would be greatly appreciated.

Sincerely yours,

CHARLES KLIGMAN.

Encl: as stated.

cc: to Ralph Nader, etc. after two (2) weeks of this letter.

ENCLOSURE: ARTICLE, "GM ASSAILS CRITICS WHO SAY AUTO FIRMS SHORTCHANGE CUSTOMERS"

[From the Wall Street Journal, June 16, 1969]

GM ASSAILS CRITICS WHO SAY AUTO FIRMS SHORTCHANGE CUSTOMERS—COLE'S ATTACK IS SHARPEST BY COMPANY IN YEARS, INDICATES HARDENING STANCE IN INDUSTRY

MARTINSBURG, W. Va.—Edward N. Cole, president of General Motors Corp., blasted critics of the auto industry who say the auto makers shortchange customers on quality and service.

In a speech made at the dedication of a new GM plant here, Mr. Cole said, "Charges by our critics which imply that we as an industry are purposely shortchanging the public are not only unrealistic—but from a business point of view are ridiculous."

The attack is the sharpest to be made by General Motors in recent years and indicates a hardening stance within the auto industry toward its critics. Earlier this year Semon Knudsen, president of Ford Motor Co., urged the industry to get tough in answering critics. But this is the first time that GM has departed from its usual pattern of muted comment.

GM, as the giant of the auto industry, has borne the brunt of criticism aimed at the industry. Within the past year it has come under intensified attack for its pricing policies, its auto warranty policy and its recall campaigns, both from individual critics like Ralph Nader and Government agencies.

In his speech, Mr. Cole asserted "we have everything to lose and nothing to gain when we deliver products of substandard quality to our customers or fail to provide satisfactory service." He added, "We pay a high penalty for defects in terms of costs for recall campaigns and warranty expenses. But we pay even more dearly in customer dissatisfaction and loss in owner loyalty which have detrimental effects on repeat sales and public reputation."

The executive acknowledged that "from a practical standpoint, we recognize that some defects will still occur because of the complexity of motor vehicles, the system of mass production manufacture and the ever-present element of human error." But he added that GM was continually instituting programs aimed at reducing such defects and producing trouble-free vehicles.

In other remarks Mr. Cole said the outlook for the remainder of 1969 is good for the industry. He said car and truck sales, including imports, will total between 11,150,000 and 11,350,000 units this year. The figure is in line with earlier forecasts for 1969 sales.

Of the economy as a whole, the GM executive said, "We believe that the overall climate for business will remain at a high level during the remainder of 1969. The automobile industry will contribute to and share in this continuing healthy pace of economic activity."

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2. Letted dated Aug. 5, 1969, from D. F. Woolley, Jr., 26 Bennington Road, Convent Station, N.J. 07961, to Customer Relations Manager, Ford Motor Co.

(NOTE.—A copy of the following letter was sent by the writer to the Senate Small Business Committee, without a transmittal letter.)

CONVENT STATION, N.J., *August 5, 1969.*

Subject: 1968 Ford Country Squire station wagon—or touring the United States 1918 style in a 1968 Ford warranty #8E76/227260

CUSTOMER RELATIONS MANAGER,
Ford Motor Co.,
Dearborn, Mich.:

On 9/28/68 the above vehicle was purchased from Ward Ford, Irvington, New Jersey. On 6/27/69 my family, consisting of one wife and three children,

started out on vacation to drive across the country and back again. The odometer read 5,081 miles.

As soon as we reached a major highway on the way to Roanoke, Virginia, it was obvious that there were problems with the original equipment tires, as the car vibrated excessively at speeds from 60 to 75 miles per hour. We stopped at the Firestone store in Roanoke on the night of 6/27 and had the two front wheels balanced. Testing the car that night revealed that the vibration was still there. I returned to the same store next day and had the front end aligned and a flat fixed (see copy of invoice). This gave us a very late departure from Roanoke.

We drove from Roanoke to Little Rock, Arkansas in two days. The odometer read 6,366 miles at Little Rock. The car continued to vibrate throughout the trip from Roanoke to Little Rock. On the morning of 6/30 I went to the Ford dealer in Little Rock and was informed that my tires, both front and rear, were out of round and flatness. I then went to the Firestone store in Little Rock. The Firestone dealer checked the dimensions on the tires, both tread, side wall and rim and found in all cases that the tires were out of specification on dimension and that all rims were within specifications. The dealer then told me that all five tires should be replaced and that the replacement cost was based on tread wear. I was informed that each tire had a retail price of $40.66, plus tax. (The same tire was advertised in the NEWARK NEWS at 4 for $88, 7/29/69.) I was amazed to learn that the tires that had been on the front of the car had worn between 45 and 55%, giving a projected useful life on these tires of not much over 12,000 miles. This seemed excessive, as I had taken care to see that all tires were inflated to between 28 and 30 pounds pressure since I have owned the automobile. Although I have only four receipts out of five (see attachments) for my purchase, the replacement of five tires cost me approximately $82 with an additional $10 for balancing.

I feel that this is extremely poor performance on the part of Ford in accepting such tires and even poorer performance by Firestone in releasing such tires from the factory. I am aware of Ford's well established and executed quality control procedures imposed on their suppliers and I am thoroughly disappointed with this situation.

I have been a Ford owner since 1948 and have never owned any other make of automobile. A Ford has served me well (1948, 1956, 1961 and 1965 models).

We then drove from Little Rock to Albuquerque, New Mexico, where I stopped to get my air conditioner checked as it was making a growling noise on acceleration. I was informed that it was nothing but a loose belt and was charged $3.50 to tighten it by Richardson Ford in Albuquerque (see attached copy of bill). Mileage at Albuerque was 7,370.

We then drove from Albuquerque to the Grand Canyon. As we were driving through Cameron, Arizona, we stopped at a gas station (W. R. Simpson Texaco) where the attendant noticed that the shock absorbers were leaking oil. When they were removed there was no compression remaining. All four shock absorbers were replaced at a cost of $54 (see copy of attached invoice). Mileage at this time was about 7,800. Also at this time I had the fan belt on the air conditioner checked because it was again making a loud noise. The mechanic at the gas station said either the clutch or compressor was about ready to break.

With this in mind we drove from Grand Canyon to Needles, California, without the air conditioning at night, arrived at Needles at 10:30 PM where the air temperature was 106 degrees F. on July 3, 1969.

Then drove from Needles to Laguna Beach, across the desert with a very loud noise coming from under the hood. Stopped at the Ford dealer in Laguna Beach, California, where the mileage read 8,388. Was informed it was only a loose fan belt which he tightened at no charge. This was July 7th.

Drove from Laguna Beach to Tucson, Arizona, with the air conditioner making noise again all the way across the desert, but performing satisfactorily. Arrived in Tucson on July 8 where mileage was 9,242. On the morning of July 10 the air conditioner compressor blew its face plate. We then went to Holmes Tuttle Broadway Ford in Tucson, who replaced the air conditioning compressor at no charge—the first time our warranty applied.

We returned home on July 19 with the odometer reading 12,252. On July 25th the engine bent two push rods on one of the cylinders. Ward Ford was very cooperative and allowed us to have this repaired on an emergency basis because we needed the car. It was repaired at no charge. Ward Ford is currently investigating why the front end continues to vibrate and the air conditioner continues to growl.

I frankly have been amazed at the lack of performance on this vehicle. The automobile was made to sell for $4,800. I think the consumer has a right to

expect better performance from this type of an automobile. I would appreciate it if you could give me any indication as to how I may recoup the money spent on this "brand new car" while driving across our country. It will be impossible for you to reimburse me for the time our family spent not seeing the country, but waiting for the automobile to be repaired. This car almost ruined one family's long planned vacation.

Please see the July-August Harvard Business Review, "Product Liability—Tougher Ground Rules", D. L. Rados, pp. 144–152.

Very truly yours,

D. F. WOOLLEY, Jr.

cc: Manager, Customer Relations, Firestone Tire; Auto Test Division, Consumers Union; Ward Ford, Irvington, N.J.; Committee of Small Business, Washington; Special Assistant to the President for Consumer Affairs in Washington.

(NOTE.—In a further letter to the subcommittee, dated September 15, 1969, in which he gave permission for publication of the foregoing letter, Mr. Wooley remarked, in part, "Since first writing I would like to report that the Ford Motor Co., through its dealer Ward Motors, has been very cooperative in correcting the faults to the vehicle." He then submitted an exchange of correspondence with a tire company, which is retained in the committee's files for review and possible future publication.)

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3. Letter dated August 5, 1969, from Christopher R. Wiese, 5036 W. K. K. River Parkway, Milwaukee, Wis. 53219, to Senator Nelson

MILWAUKEE, WIS., *August 5, 1969.*

Senator GAYLORD NELSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: I am enclosing a copy of the letter I sent the VW people about the trouble I have had with the dealerships. Knowing the campaigns you have waged against the dealers and manufacturers I thought I might add some more kindling wood. You may use the letter as you see fit and if no use can be found for it, it will at least provide some interesting reading. I had also included with the letter to the VW people, copies of all bills involving the matter. They have full knowledge of my problem. To date I have not heard from them and am presently still having starter problems.

A copy of the enclosed letter was also sent to Senator Philip A. Hart who as I understand it is conducting investigations into automobile manufacturers.

Sincerely,

CHRISTOPHER WIESE.

(ENCLOSURE: LETTER DATED JULY 28, 1969, FROM CHRISTOPHER R. WIESE TO VOLKSWAGEN OF AMERICA, INC.)

MILWAUKEE, WIS., *July 28, 1969.*

EXCLUSIVE IMPORTER,
Volkswagon of America, Inc.
Englewood Cliffs, N.J., and Volkswagen North Central Distributor, Inc.

GENTLEMEN: I am writing this letter somewhat of a disgruntled and frustrated VW owner. There is an old saying by behavior scientists—an organization is only as strong as its weakest link. Unfortunately as a VW owner, I have come in contact with nothing but VW's weakest link—used car and service dealers. By now you've probably guessed my motives for writing this letter—to bitch about my treatment by VW service centers. At this point you may be wondering whether to put this letter aside into your out (wastepaper) basket and continue with more important matters such as customer satisfaction. Rest assured that in my capacity as a very amateur writer I will make this letter as entertaining as possible—if I put some sex into it I may be able to sell it to Random House—and you will will regret pushing this letter aside. I also hope this letter manages to proceed further up the organizational scale than having some vivacious secretary deem it unimportant. Although at any other time I would be thrilled to have such a heavenly creature pass her beautiful blue eyes over my prose, considering the time and place, I would rather have some big, brave, executive take some action.

The corporate executive in his dual role as god and man as far as the consumer is concerned, may say—to err is human, to forgive divine. However, to us sheep down on earth—expecially those going to college as you may have guessed—the primary means of monetary transfer is not so much divine inspiration as it is money—so let's start at the beginning.

"And on the first day God created . . ." Well, let's not go that far back. It was around November 1968 that said humble college student decided that his 1962 Chrysler 300 didn't look so good with a gas truck following it. This and foreseeable repair bills, and limited funds (dished out to Marquette University so that some day I can become a corporate executive and have the opportunity to read a letter like this poetic justice?? forced me to rely on my friendly and *trustworthy*?? VW dealer. After some haggling over price (I thought barter went out in the 20's and only existed in Panama) we settled on a reasonable price. For $895.00 cash and my old car ($400.00) I was the owner of a sleek, majestic, 1965 VW convertible. This was a thrill in itself, who cares about the vet's, porsche's or jag's. I'll race any bus.

The next day while I was driving my "car" obtaining nowhere near the supersonic acceleration of other American cars, but who cares—I owned a VW, I found myself in the embarrassing position of being without a throw-out bearing in the middle of a three-mile viaduct. O.K., get out of your convertible, call the tow truck ($25.00) and in the meantime maintain an air of pride and integrity in your VW dealer (Concours Motors for the record). After I got the car to the dealer he mentioned that if the problem was due to clutch trouble it would not be covered by the guarantee. After some consultation (3 days) and the mention of the magic words attorney, court and 100% guarantee on the bill of sale (my father was not as trusting as myself) the dealer was miraculously reincarnated into one of the friendliest people on earth. They found that the clutch was not burned out but they had previously put in the wrong type of throw-out bearing—soft metal instead of hard and would fix it free of charge along with some other items, such as no horn, left-headlight burning out every two days, one and one-half pint per week oil leak, etc. Their generosity, they thought, exceeded that of no mortal. They even included according to the sales manager a new flywheel which was damaged due to towing. I had received $130.00 worth of free repair work but to no avail could I get a copy of the bill a service department issues a used car department when work is done on a guarantee.

About one month later, December 1968, I decided to take a trip to Florida—that haven for harassed, overworked college students. Of course, getting there alive was my prime motive so I decided to have my VW checked. Not having fallen in love with Concour's Motors, I decided to have the work done by Walter Laev Volkswagen. Wally did a good job, gave me a tune-up, etc., balanced my front wheels and assured me that my car was in perfect alignment as is seen by the N/C and safety check on bill of 12–17–68. Before I left on my excursion I noticed that occasionally the starter would not engage (think flywheel) but thought nothing of it.

About one complete day later in Bowling Green, Kentucky at 2:00 in the morning the VW wouldn't start. Apparently that occasional starter non-involvement led to permanent disability. Oh, I got all the way to Florida by popping the clutch whenever I needed to start the car which wasn't often, because I ran the engine up to 12 hours straight driving time to avoid excessive misuse of the starting system.

Promptly upon arriving in Florida I went to Earl A. Brown Volkswagen who assured me the problem was with the starter and gave me for Christmas a $41.44 charge for a new starter. Oh well, at least the car would start now. On the night before I left from Florida the same problem arose—the starter would not engage occasionally, but in my rush to get home before the predicted snow storm hit the Midwest I said the hell with taking the car back to Earl baby.

All went fine until February when I took the car in because I noticed excessive wear on the front tires. I figured the tires needed balancing so I asked Laev to check the balance and while they were at it the wheel alignment. Affirmative, the car needed both as noted on bill of 2–13–69, so I waited until a later date at which time I might better afford the repair.

I went back to Laev on 3–7–69 and had the dealer check the front-end to establish once again that I needed an alignment and balance. I also mentioned that I had that starter problem again (think flywheel). I then received the bad news. my car had apparently been sold to me with a bent front axle (why this wasn't noticed on 12–17–68 and 2–13–69 I'll never know) and had caused my

front-end to be completely worn out including two tires which have yet to be replaced. The estimate to replace the front axle, wheel bearings, tie rods, etc. was $180.00. * * *! Realizing that I rode 2700 miles to Florida and back with a bent front axle, I was quite [disgusted] to say the least. I would not let any VW dealer experiment on my car. The hell with the front end and starter. I searched for about three weeks without a car and finally found a place called Accurate Auto Alignment who did the job for $30.95. ($180.00—$30.95=$149.05 worth of divine inspiration?)

All went fine until May when the starter problem occured again and on 5-22-69 I was told by Laev that nothing could be found. On 7-7-69 I went in again with the starter problem and again nothing could be found. Then on 7-25-69 I went in again and lo and behold—they miraculously found the problem. The flywheel (ring a bell) had a few teeth missing. Apparently the service manual must read:

When customer comes in with a problem do not find until seventh try!!!

Today I drove the car home and was back at the dealer within thirty minutes. They had replaced the flywheel but suddenly I heard some rubbing noise in the rear of the car, which was not apparent before the car was repaired. After the service manager at Laev test drove the car he said it was the throw-out bearing. It, the noise that is, might go away or they could drill a hole in the housing and lubricate the bearing itself. I told him to forget it, that I'll play the radio louder to blanket the noise.

I am not writing this letter to better my writing talent which suffers already nor out of sympathy. Sympathy as defined by Webster cannot be given by the offender, although some have used sympathy as synonymous with remuneration. I enjoyed writing this letter for I look at it this way: without the lousy service and misrepresentation given me by VW dealers and without expending the following:

1 starter	$41.44
Front-end	30.95
Front wheel repacking	8.00
Flywheel	43.78
Ignition switch	4.07
2 front tires	26.00
Total	154.24

this letter would never have been possible.

Sincerely,

CHRISTOPHER R. WIESE.

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4. Article by UPI, "Public Ceremony—Angered by Repairs, Owner Buries Ford"

[From the Washington Daily News, Jan. 2, 1969]

PUBLIC CEREMONY—ANGERED BY REPAIRS, OWNER BURIES FORD

ATLANTA, January 2 (UPI).—Virlyn Motes decided he'd had enough troubles with his 1967 Ford so he buried it in his front lawn New Year's Day while several Ford representatives looked on.

"Now I ask you, where is Mr. Ford's better idea?" said the suburban Atlanta cosmetics salesman in a formal note announcing the burial.

Mr. Motes, 40, decided to bury the car just after he had a new motor installed at a cost of $688 last November. It was the last straw, he said, when the company refused to guarantee the new motor indefinitely.

Mr. Motes opened the door of the dark green Galaxie for the last time, solemnly seated himself behind the wheel while at least two area Ford representatives stared, and carefully backed the car down a dirt embankment into the hole.

TV INTERVIEW

Some 50 spectators looked on in the freezing weather, many smiling.

From the grave he told a television crew: "I did this for safety. The Ford Motor Co. won't guarantee me that this new engine I've had put in the car won't lock up. It's a hazard and I don't think the car should be on the road."

Mr. Motes said he had other troubles with the Ford, including over $1,000 worth of repairs in the two-year period.

"I've just ordered a Chevrolet," he said.

5. Statement in the House of Representatives by Representative Charles A. Vanik, "Ford Motor Co. Announces Reduced Warranty Period"

[From the Congressional Record, September 3, 1969]

FORD MOTOR CO. ANNOUNCES REDUCED WARRANTY PERIOD

(Mr. VANIK asked and was given permission to address the House for 1 minute, to revise and extend his remarks and to include extraneous matter.)

Mr. VANIK, Mr. Speaker, it was announced last Friday by the Ford Motor Co. that its warranty coverage beginning with 1970 models will be reduced to a flat 12-month warranty on all factory caused defects in the car regardless of mileage. It is also reported that the company will provide Ford purchasers' adjustments and services during the first 90 days after purchase.

Prospective car buyers have every reason to be irate at the effort to increase prices by reducing the outlays for warranty which were included in the prices of last year and for previous years.

Except for the price increase factor, few automobile owners will complain about the "retreat from warranty." To all but the most patient and perservering the automobile warranty has been a "myth of assurance." What value is a warranty if you have to present your automobile at the agency garage no later than 8:10 a.m. to get repair work done? What good is a warranty if getting the work done requires the loss of a car for day after day of procrastination?

Last Monday, I drove up for service at a very large official Ford agency in nearby Virginia. At 8:40 a.m. when I arrived, the service department was closed, "filled for the day." Only the early bird with several other cars has a chance for service. The next day I appeared at 8:15 a.m. and waited patiently in line until 8:50 a.m., when I was told that the quota for that day was filled. I gave up in despair and had my repairs made at a neighborhood service station. This will be my plan from here on in. When the work becomes too complex for the neighborhood gas station repairman, I will dispose of my automobile.

Automobile warranties have absolutely no value unless necessary repair can be made under reasonable circumstances. Factory-authorized service agencies which cannot provide this service should suffer a withholding of their franchise priviledge. Perhaps the time has arrived for the automobile industry to franchise authorized automobile repairmen and let the car buyer make his choice of a new car from a catalog.

F. TWO EDITORIALS FROM AUTOMOTIVE NEWS

1. "Communicating in a Frustrating Time . . . It's What You Do That Talks

[From Automotive News, June 2, 1969]

COMMUNICATING IN A FRUSTRATING TIME—IT'S WHAT YOU DO THAT TALKS

In this age when the Federal Government and millions of critics are looking down the throat of the industry, is it possible for industry associations to represent their members—to speak for auto dealers or for auto makers?

Considerable rethinking is being done in this area by many association people. The the auto making area. The Automobile Manufacturers Assn. has done an excellent job in the past of acting or speaking for makers in areas where a cooperative effort is possible.

Is there still such an area?

There are some in association work who wonder.

AMA men have tried to develop position papers on areas of public concern so that the organization can respond promptly when it is appropriate to give an industry position. The difficulty is to get industry agreement on a position. A concerned worker in this area said that AMA's problem is not the men at the top or the troops at the working level.

The difficulty is that in the middle there are a thousand guys who can say "No" and no one who can say "Yes."

So if you think that AMA is not responsive on public issues, there is a good reason why it is not.

The National Automobile Dealers Assn. is in a similar position—or perhaps a more difficult one—on dealer concerns.

If you think it is difficult to get four auto makers to agree on a position, consider what it must be to get 21,000 fiercely independent auto dealers to agree.

Yet this is a time when the public is demanding answers.

Perhaps this is a time when industry people should worry less about dotting "i"s and whether good grammar calls for a comma or a semicolon.

The auto industry today seems to be a target for discontent of the age. Many people are taking out all their frustrations with this frustrating age on the auto industry.

And the industry just isn't that bad. The fact is that it is doing a tremendous job in meeting the automotive needs of the world.

As a veteran participant noted:

"People don't really care what you say. It is what you do that counts."

So let's do something good for the industry. And then talk about it.

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2. *"Should We Hide Our Heads in the Sand?—An Industry and Its Critics"*

[From Automotive News, August 11, 1969]

SHOULD WE HIDE OUR HEADS IN THE SAND?—AN INDUSTRY AND ITS CRITICS

Trade papers find they win dubious popularity by blasting an industry's critics and playing up its defenders.

But do they really serve their industry with such a policy?

We think not.

In the long run, an industry must stand or fall on the service it provides to its owners.

If there is something amiss in that relationship, exposure to the heat of public inquiry may help get the industry back on the right path.

Certainly, some conditions in the auto industry deserve scrutiny.

Is the service provided to owners all that it might be? If it is not, and there is a general feeling that it is not, what is wrong? Is there something amiss in the new-car distribution system?

What about the policy of the factories which is leading to fewer and fewer dealers?

The idea sounds good. More territory to support fewer but better equipped dealers. Modern service facilities were supposed to make up for any reduction in the number of dealers.

But did the accent on volume lead to the elimination of many dealers who built their business on service? And did this help or harm the industry and the public?

Most factory men display an interest in service that seems sincere, but do the executive garages protect them from the real facts of customer service by volume dealers?

Is there no effective way of tying new-car sales volume to service responsibility?

And will new-car buyers ever be assured of adequate new-car preparation and warranty service as long as volume of sales is not linked to service responsibility?

And what about the condition of new cars delivered to buyers? Does not public outcry against new-car quality indicate that correction is needed?

The other day Consumers Union reported that it found an average of 36 defects in each 1969 car tested. It said that this was twice the 1967 figure.

Can the industry shut its eyes to this?

If this is even close to being accurate, the arithmetic is frightening—some 8,500,000 buyers of domestic cars a year with that kind of trouble.

This makes a great sounding board for those who are pressing for consumerism legislation in Washington.

The magnitude of the job may be frightening, but certainly the industry cannot hide its head in the sand.

G. LETTER DATED AUGUST 14, 1969, FROM DAVID H. LIBBY, LIBBY DISTRIBUTING CO. (WYNN'S CAR CARE PRODUCTS—WAREHOUSE DISTRIBUTOR, STATES OF MAINE AND NEW HAMPSHIRE), 120 FOUR WINDS ROAD, PORTLAND, MAINE, TO SENATOR NELSON, AND RELATED CORRESPONDENCE

1. *Letter from David H. Libby to Senator Nelson*

LIBBY DISTRIBUTING CO.,
PORTLAND, MAINE, *August 14, 1969.*

Senator GAYLORD NELSON,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR NELSON: I read about your committee with much interest, and wish you to continue investigating the Automobile Companies . . . especially in their coercive marketing techniques . .

I sell Car Dealers automotive supplies, and the car manufacturers are now having made under private label, supplies that replace the market for supplies that I am currently selling. It seems unfair that the big conglomerate companies (ESPECIALLY GENERAL MOTORS—CHEVROLET DIVISION) are able to force orders from the car dealers for similar products that I personally have created for the car dealers. I spend much time educating the car dealer personnel, and get them selling the products that I sell, and the CHEVROLET representatives muscle in and tell them they must purchase GM chemicals from GM and not from outside suppliers.

Naturally, they are interested in profits, and I do not complain about competition, but is it necessary for them to use coercion in the selling of their lines?

Texaco INC has been doing the same thing, only much worse, and if you will contact Senators Muskie, and Smith from Maine, you will find that I have been doing a lot in this field. I have had the FTC make an initial investigation of the coercion, and we have a Anti-Trust suit about to be filed on this company.

The main reason for this letter is to ask you to continue looking into the automotive manufacturers, and wish you success in stopping undue pressures from the manufacturers over their dealers in the form of coercive selling.

There have been many cases of the sales representative telling the dealer agency that they will not get the extra cars that they could unless they bought the products that I have been selling (WYNNS CAR CARE PRODUCTS) the replacements of which, are carrying the GM label. In other words, the market that I have established, they are trying to just keep them selling the products, but change to GM instead of what I have been able to build a business on. I am a very small operator, and if it is affecting me up here in Maine, it must be all over the country.

Thanks for your time.

Sincerely,

DAVID H. LIBBY.

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2. Letter dated August 25, 1969, from Senator Nelson to David H. Libby

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
August 25, 1969.

MR. DAVID H. LIBBY,
Libby Distributing Co., Portland, Maine.

DEAR MR. LIBBY: Thank you for your letter of August 14, 1969. The information it contains tends to corroborate other testimony received at the July 9–11 hearings of the Senate Small Business Subcommittee on Monopoly on "The Role of Giant Corporations in the American and World Economies: Automobile Industry—1969."

Unless you have objections, we intend to publish your letter to me in Appendix V–G of the printed record of the hearings, which will be appearing sometime this fall. If you do *not* want your letter to me to be part of a public, printed hearing record of the Senate, please notify Raymond D. Watts, Counsel, Senate Small Business Committee, Washington, D.C. 20510 (telephone 202–225–5175) immediately. If you wish to give consent in writing, or to amplify your remarks, a further letter from you for the hearing record would be welcome, if received promptly.

Again, many thanks for your interest in our work and for your encouragement and help.

Sincerely,

GAYLORD NELSON,
Chairman, Subcommittee on Monopoly.

H. LETTER DATED JUNE 29, 1969, FROM JAMES G. MAIER (FORMER GENERAL MOTORS EMPLOYEE), 18750 PHILOMENE ST., ALLEN PARK, MICH., TO SENATOR NELSON

ALLEN PARK, MICH., *June 29, 1969.*

Re: Your "Whether What We Have Is Good Enough"
Detroit News, June 15.

Senator GAYLORD NELSON,
Madison, Wis.

G.M. is the major killer of all those fine small automobile manufacturers, who in their time created and produced the outstanding achievements in product *quality* * which are so sadly lacking today, particularly in the G.M. line, more that any other.

Concerned with quality, all other manufacturers resisted the switch to modern day "draw steel"—really sheet iron, highly refined; its only purpose is to extend tooling life on difficult shapes. Introduced by G.M. in 1941–42, its production rate in the steel mills finally forced Ford to use it extensively in the 1949 model. Chrysler being smaller, held off till 1953, the last major user of the cheaper (in material cost only) commercial grade steel, infinitely superior to draw stock, both in strength and rust resistance.

And there's much, much more. Who ever heard of a major, real quality, advancement from G.M.? Starters, automatic transmission sure, but these are luxury items actually aimed to create a larger market, in the overall comprised of people who could not master older driving techniques. These also are the same people throughout the world, that by association *actually believe* any company could provide such items without cutting down someplace else.

I was with G.M. 25 years, initially in a protege spot; a non-assertive type of very high I.Q. with the perception that goes with it, I've been active in every major automotive phase of design and specifications for body and chassis. I saw the forced retirement of keen minds, whose greatest sin was to put quality before profit.

Though no one saw it then (in the '30's) the G.M. philosophy of only providing the customer's wants, never his needs, eventually provided them the influence to literally smash the only really hard-core conscientious manufacturers (Auburn especially, Hupp, Reo, Franklin, Pierce, and many others) whose prime interest was quality first.

It wouldn't take much for me to get so mad I'd write a book.

JAMES G. MAIER.

P.S. Incidentally—I voluntarily left G.M., this being a prime motive.

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*Quality, as distinguished from synthetic luxury.

APPENDIX VI

ECONOMIC ANALYSIS OF FORD MOTOR COMPANY PRICING POLICY AS REVEALED BY COMPARISON OF FACTORY COST DATA AND WHOLESALE PRICE LIST: PAPER BY PAUL BURGESS AND FRED R. GLAHE; COMMENT BY MARK P. SCHUPACK

A. LETTER OF TRANSMITTAL DATED APRIL 16, 1969 FROM FRED R. GLAHE, ASSOCIATE PROFESSOR OF ECONOMICS, UNIVERSITY OF COLORADO, BOULDER, COLORADO 80302, TO RAYMOND D. WATTS, COUNSEL, SENATE SMALL BUSINESS COMMITTEE

UNIVERSITY OF COLORADO,
DEPARTMENT OF ECONOMICS,
Boulder, Colo., April 16. 1969

MR. RAYMOND D. WATTS
Counsel, Senate Small Business Committee,
U.S. Senate,
Washington, D.C.

DEAR MR. WATTS: Thank you for the copy of *Planning, Regulation, and Competition: Automobile Industry—1968.*

Enclosed is a copy of a study of automobile pricing which I have just completed. In this study, Mr. Burgess and I used the Ford data as read into the Record by Senator Nelson.

This paper was written for economists, therefore, a word of explanation regarding the use of the term "pricing via the competitive equilibrium mechanism" may be in order. This term as used by Eckstein and Fromm in their article and adopted, reluctantly, by us simply means that price is determined by the interaction of Supply and Demand, whether that market might be characterized by the economist as Pure Monopoly, Oligopoly or Pure Competition. Thus, the word as used here does not mean, necessarily, a market charaterized by a high degree of competition. The antithesis of this view is best expressed by Mr. Galbraith when he says (and personally believes) that "the producer puts prices at a level appropriate to its needs and goes on to persuade the consumer as to what he should do". (Hearings p. 911). It is also in opposition to a similar idea about pricing practices, which Fromm and Eckstein refer to as "the oligopolistic pricing mechanism." This is well described on pages 1061–1064 of the Hearing you just sent.

The conclusions of our research tends to support the idea that the auto industry, as led by G.M., sets prices via the so-called "competitive equilibrium mechanism", i.e., the demand of the consumer plays a dominant role. This tends to support the findings of Eckstein and Fromm, which were based on very aggregate data. This is not to say that G.M. does not behave like a monopolist in setting prices. In fact, we tend to believe that this is the case, and G.M. sets price in the manner of a monopolist and the rest of the industry apparently follows. At times, however, G.M. may *not* seek to maximize profits in the short-run, i.e. not raise prices when other manufacturers would like to, in order to forestall anti-trust action.

I would be glad to receive any comments you might have on our paper. We have submitted it to the American Economic Review for publication.

Thanks again.

Sincerely,

FRED R. GLAHE,
Associate Professor of Economics.

B. PAPER BY PAUL BURGESS AND FRED R. GLAHE, "THE PRICE EQUATION: SOME MICROECONOMIC EVIDENCE"

(NOTE.—The following manuscript, submitted by the authors to the American Economic Review for publication, is published here with the authors' permission.)

THE PRICE EQUATION: SOME MICROECONOMIC EVIDENCE—BY PAUL BURGESS AND FRED R. GLAHE*

I. Introduction

In their December 1968 *American Economic Review* article, Otto Eckstein and Gary Fromm investigated the manner in which prices are set by U.S. industries (1). This study, conducted on a very high level of aggregation, tested the two dominant microeconomic theories of pricing: (1) the competitive equilibrium mechanism, i.e., supply and demand; and (2) the oligopolistic pricing mechanism as expressed in (a) the target return or (b) the full cost pricing mechanism. Since detailed cost information for a given product of a given firm is virtually impossible to obtain, the Eckstein and Fromm study, as well as those that have preceded it, have had to rely on aggregate data or on the questionnaire and interview method. While quantitative studies of this nature can, and usually do, reach a conclusion regarding the manner in which prices are established, there is always the suspicion that the level of aggregation has been too great or that the interviewer was told what he wanted to hear by a businessman saying what he thought the interviewer wanted to hear. Ideally, the economist would welcome the opportunity to analyze the above theories in the framework of the detailed cost and price data of any large corporation.

In this communication detailed costs and wholesale prices of three very slightly differentiated Ford automobiles are analyzed. This analysis indicates that neither the target return nor the full cost pricing mechanism is used in the automobile industry. This tends to support the conclusions reached by Eckstein and Fromm, i.e., the competitive equilibrium mechanism best explains the setting of price in manufacturing industries.

II. Availability of data

An opportunity to analyze detailed costs and prices of a major manufacturing corporation occurred last year when Senator Gaylord Nelson read into the *Congressional Record* detailed cost and price data pertaining to the manufacture of Ford automobiles (5). The data cover all standard size, 1966 Ford automobiles and most of all available equipment options for one assembly plant during the month of July 1966.

The manner in which the cost of production of a base vehicle is determined, is shown in Table 1. As can be seen, the Adjusted Unit Cost is broken down into eight subcosts.

Regular Material Cost includes the major subassemblies of the automobile, e.g., fenders, frames, engines, trim components, etc. When these parts are supplied by another factory of the Ford Motor Company, the cost of these parts includes a "profit" mark-up for the supplying factory.

Minor Material includes bulk materials such as glue, solder, paint, etc., for which there exists no standard or convenient measure of the amount used per car.

Standard Parts are those used on many models, e.g., screws, nuts, bolts, and washers. Larger and more expensive standard parts, such as a two cent bolt might be included in Regular Materials.

Inbound Transportation Cost charges off the cost of material transportation against production and covers the cost of transporting parts to the assembly plant from suppliers, both external and internal to the corporation.

Direct Labor Cost refers to direct, identifiable labor expended on assembly of a base vehicle in this plant. Direct Labor Costs incurred by Ford in the production of parts and subassemblies in its other plants would be reflected in the

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*The authors are Teaching Associate and Associate Professor of Economics, University of Colorado.

NOTE.—Numbered references in parentheses appear at end of article.

regular materials column, but cannot be separated out from the available data. However, according to testimony before joint sessions of the Subcommittees on Monopoly and Retailing of the Senate Small Business Committee, Ralph Nader stated that the direct and indirect labor costs of a medium-priced automobile do not exceed $300 (5, p. S11355).

Manufacturing Overhead essentially covers fixed nonallocable costs including indirect labor for this particular assembly plant. Other fixed overhead costs incurred by Ford in the design, test, manufacture, and selling of automobiles are not included in the cost figures shown here, nor in Regular Material Costs. These major fixed costs include "special tool amortization, selling and marketing expense, engineering and research costs, warranty and policy costs, and general administrative expenses" (4, p. 2). These excluded costs account for the fact that profits, as a percent of sales, are much lower than the cost data presented here would indicate.[1]

Unit Standard Cost is simply the sum of the preceding six columns. This cannot be interpreted as the precise actual cost of a unit since standardized costing insures that the accounting cost of each part supplied by a vendor to an assembly plant is the same, while the actual cost of the parts may have slight variations from standard cost due to their being supplied by different vendors in different regions of the country. The advantage of using standard costs over actual costs, is that it permits interplant performance comparison, i.e., efficiency of plants is based only on data which the plant itself can affect. In many and perhaps most cases the difference between actual cost and standard cost is zero and almost always very close to zero.

Usage and Deletion Changes is a cost item that provides flexibility in the costing system and refers strictly to adjustments in regular material costs. This is necessary because costs at the first of the model year are only approximations; as errors are discovered, plants are notified and adjustments made. The figure shown is a cumulative total of many changes throughout the year. Since these data are for July 1966, the last month of production in the 1966 model year, the figures shown reflect the total net adjustment for the year and thus, should be very accurate. A plus sign (absence of minus sign) indicates that the figure is an addition to regular material costs, while a minus sign represents a decrease in these costs.

Adjusted Unit Standard Cost is the summation of Unit Standard Cost and Usage and Deletion Changes.

Unit Variable Cost (computed by the authors) is simply Adjusted Unit Standard Cost minus Manufacturing Overhead. This adjustment was made to approximate variable costs as closely as possible since a large part of Manufacturing Overhead represents fixed costs.

The breakdown of option costs is similar to that of the base vehicle except that the optional costs shown in the Congressional Record are incremental additions to, or subtractions from, the base vehicle. Many of the options have a base vehicle counterpart and, in this situation, the option costs reveal not the cost of that option, but the increment in cost for that option over the standard equipment, e.g., tinted glass over untinted glass.

Table II contains wholesale to dealer and suggested retail prices of the base vehicle prices of the Ford automobiles listed in Table I. Schedule "A" *D and D* is the amount of applicable Federal excise tax. Adding this amount to the Wholesale to Dealer price gives the Wholesale Delivered price, but this price does *not* include freight costs and a $15 per vehicle advertising charge. The Suggested List does not include excise tax or a $40 dealer preparation charge, and adding these two figures to the Suggested List price gives the Suggested Retail price, or, as it is sometimes called, the "sticker price."

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[1] For the calendar year 1966, Ford's pretax profits were 9½ per cent on sales (4, p. 2).

TABLE I.—DEVELOPMENT COST OF PRODUCTION: PROOF OF ENDING INVENTORY, 1966 MODEL FORD, JULY 29, 1966

Description [1]	Regular material	Minor material	Standard parts	Inbound transportation	Direct labor	Manufacturing overhead	Unit standard cost	Usage and deletion changes	Adjusted unit cost	Unit [2] variable cost, UVCN
Cust. 500 2-dr. sdn	$1,308.34	$19.24	$15.36	$19.50	$54.51	$142.01	$1,558.96	−$1.18	$1,557.78	$1,415.77
Cust. 500 4-dr. sdn	1,328.66	20.34	15.52	19.80	56.25	144.67	1,585.24	−.54	1,584.70	1,440.03
Cust. 2-dr. sedan	1,301.37	19.35	15.05	18.80	53.76	140.86	1,549.19	−.90	1,548.29	1,407.43
Cust. 4-dr. sedan	1,326.86	20.34	15.24	19.80	55.50	143.52	1,581.26	−5.38	1,575.88	1,432.36
Gal. 500 4-dr. hardtop LTD	1,558.16	20.62	18.89	21.77	64.71	157.62	1,841.77	.46	1,842.23	1,684.61
Gal. 500 2-dr. hardtop, 7 Litre	1,694.24	19.77	17.96	20.95	62.76	154.64	1,970.32	7.59	1,977.91	1,823.27
Gal. 500 4-dr. sdn	1,360.38	20.33	16.32	19.98	57.85	147.12	1,621.98	.52	1,622.50	1,475.38
Gal. 500 2-dr. conv. 7 Litre	1,875.05	17.06	19.60	21.75	65.51	158.85	2,157.82	23.68	2,181.50	2,022.65
Gal. 500 4-dr. hardtop	1,418.36	20.56	17.00	20.37	60.74	151.55	1,688.58	.27	1,688.85	1,537.30
Gal. 500 2-dr. conv	1,583.14	16.93	18.08	21.07	60.44	151.09	1,850.75	2.99	1,853.74	1,702.65
Gal. 500 2-dr. spts. hardtop, FB	1,378.44	19.66	16.43	19.77	56.91	145.68	1,636.89	2.73	1,639.62	1,493.94
Gal. 500 2-dr. hard-top, LTD	1,507.51	19.77	16.81	21.27	58.87	148.68	1,772.91	−.24	1,772.67	1,623.99
Gal. 500 2-dr. spts. hardtop, XL, fast	1,517.64	19.93	17.31	21.47	62.23	153.83	1,792.41	8.86	1,801.27	1,647.44
Gal. 500 2-dr. conv	1,710.96	17.06	18.95	22.27	64.96	158.01	1,992.21	10.45	2,002.66	1,844.65
4-dr. ranch wagon, 6 pass	1,508.58	20.67	18.13	25.67	61.54	152.77	1,787.36	10.24	1,797.60	1,644.83
4-dr. country sdn. 6 pass	1,540.42	20.17	18.82	25.87	62.15	153.71	1,821.68	−5.33	1,816.35	1,662.64
4-dr. country sdn. 9 pass	1,591.16	20.72	19.29	26.17	64.88	157.88	1,880.10	−.81	1,879.29	1,721.41
4-dr. country Squire, 6 pass	1,644.80	22.09	19.64	26.38	73.82	171.57	1,958.30	−2.43	1,955.87	1,784.30
4-dr. country Squire, 9 pass	1,686.77	22.09	20.55	40.76	75.75	174.53	2,020.45	.93	2,019.52	1,844.99

[1] Includes eight cylinder engine which would be the "standard eight" for each model.
[2] Computed by authors (adjusted unit cost less manufacturing overhead).

Source: 5, p. S11358.

TABLE II.—FORD DIVISION, FORD MOTOR CO., 1966 FORD PASSENGER CAR PRICES FOR SELECTED MODELS

	Wholesale to dealer [1]	Schedule A D. & D.	Wholesale delivered [1]	Suggested list	Suggested retail [2]
6-cylinder models:					
Custom:					
2-door sedan	$1,705.18	$125.10	$1,830.28	$2,215	$2,380.10
4-door sedan:	1,742.73	127.90	1,870.63	2,264	2,431.90
Custom 500:					
2-door sedan	1,779.10	130.24	1,909.34	2,311	2,481.24
4-door sedan	1,817.15	132.54	1,949.69	2,360	2,532.54
Galaxie 500:					
4-door sedan	1,922.31	139.82	2,062.13	2,497	2,676.82
2-door hardtop	1,927.88	140.74	2,068.62	2,504	2,684.74
4-door hardtop	1,985.43	143.06	2,128.49	2,579	2,762.06
Convertible	2,110.58	153.34	2,263.92	2,741	2,934.34
Station wagon:					
4-door ranch wagon	2,005.95	147.08	2,153.03	2,606	2.793.08
4-door country sedan, 6 pass	2,071.95	151.17	2,223.12	2,691	2,882.17
4-door country sedan, 9 pass	2,157.69	155.75	2,313.44	2,803	2,998.75
4-door country squire, 6 pass	2,290.05	166.81	2,456.86	2,975	3,181.81
4-door country squire, 9 pass	2,351.13	171.07	2,522.20	3,054	3,265.07
8-cylinder 289 CID base V-8: Extra charge over 240 CID 6-cylinder for these models	77.62	5.72	83.34	101	106.72

[1] Includes heater, standard safety features, and dealer holdback equal to 2 percent of suggested list.
[2] Includes heater, standard safety features, and manufacturer's suggested dealer preparation and conditioning charge of $40 in addition to schedule A. D. & D.

Source: 5, pp. S11370–1.

III. The oligopolistic price equations

In their paper, Eckstein and Fromm postulated two possible oligopolistic pricing methods: (1) full cost pricing and (2) target return pricing.

Full cost pricing is a very simple concept and merely says that price equals standard Unit Labor Cost, ULC^N, plus standard Unit Material Cost, UMC^N, times a fixed mark-up, or

$$(1)\quad p=(1+\lambda)\ (ULC^N+UMC^N)=(1+\lambda)\ (UVC^N)$$

where λ is the mark-up factor and UVC^N is the standard Unit Variable Cost at the standard volume of production. In this formulation of the pricing equation, the choice of λ is a policy decision of the firm and would be the same, or almost the same, for all products the firm produces which are only slightly differentiated, e.g., the Custom 4-door sedan versus the Custom 500 4-door sedan. Price, in this formulation, will be altered if changes occur in UVC^N, but will not change in response to changes in the level of output.

A more sophisticated price equation is the target return pricing equation. This is a long-term pricing formula and determines a price which will earn a target rate of return on capital at a standard volume of output. The price equation is:

$$(2)\quad p=\frac{\tilde{\pi}K}{X^N}+UVC^N$$

where $\tilde{\pi}$ is the target rate of return, K is the firm's capital stock, and X^N is the standard level of output. "Price is altered if the cost of producing the standard output changes, either because of changes in the prices of the main inputs, or because of technological progress. However, price will not respond to cost changes caused by changing operating rates, nor to changes in demand" (1, p. 1165).

According to Eckstein and Fromm, target return pricing may be used in industries such as steel or petroleum refining where the size and life of the capital stock is the prime consideration, and full cost pricing would more likely be applied to consumer oriented industries where the design of the product is critical, e.g., the automobile industry (1, p. 1166). Kaplan, Dirlam, and Lanzillotti, however, believe that target return pricing is used by the auto industry (3, p. 49).[2]

[2] It is interesting to note that Kaplan, Dirlam, and Lanzillotti had serious reservations themselves on this point and concluded that "It seems probable that like many policies (target return pricing) serves more as an internal discipline than as a dominant technique for arriving at price to the dealer" (3, p. 55).

TABLE III.—COMPARISON OF 1966 CHEVROLET AND FORD WHOLESALE AND SUGGESTED RETAIL PRICES

4-door sedans with base V–8 engines	Wholesale delivered	Suggested retail
Chevrolet Biscayne	$1,952.51	$2,536.00
Ford Custom	1,953.97	2,538.62
Chevrolet Bel Air	2,030.66	2,636.00
Ford Custom 500	2,033.03	2,639.26
Chevrolet Impala	2,145.69	2,783.00
Ford Galaxie 500	2,145.47	2,783.54

Source: For Ford (5, pp. S11370–1). For Chevrolet (2, p. 4).

IV. Empirical analysis

One might argue that the use of Ford data to examine the above pricing equations is less than desirable since it is generally agreed that Ford, as well as Chrysler and American, follow General Motors in setting price. Evidence to substantiate this supposition is shown in Table III where the Wholesale Delivered and Suggested Retail prices of three comparable Ford and Chevrolet automobiles are given. The average deviation in Wholesale Delivered price on these approximately $2000 items is only $1.35. Nonetheless, the authors of this paper contend that it is reasonable to assume that the Unit Variable Costs for Ford cars and options will be highly correlated with the costs of comparable Chevrolet cars and options. Thus, if the Unit Variable Costs of Chevrolet are lower than those of Ford and even if Chevrolet is the price leader, valid conclusions can still be reached by using Ford cost data. Furthermore, it is very doubtful that the Unit Variable Costs of Ford and Chevrolet are significantly different.

As stated above in Section III, if a firm were utilizing full cost pricing methods, the mark-up factor, λ, for slightly differentiated products, would be the same. Three such products of the Ford Division of the Ford Motor Company are the Custom, Custom 500, and Galaxie 500 4-door sedans equipped with the standard eight cylinder engine. Their product differentiation results primarily from internal and external trim changes, with the Custom being the plainest and the Galaxie 500 the most luxurious.[3] The Unit Variable Cost, Wholesale to Dealer Cost, and computed mark-up factor, λ, for these cars are shown in Table IV. The mark-up factors for the Custom, Custom 500 and Galazie 500 are 0.238, 0.282, and 0.320 respectively. These are *not* constant nor even *close* to being the same. It is apparent from this example, and can in a similar manner be shown for others, that the automobile industry does not use full cost pricing when setting the wholesale price. The mark-up factor from wholesale to retail, μ, is also shown in Table IV, and not surprisingly this is almost a constant. However, the suggested retail price of a car is seldom the price at which the car is sold.

TABLE IV.—MARK-UP FACTORS FOR THREE SIMILAR FORD AUTOMOBILES

Model automobile (all 4-door sedans with base V–8 engines)	Unit variable cost UVCN	Wholesale price to dealer[1]	Wholesale markup factor λ and λ'	Suggested list	Retail markup factor μ
Custom	$1,432.36	$1,773.05	0.238	$2,365.00	0.334
Custom 500	1,440.03	1,845.55	.282	2,461.00	.333
Galaxie 500	1,475.38	1,947.97	.320	2,598.00	.334

[1] "Wholesale to dealer" less 2 percent of "suggested list." This figure is the net price which Ford charges the dealer, exclusive of excise tax and freight.

Source: (5, pp. S11358 and S11370–1).

Having dispensed with full cost pricing, we are now faced with the problem of ascertaining if target return pricing is being used. This is, at first glance, a seemingly difficult task because the capital stock, K, and the target rate of return, $\bar{\pi}$, are unknown and probably unknowable.[4] A pseudo mark-up factor from

[3] Ford introduced a more luxurious car in 1966 (the LTD), but it was not produced as a 4-door sedan until the 1967 model year.

[4] It is implicitly assumed both here and in the previous full cost pricing example that achieved output rates unit variable production costs are equal to, or very close to, those rates and costs that were anticipated when prices were originally set.

production cost to wholesale can be computed, however, and as will be shown below, this pseudo mark-up factor, λ', can be used to determine if target return pricing is being applied to slightly differentiated products which meet certain cost and production criteria.

If target return pricing is being used by a firm, then for any given product there exists a pseudo mark-up factor which, when added to unity and multiplied times Unit Variable Cost, will yield the same price, p. Thus, changing λ in equation (1) to λ', equation (1) can be set equal to equation (2):

$$(3) \qquad (1+\lambda')\cdot(UVC^N)=\frac{\tilde{\pi}K}{X^N}+UVC^N.$$

For a given firm $\tilde{\pi}$ can be assumed constant and for the three automobile models under consideration the value of K can also be assumed a constant, because these models, except for minor trim variations, are identical and they are manufactured in the same plants on shared assembly lines. Let $k=\tilde{\pi}K$, a constant for the above three models, and we can write (3) as

$$(4) \qquad 1+\lambda'(UVC^N)=\frac{k}{X^N}+UVC^N.$$

Dividing both sides of (4) by UVC^N, we get

$$(5) \qquad 1+\lambda'=\frac{k}{(X^N)UVC^N}+1,$$

and solving for λ' yields

$$(6) \qquad \lambda'=\frac{k}{(X^N)UVC^N}$$

According to equation (6), if Ford is using target return pricing on the automobiles shown in Table V, the pseudo mark-up factor, λ', will become smaller as the standard output increases and/or as Unit Variable Cost increases. Symbolically,

$$(7) \qquad \frac{\partial\lambda'}{\partial X^N}<0 \text{ and } \frac{\partial\lambda'}{\partial UVC^N}<0$$

This might not seem particularly helpful since it is likely that X^N will be increasing while UVC^N will be decreasing, but for the example studied in this paper this is not the case. As shown in Table I, the Unit Variable Cost increases when going from the Custom, to the Custom 500, to the Galaxie 500 4-door V8 models. Table V shows that the annual output for these models increases as we go from the Custom to the Galaxie 500.

Table V.—1966 model year production data on three similar Ford automobiles

Model automobile: (all 4-door sedans with V–8 engines):	*Units produced*
Custom	25, 120
Custom 500	75, 500
Galaxie 500	102, 000

Source: (6, pp. 13, 24, 25, and 139).

Given that both the Unit Variable Cost and the standard output rate, X^N, increase, going from the Custom to the Galaxie 500, if target return pricing is being used, λ' would decline but, as shown in Table IV, λ' actually increases. Based on this empirical evidence, we conclude that The Ford Motor Company does not practice either full cost pricing or target return pricing and it is likely that this is also the case for the rest of the industry. This result tends to substantiate the results reached by Eckstein and Fromm in their aggregate analysis, namely that the competitive price setting mechanism explained a large fraction of the total variance in price.

V. Conclusions

Based upon an analysis of detailed cost information, it does not appear that prices in the automobile industry are set by either the full cost method or the target return method. We conclude, therefore, that the competitive equilibrium mechanism or some other, as yet undefined, price equation will best explain automobile pricing.

References

1. O. Eckstein and G. Fromm, "The Price Equation," *American Economic Review*, Dec. 1968, 58, 1159–1183.

2. *1966 Dealers Costs*, Dealers Costs Corporation, Waco, Texas.

3. A. D. H. Kaplan, J. B. Dirlam, and Robert F. Lanzillotti, *Pricing in Big Business—A Case Approach*, Washington, 1958.

4. Rodney W. Markley, Jr., (Vice President, Ford Motor Co., Washington Staff), "Letter to Senator Gaylord Nelson," October 1, 1968. Reprinted in *Planning, Regulation, and Competition: Automobile Industry 1968*, U.S. Government Printing Office, Washington, D.C., 1968, pp. 603–04.

5. Gaylord Nelson, "Automaker's Cost Data Reveal High Markups," *Congressional Record—Senate*, September 25, 1968, S11354–S11375.

[Editorial note.—Also published in Hearings before Subcommittees of the Senate Small Business Committee on "Planning, Regulation, and Competition: Automobile Industry—1968, 90th Congress, 2d session, pp. 268–330 (1968).]

6. *Wards Automotive Yearbook—1967*, Detroit, 1967.

C. COMMENT ON BURGESS AND GLAHE'S PAPER BY MARK B. SCHUPACK

(Note.—The subcommittee sent copies of the foregoing paper by Burgess and Glahe to all witnesses invited to participate in the hearings recorded in this volume, and to the principal automobile manufacturers, and invited comments. At press time, the only comment received in response to that invitation was from Mark B. Schupack, Associate Professor of Economics, Brown University. His comment, which was appended to his prepared statement published at p. 497, in part 1 of this record, follow:)

COMMENT ON THE PAPER BY PAUL BURGESS AND FRED R. GLAHE, "THE PRICE EQUATION: SOME MICROECONOMIC EVIDENCE"

(By Mark B. Schupack)

This paper has used the unit standard cost data for 1966 Ford automobiles presented by Mr. Ralph Nader in the 1968 *Hearings* of the Senate Select Committee on Small Business. Burgess and Glahe have used the data to try to infer whether or not Ford used either a target rate of return or a full cost pricing scheme. My general conclusion is that the methods they used are invalid and that the data presented in the 1968 *Hearings* will probably prove too incomplete for use in telling anything about Ford's pricing procedures or market behavior.

The key methodological problem in the paper occurs on page 13 [1] where Burgess and Glahe assume that $k = \bar{\pi}$ is constant among the three Ford models considered, where $\bar{\pi}$ is the target rate of return set by the firm and K is the capital stock used. k then becomes the total profit imputed to each of the models. If this assumption does not hold, then the rest of the analytical work does not follow and nothing about pricing schemes can be inferred from the data used. In particular, unless we can assume constant k for all models, we would have to know the value of $\bar{\pi}$ and K for each of them, "data which is not known and probably not knowable", (page 11, Burgess and Glahe [2]).

It is not likely that k is constant among the three models. We can probably assume that the target rate of return $\bar{\pi}$ is constant. This means that the amount of capital K used for each model must be the same. The amount of K used per automobile might be approximately constant for three models considered since apparently the only difference among them is in the amount and quality of trim. But the length of production runs for the three models were very different. Table V of the paper shows that output ranged from 25,120 for the Custom to 102,000 units for the Galaxie 500 during the month considered. The total profits imputed to each of the models should vary accordingly. In other words, we must realize that the capital stock of the firm is shared in use by the production activities of

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[1] Page 754, above, following equation (3).—Editor.
[2] Page 753, above, following Table IV.—Editor.

three different models (and perhaps more products). The use of K in a target rate of return pricing formula requires that we use that amount of K *used in the production of the particular product being considered.* This means that the allocated K will vary by the size of the production run and correctly impute more dollar profits to higher volume models, If k, $\tilde{\pi}$, and output are the same for all three models, then the target rate of return method of pricing becomes exactly the same as the full cost method of pricing.

Burgess and Glahe apparently have chosen the target rate of return and full cost pricing methods as alternatives firms might follow instead of setting prices to maximize profits. (Under their special assumptions they really have only one alternative method.) One cannot conclude that, if the data will not support either of these alternatives, then the firm must use profit maximizing pricing. There are many other alternatives to profit maximizing behavior which have not been tested, including a combination of the two considered. More powerful tests are needed to show that profit maximizing pricing was not followed.

Although further explanation is given in the covering letter under which the paper was submitted to the Committee, it is not clear in the paper that profit maximizing pricing and the amount of market competition present may be independent of each other. Profit maximizing behavior can be practiced by pure monopolists as well as by perfect competitors. All this means is that the firm takes both cost and demand conditions into account to set the price and output which will maximize profits. In this case of competition, the price is given to the firm and only the optimum output must be decided. The use of target rate of return or full cost pricing mechanisms usually mean that profits are not as great as they might have been. The demand side of the market is not usually incorporated into the price setting decision in as complete a manner as occurs with profit maximizing pricing. The non-profit-maximizing price may be either higher or lower than the profit-maximizing one.

Market behavior depends, among other things, upon the number and relative sizes of the firms in the industry. While it is probably true that perfect competitors virtually have to engage in profit maximizing behavior, firms in highly concentrated industries may do so, too. The type of pricing schemes used by a firm in an oligopolistic or monopolistic situation may give some hints about the market performance when combined with other information and possible collusion in the industry, but it cannot by itself yield anything very interesting to us.

There are two difficulties with the Ford data which may prevent its being used for any useful purpose:

1. Many joint costs among the three models are included in the very large (about 85% of the total unit costs) regular material costs. These regular material costs are brought forward from other manufacturing operations. Joint costs are also present in the manufacturing overhead charge. The allocation of joint costs among three separate products is always an arbitrary procedure. Much of the actual pricing decision may be hidden in the cost allocation operation.

2. No non-direct costs are explicitly included, but many of these costs are hidden in the regular material figure. Footnote 4 on page 319 of the 1968 *Hearings* points out that all the imputed profit from the previous manufacturing operations has been included in the regular material figure. The imputed profit figures will include arbitrary allocation of joint costs not only among the three models considered but also among all products which Ford made during this period. Any conclusions about pricing, market behavior, etc., must be based on more complete data than that presented here.

Appendix VII

The Securities and Exchange Commission's New Requirements for Line-of-Business Sales and Profits Reporting by Conglomerate Corporations, and Related Materials

A. Statement by Senator Nelson, "The Securities and Exchange Commission's New Rules on Disclosures by Conglomerates," With Exhibits

[From the Congressional Record, July 18, 1969]

The Securities and Exchange Commission's New Rules on Disclosures by Conglomerates

Mr. Nelson. Mr. President, the Securities and Exchange Commission this week has taken an important step toward bridging an "information gap" that has long troubled the investment community. I commend the Commission for its adoption of the long pending proposed amendments to forms S–1, S–7, and 10, to provide for greater disclosure of financial data on the separate operations of diversified corporations.

The policy issue that is involved in these new rules is simply stated, although the details are extremely complex. The policy issue is: How much should the public know about the ways in which our large corporations make their profits and sustain their losses?

On June 20 I wrote to the Chairman and each member of the Commission to express my concern about the length of time the proposed rules changes had been pending in a sort of administrative limbo. In that letter I expressed my own philosophy on the issue in these terms:

"Generally, in my judgment, the direction of our public policy should be toward an ever more open society, with the widest possible availability and dispersion of scientific, industrial and economic information. The accelerating conglomerate merger movement is pushing us in the opposite direction: every year more information about leading factors of production in major—and concentrated—industries drops out of sight behind the veils of consolidated balance sheets and operating statements."

The Monopoly Subcommittee of the Senate Small Business Committee pursued this idea further at hearings July 9, 10, and 11 on the role of giant corporations in the American and world economies: automobile industry, 1969. The inequities in the amounts of information available to small and large competitors appeared very plainly in some of the testimony.

Welcome as the action of the SEC is, no one should be unaware of the areas of our economy that will still be permitted, under these new SEC rules, to remain shrouded behind the veils of secrecy called consolidated balance sheets in the future, as in the past.

Most important, there will be only irregular and infrequent disclosures of the additional information now required. No corporation will be called upon to report line-of-business data on an annual or any other regular, periodic basis, beyond the present sketchy requirement. The new information will be required to be divulged only when a new issue of securities is being registered with the SEC. A first, obvious step for a stronger, better bridge over the "information gap," therefore, will be to extend the line-of-business reporting requirements to the annual report form, form 10–K. I understand that the Commission is studying a recommendation to that effect by Commissioner Wheat, and I hope that the study may not take quite as long as did the study of the revisions of forms S–1, S–7, and 10.

Additionally, it is regrettable that the new requirements for information on assets used in each major line of business, and for itemized reporting on foreign operations, contained in the amendments as first proposed, have been dropped or diluted in the amendments as adopted.

Finally, these new rules should be recognized as intended for the alleviation of the information problems of the share-purchasing public, and not for the

alleviation of the competitive information problems of the small business community. It is, of course, the latter problem area that has so long concerned the Senate Small Business Subcommittee on Monopoly, both under its prior chairman, Senator RUSSELL B. LONG, and under my chairmanship. While I welcome the new SEC rules, I am by no means convinced as yet that the small business competitive information problem has been significantly eased by them. I am not convinced as yet that that problem can be solved by an administrative action. Additional legislation may be required.

In any event, we shall closely and diligently study what application the new SEC requirements may have, if any, to the small business competitive problems, and we shall welcome the help and advice of all having any expert knowledge or experience to offer.

Mr. President, I have a number of exhibits which I shall shortly ask unanimous consent to insert in the Record; but first I want to identify or describe them. The exhibits are in two parts. The first part consists of official correspondence and documents. The second part consists of newspaper articles which, I think, will be helpful to Senators interested in getting a quick overview of this extremely complex subject.

These exhibits are identified as follows:

PART I. OFFICIAL CORRESPONDENCE AND DOCUMENTS

Exhibit 1, letter dated June 20, 1969, from Senator Gaylord Nelson to Chairman Hamer H. Budge of the Securities and Exchange Commission, with copies to each member of the Commission and each member of the Senate Small Business Committee—enclosures omitted.

Exhibit 2, letter dated July 9, 1969, from Chairman Budge to Senator Nelson, with its enclosures identified as follows:

Exhibit 2A, memorandum prepared by Office of Chief Accountant and Division of Corporation Finance, Securities and Exchange Commission, with respect to letter dated June 20, 1969, addressed to Chairman Budge by Senator Gaylord Nelson.

Exhibit 2B, Securities and Exchange Commission, Securities Act release No. 4922, dated September 4, 1968: "Notice of Proposed Amendments to Forms S–1, S–7 and 10."

Exhibit 2C, Securities and Exhange Commission, Securities Act release No. 4949, dated February 18, 1969: "Notice of Revision of Proposed Amendments to Forms S–1, S–7 and 10."

Exhibit 2D, Securities and Exchange Commission, Securities Act release No. 4936, dated December 9, 1968: "Guides for Preparation and Filing of Registration Statements."

Exhibit 2E, Securities and Exchange Commission, Securities Act release No. 4886, dated November 29, 1967: "Adoption of Short Form for Registration of Securities of Certain Issuers and Amendment of Rule 174."

Exhibit 2F, Securities and Exchange Commission form S–1.

Exhibit 2G, Securities and Exchange Commission, Securities Act release No. 4718, dated August 27, 1964: "Adoption of Amendments to Form S–1, Form S–8 and Form S–11, and so forth."

Exhibit 2H, Securities and Exchange Commission form S–10.

Exhibit 3, Securities and Exchange Commission, Securities Act release No. 4988, dated July 14, 1969: "Adoption of Amendments to Forms S–1, S–7 and 10."

PART II. NEWSPAPER ARTICLES

Exhibit 4, article, "Revision of Divisional Reporting Proposals Draws Negative Comment," from Securities Regulation & Law Report, June 25, 1969.

Exhibit 5, article by Jan Nugent, "Big Firms Fight Data Requests," from the Journal of Commerce, July 9, 1969.

Exhibit 6, article by Edwin L. Dale, "Disclosure Rules For Big Divisions Adopted by SEC," from the New York Times, July 15, 1969.

Exhibit 7, article, "SEC Sets Congolomerate Reporting Guide; Regulation Altered To Help Small Firms," from the Wall Street Journal, July 15, 1969.

Exhibit 8, article, "SEC Ordering Conglomerates To Explain Net," from the Washington, D.C., Evening Star, July 14, 1969.

Exhibit 9, article, "SEC Adopts Disclosure Regulations," from the Washington Post, July 15, 1969.

Mr. President, the last five enclosures with Chairman Budge's letter to me—identified as exhibits 2D through 2H—are all familiar documents to the investment and business community. Since they are quite long and are easily available from the Securities and Exchange Commission, I see no useful purpose in inserting them in the Record. The remaining exhibits I have identified are an important part of this statement.

Therefore, Mr. President, I ask unanimous consent that the exhibits I have identified as numbers 1 through 9, including the first three subparts of exhibit 2, identified as exhibits 2A through 2C, be printed in the Record.

There being no objection, the items were ordered to be printed in the Record, as follows:

[Exhibit 1]

United States Senate,
Select Committee on Small Business,
June 20, 1969.

Hon. Hamer H. Budge,
Chairman, Securities and Exchange Commission,
Washington, D.C.

Dear Mr. Chairman: For many years the Senate Small Business Committee has been concerned with the problem posed to small, single-line businesses by the consolidation of operating data in the public financial statements of their large, vertically integrated and/or diversified competitors, the giant corporations. This is especially galling, at best, and disastrously damaging, at worse, when the giant competitor is also the principal or even the sole source of supply. In the too-familiar, typical situation, the small business cannot get any data at all on the giant's operations in the particular line or level of commerce that is the small firm's only business. The reverse is not true: the giant can usually ascertain or estimate the small business competitor's operating data with ease and accuracy.

Some years ago, Senator Russell B. Long, my predecessor as chairman of the Subcommittee on Monopoly, proposed legislation to correct this competitive inequity between large and small business in one type of situation, that of dual distribution. At hearings on the Long bill (S. 1843, 89th Congress), one argument that opponents made against it was that the SEC already had the power to require disclosure, from public corporations, of a type that would sufficiently meet the small business competitive need, incidentally to meeting a long-felt need of the investing public.

A speech by your predecessor, the Honorable Manuel F. Cohen, before the Financial Analysts Federation, May 24, 1966, was inserted in the record of the hearings in support of this point. (Hearings before the Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, on S. 1842, S. 1843 and S. 1844, 89th Congress, 2d session, part 2, p. 375 (1966).) The SEC was not otherwise represented by testimony or a statement at the hearings on the Long bills; however, your Commission had earlier contributed written information on its existing authority in this area to the same subcomittee in another study. (Hearings before the Subcommittee on Antitrust and Monopoly, etc., on economic concentration, 89th Congress, 1st session, part 2, p. 1069 (1965).) That material was submitted on June 4, 1965.

On September 20, 1966, Chairman Cohen appeared in person at the economic concentration hearings (*ibid.*, 89th Congress, 2d session, part 5, p. 1981 (1966))

> * * * to discus the necessity and desirability of requiring "conglomerate" corporations to include in their financial statements meaningful information about the results of operations in each of their distinct lines of activity.

(*Id.* at p. 1982.)

Mr. Cohen stated unequivocally that the Commission had power to require such disclosures

> * * * if and to the extent that the Commission finds them necessary or appropriate in the public interest or for the protection of investors. There is no need to amend these statutes for this purpose.

(*Ibid.*)

The subcommittee never reported S. 1843.

Much later, in September 1968, your Commission announced proposed amendments to Forms S–1, S–7 and 10, three forms used in the registration of securities under your Acts.

> * * * to require that a registrant shall state for each of the past five years the approximate amount or percentage of sales or operating revenues and contribution to net income attributable to each class of related or similar products or services, which contributed 10 percent or more to total sales and operating revenues, or to income before extraordinary items and income taxes, during either of the last two fiscal years. * * * To the extent practicable, the approximate amount of assets employed in each segment of the business is to be reported. Comparable data on revenues and earnings received from foreign sources and from government procurement or any single customer are also to be reported.

(SEC, Securities Act of 1933 Release No. 4922, Securities Exchange Act of 1934 Release No. 8397, Sept. 4, 1968.)

Still later, after consideration of comments on the September proposal, your Commission issued a notice of revision of the proposed amendments to the three forms. (Securities Act of 1933 Release No. 4949, Securities Exchange Act of 1934 Release No. 8530, February 18, 1969.)

It is my understanding that, although the period for filing of comments on the February revisions expired on March 10, the Commission still has not finally adopted or promulgated the amendments to the forms.

On July 9, 10 and 11, the Senate Small Business Subcommittee on Monopoly will hold three days of hearings on the role of giant corporations in the American and world economies, with particular reference, at these sessions, to the automobile industry. I anticipate that there will be considerable discussion of the issue of needless and excessive secrecy on the part of the large corporations. In this connection, it would be helpful to have, for the record of those hearings and, if practicable, before they begin, your answers to these questions:

1. Under existing forms S–1, S–7 and 10, under the amendments of the forms proposed in September, and under the February revisions of the September amendments (three separate situations), what are and would be the tests of sufficient significance of a portion of a registrant's business to require an itemized account or disclosure thereof in the registration statement? What are and would be the definition and limitations of fractions of the business to be separately reported?

2. Under each of the three conditions of the registration forms—existing, September proposal and February proposal—what are and would be the requirements for disclosure of:

a) Relative importance of the separately reported fractions of registrant's business?

b) Dollar amounts and percentages of sales or revenues of the separately reported fractions of registrant's business?

c) Dollar amounts and percentages of contributions to net income of the separately reported fractions of registrant's business?

d) Dollar amounts and percentages of assets employed in the separately reported fractions of registrant's business?

e) Dollar amounts and percentages of losses incurred in the separately reported fractions of registrant's business?

3. Under each of the three conditions of the registration forms—existing, September proposal and February proposal—what are and would be the requirements for separate, itemized disclosure of:

a) Foreign operations?

b) Sales to the U.S. Government?

c) Sales to single important customers?

d) Significance, in terms of both sales and income, of transfers within the registrant corporation, its divisions and subsidiaries?

(It would be helpful if your answers to the above three questions, and to each sub-part of those questions, were numbered to correspond to the question and were in three parts: "Existing," "September proposal" and "February proposal.")

4. To what extent, if any, would the September proposal have served, and would the February proposal serve, the long-standing interest of the Senate Small Business Subcommittee on Monopoly in making public the extent to which, in giant diversified and integrated corporations, some operations may be conducted at high profits for the purpose, in part, of subsidizing other operations on a low-profit, no-profit or loss basis, to drive out competition?

5. If, as I surmise, neither the September nor the February proposals for revision of your registration forms would have made or would make any significant contribution to the type of revelation contemplated by question 4, would you agree with me that new legislation would be required to accomplish that purpose?

In connection with question 5, please note the testimony of former Chairman Manuel Cohen before the Senate Judiciary Subcommittee on Antitrust and Monopoly on September 20, 1966:

> I think there is a general statement that I should make in the light of series of questions that you are putting. I am not interested officially in the sense of having responsibility for the anti-competitive concerns that have been expressed here.

(Hearings on economic concentration, part 5, p. 1991.)

6. Of what considerations, in the securities laws, should the Congress be especially aware in drafting and studying new conglomerate corporation disclosure legislation? Is there any compelling reason why Congress should not be considering new legislation of this type concurrently with your Commission's study of the proposed amendments to your registration forms?

7. What is the status of the proposed amendments to Forms S-1, S-7 and 10? When may we expect them finally to be promulgated, or rejected?

Notwithstanding my feeling that the proposed amendments will be of little utility in ameliorating the competitive information problem that has so long troubled my subcommittee, I do believe that they are desirable and I regret that they have been delayed for so many months in becoming effective. Generally, in my judgment, the direction of our public policy should be toward an ever more open society, with the widest possible availability and dispersion of scientific, industrial and economic information. The accelerating conglomerate merger movement is pushing us in the opposite direction: every year more information about leading factors of production in major—and concentrated—industries drops out of sight behind the veils of consolidated balance sheets and operating statements.

I would urge the Securities and Exchange Commission to help stem this tide of concentration promoted by undue secrecy. I intend to pursue the problem in the Congress, in particular at the July hearings and through the new legislation that I hope shortly thereafter to introduce.

I am enclosing a copy of the Senate Small Business Committee's press release no. 564, describing the July hearings, and a copy of my report to other Committee members, mentioned in the release.

Sincerely,

GAYLORD NELSON,
Chairman, Subcommittee on Monopoly.

cc: Members of the Securities and Exchange Commission
The Secretary of the SEC
Members, Small Business Committee & Hon. Philip A. Hart

"EXHIBIT 2

"SECURITIES AND EXCHANGE COMMISSION,
"Washington, D.C., July 9, 1969.

"HON. GAYLORD NELSON,
"U.S. Senate,
"Washington, D.C.

"DEAR SENATOR: In response to your letter of June 20, 1969, I am transmitting a memorandum prepared by the Commission's Office of Chief Accountant and Division of Corporation Finance.

"The Commission expects to announce on July 14, 1969 its determination with respect to the proposals set forth in Securities Act Release No. 4949 as mentioned in the enclosed memorandum, for disclosures with respect to volume of operation and earnings of different lines of business carried on by one company. We shall furnish you the Commission's announcement as soon as it is released.

"Please let me know if you have further questions in regard to this matter.

"Sincerely,

"HAMER H. BUDGE, *Chairman.*"

"EXHIBIT 2A

"MEMORANDUM PREPARED BY OFFICE OF CHIEF ACCOUNTANT AND DIVISION OF CORPORATION FINANCE, SECURITIES AND EXCHANGE COMMISSION, WITH RESPECT TO LETTER DATED JUNE 20, 1969, ADDRESSED TO CHAIRMAN BUDGE BY SENATOR GAYLORD NELSON

"In responding to the inquiries in the letter of June 20, 1969, it will be helpful first to state the Commission's jurisdiction to require, where a company is engaged in different lines of business, disclosures of the respective contributions of various segments of a business to the overall income.

"Statutory authority to require disclosures in this area is found in Schedule A of the Securities Act of 1933 which calls for disclosures of '(8) the general character of the business actually transacted or to be transacted by the issuer.' Section 7 of the Securities Act provides that a registration statement under that Act 'shall contain such other information . . . as the Commission may, by rules or regulations, require as being necessary or appropriate in the public interest or for the protection of investors.' Similarly Section 12(b) of the Securities Exchange Act of 1934 grants power to the Commission to require in an application for registration of securities on a national securities exchange. 'Such information, in such detail, as to the issuer . . . as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, . . .' in certain specified areas including 'the nature of the business.' Section 12(g)(1) of the latter act gives the Commission similar power with respect to registration of the prescribed securities traded 'over-the-counter' in interstate commerce. Pursuant to these provisions of the statutes the Commission has adoped forms which further specify disclosures required. The Commission's Form S–1, the form of general applicability for registration of securities under the Securities Act, and Form 10, for registration of securities under the Securities Exchange Act, contain the same requirement (in Item 9(a) and Item 3(a), respectively, headed 'Description of Business'), as follows:

" 'Briefly describe the business done and intended to be done by the registrant and its subsidiaries and the general development of such business during the past 5 years. If the business consists of the production or distribution of different kinds of products or the rendering of different kinds of services, indicate insofar as practicable, the relative importance of each product or service or class of similar products or services which contributed 15 percent or more of the gross volume of business done during the last fiscal year.'

"The Commission's Form S–1 has contained the requirement quoted since 1951. Since 1942 a similar requirement, however without reference to the 15% qualification, has been a part of the disclosure required by the form. The requirements of Form 10 mentioned were adopted in 1949.

"The Commission's Form S–7, mentioned in Senator Nelson's letter, adopted November 29, 1967, calls for similar disclosures with respect to the business done and intended to be done but not the development of the business during the past five years. Reference is made to Item 5 of Form S–7 enclosed. Copies of Form S–1 and Form 10 are also enclosed.

"Under the mentioned requirements for a description of business done or proposed to be done by a diversified company, we seek appropriate disclosures where the contribution of a line of products or services to sales and revenues is not proportionate to the contribution to earnings by the line of products or services. We seek disclosure of financial information not provided by consolidated financial statements which may be important to a sound analysis of a company's net worth and future prospects. In some instances a reliable calculation of the contribution of earnings may not be practicable. In many instances the calculation may not produce a precise result. What constitutes an adequate response to the requirement for disclosure of 'the relative importance of each product or service or class of similar products or services' depends on the facts and circumstances of a particular company.

"We turn now to the specific questions put by Senator Nelson, pages 4 to 6 of the letter of June 20, 1969.

"It does not appear practicable to attempt to set forth more precisely 'the definition and limitations of fractions of the business to be separately reported,' as mentioned in question 1, other than the references to the provisions of the Commission's forms and the description of the policies followed by the Commission's staff as stated above.

"In approaching question 2 we refer again to the statement above to the effect that the Commission's policies require disclosures appropriate to specific requirements of the mentioned forms, our rules require such additional statements as may be necessary in order to make the statements made not misleading. Specifically, Rule 408 under the Securities Act of 1933, applicable to Form S-1 and S-7, states 'In addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements in the light of the circumstances under which they are made, not misleading.' Rule 12b-20 under the Securities Exchange Act of 1934, applicable to Form 10, is similar.

"With the explanations and qualifications set forth in the preceding paragraph we now turn to the specific areas mentioned in question 2. Generally, the Commission's existing rules call for disclosures by 15% segments of the business of a company. The proposals of Securities Act Releases 4922 and 4949, dated September 4, 1968 and February 18, 1969, respectively, provide disclosure of 10% segments. The present rules contain specific reference only to percentages of sales and revenues. The proposals refer to tests based on contribution to income also. Under both present requirements and proposed requirements disclosures in terms of percentages or approximate dollar amounts would be acceptable. The proposals of Release No. 4922 with regard to disclosure of amounts of assets employed in separately reported fractions of the registrant's business were withdrawn by Release No. 4949. There is no present requirement with respect to assets employed in segments of a business.

"While the Commission's present forms do not refer specifically to operations conducted at loss, the general disclosure requirements mentioned would apply where losses are material. Specific reference to loss operations appears in the proposals of Release No. 4949.

"With respect to foreign operations, again, the Commission's present forms do not contain specific provisions for disclosures. However, we have generally secured disclosures along the lines of Chapter 12 of the Accounting Research Bulletin No. 43, American Institute of Certified Public Accountants, which specifies that adequate disclosure of foreign operations should be made including, among other things, a summary of foreign subsidiaries' assets and liabilities and their income and losses. The proposals for disclosures of foreign operations in Release No. 4922 were modified in Release No. 4949.

"The Commission's present policies with respect to disclosures of sales to the United States Government and to single important customers are set forth principally in 'Names of Customers and Competitors,' paragraph 27 of Securities Act Release No. 4936 entitled Guides for Preparation and Filing of Registration Statements. In addition, it has been our practice to secure pertinent disclosures of government business subject to renegotiation and orders or contracts subject to termination at the convenience of the government. The proposals in these areas set forth in Release No. 4922 were modified in Release No. 4949.

"Neither our present disclosures practices nor any of the proposals of Releases 4922 and 4949 provide for disclosure of the significance of transfers between companies whose results of operation and financial position are consolidated with the results of operations and financial position of the parent company.

"In developing the proposals in Release No. 4949 we considered comments received with respect to proposals set forth in Release No. 4922 and other materials including the section 'Public Financial Reporting By Conglomerate Firms,' pages 86-7, Studies by the Staff of the Cabinet Committee on Price Stability, January 1969.

"Neither the proposals of Releases No. 4922 or No. 4949 if adopted would necessarily provide disclosure of 'the extent to which, in giant diversified and integrated corporations, some operations may be conducted at high profits for the purpose, in part, of subsidizing other operations on a low-profit, no-profit or loss basis, to drive out competition' as mentioned in question 4.

"The disclosure provisions of the Federal securities laws are basically designed to provide information useful in making investment decisions rather than to provide disclosure in the interest of furthering competitive equality. We are not in a position to determine whether additional legislation is necessary to accomplish the latter objective.

"In respect to question 6 of the letter of June 20, 1969 we see no reason Congress should not consider new legislation of the character mentioned concurrently with the Commission's study of the proposed amendments."

"EXHIBIT 2B

"[From the Securities and Exchange Commission, Sept. 4, 1968]

"NOTICE OF PROPOSED AMENDMENTS TO FORMS S-1, S-7 AND 10

"(Securities Act of 1933, Release No. 4922; Securities Exchange Act of 1934, Release No. 8397)

"(Deleted matter enclosed in black brackets, new matter printed in italic)

"Notice is hereby given that the Securities and Exchange Commission has under consideration certain proposed amendments to Forms S-1, S-7 and 10. Form S-1 is a general form for registration of securities of commercial and industrial companies under the Securities Act of 1933. Form S-7 is a short form for registration under the Act of securities to be offered for cash by listed companies and domestic companies which have securities registered under Section 12(g) of the Securities Exchange Act of 1934, and which have long records of earnings and stability of management and business. Form 10 is a general form for registration of securities of similar companies under Section 12 of the Securities Exchange Act of 1934.

"In view of the increasing number of companies which are engaged in more than one line of business, the Commission has for several years been studying the necessity for clarification of its requirements for disclosure of the importance of the various lines of business to companies' end results. The proposed amendments would supply information on the basis of which existing security holders and new investors may be able to determine the approximate contribution which the various lines of business make to a company's overall profitability, or lack of it.

"Item 9 of Form S-1, Item 5 of Form S-7 and Item 3 of Form 10 require a brief description of the business done and intended to be done by the registrant and its subsidiaries. Where the registrant is engaged in different lines of business, the item also requires an indication, insofar as practicable, of the relative importance of each class of similar products or services, which contributed 15 percent or more to the gross volume of business done during the last fiscal year. It is proposed to amend these items to require that a registrant shall state for each of the past five years the approximate amount or percentages of sales or operating revenues and contribution to net income attributable to each class of related or similar products or services, which contributed 10 percent or more to total sales and operating revenues, or to income before extraordinary items and income taxes, during either of the last two fiscal years. However, if it is not practicable to indicate the contribution to net income, then disclosure is to be provided as to the contribution most closely approaching net income or loss. To the extent practicable, the approximate amount of assets employed in each segment of the business is to be reported. Comparable data on revenues and earnings received from foreign sources and from governmental procurement or any single customer are also to be reported. The Commission believes that such disclosure with respect to a single customer merits consideration and invites comments thereon.

"Comparable amendments to other disclosure requirements have been deferred pending the completion of the study which is currently being made by the Commission of disclosure under the Securities Exchange Act of 1934.

"In developing the proposed amendments the Commission has considered a study sponsored by the Financial Executives Research Foundation, entitled 'Financial Reporting by Diversified Companies,' prepared by Dr. Robert Mautz, the publications and suggestions of the American Institute of Certified Public Accountants, the National Association of Accountants and others. The Commission has also observed that some companies in their annual reports to stockholders have segregated operations down to net income.

"The text of the proposed amendments is set forth below:

"I. FORMS S-1 AND 10

"A. Item 9(a) of Form S-1 and Item 3(a) of Form 10 would be amended as follows:

"(a) Briefly describe the business done and intended to be done by the registrant and its subsidiaries and the general development of such business during the past five years. [If the business consists of the production or distribution of different kinds of products or the rendering of different kinds of services, in-

dicate insofar as practicable, the relative importance of each product or service or class of similar products or services which contributed 15 percent or more to the gross volume of business done during the last fiscal year] *State for each of the five years the approximate amount or percentage of sales or operating revenues and contribution to net income, excluding extraordinary items, attributable to each class of related or similar products or services which contributed 10 percent or more to the total of sales and revenues, or to net income, before extraordinary items and income taxes, during either of the last two fiscal years. If it is not practicable to state the contribution to net income, excluding extraordinary items, by any such segment of the business, disclose the contribution to earnings most closely approaching such net income or loss. In addition, state, if practicable, the amount of assets employed in each segment of the business for which operating results are reported. Where 10 percent or more of total sales and revenues or net income as stated above are derived from operations outside the United States and Canada or from Government procurement or any single customer, similar information with respect to each such source shall be set forth and for any categories of products or services within each source which contributed 10 percent of the total company sales and revenues or net income as stated above.*

"B. The following new Instruction 3 would be added to the instructions to the above-mentioned items:

"3(a). In classifying products or services appropriate consideration shall be given to all relevant factors, including rates of profitability of operations, degrees of risk and opportunity for growth. The basis for classifying products or services and any material changes between periods in such classifications shall be described briefly.

"(b) Where substantial amounts of products or services are transferred from one unit to another, the receiving and the transferring units may be aggregated for reporting the operating results of a segment of the business pursuant to this item.

"(c) If the method of pricing intra-compay transfers of products or services or the method of allocation of common or corporate costs materially affects the reported contribution to income of a segment of the business, such methods and any material changes between periods in such methods and the effect thereof shall be described briefly.

"II. FORM S–7

"A. Item 5(a) of Form S–7 would be amended as follows:

"(a) Briefly describe the business done and intended to be done by the registrant and its subsidiaries. [If the business consists of the production or distribution of different kinds of products or the rendering of different kinds of services, indicate, insofar as practicable, the relative importance of each product or service or class of similar products or services which contributed 15 percent or more to the gross volume of business done during the last fiscal year.] *State for each of the last five years the approximate amount or percentage of sales or operating revenues and contribution to net income, excluding extraordinary items, attributable to each class of related or similar products or services which contribute 10 percent or more to the total of sales and revenues, or to net income before extraordinary items and income taxes, during either of the last two fiscal years. If it is not practicable to state the contribution to net income, excluding extraordinary items, by any such segment of the business, disclose the contribution to earnings most closely approaching such net income or loss. In addition, state, if practicable, the amount of assets employed in each segment of the business for which operating results are reported. Where 10 percent or more of total sales and revenues or net income as stated above are derived from operations outside the United States and Canada or from Government procurement or any single customer, similar information with respect to each such source shall be set forth and for any categories of products or services within each source which contributed 10 percent of total company sales or revenues or net income as stated above.* In the case of an extractive enterprise, give appropriate information as to development, reserves and production.

"B. The following new instructions would be added to the above-mentioned Item 5(a):

"Instruction. 1. In classifying products or services, appropriate consideration shall be given to all relevant factors, including rates of profitability of operations, degree of risk and opportunity for growth. The basis for classifying products or

services and any material changes between periods in such classification shall be described briefly.

"2. Where substantial amounts of products or services are transferred from one unit to another, the receiving and the transferring units may be aggregated for reporting the operating results of a segment of the business pursuant to this item.

"3. If the method of pricing intra-company transfers of products or services or the method of allocation of common or corporate costs materially affects the reported contribution to income of a segment of the business, such methods and any material changes between periods in such methods and the effect thereof shall be described briefly.

* * * * * * *

"All interested persons are invited to submit their views and comments on the proposed amendments, in writing, to the Securities and Exchange Commission, Washington, D.C. 20549, on or before October 4, 1968. Except where it is requested that such communication not be disclosed, they will be considered available for public inspection.

"By the Commission.

"ORVAL L. DUBOIS,
"Secretary."

"EXHIBIT 2C

"[From the Securities and Exchange Commission, Washington, D.C., Feb. 18, 1969]

"NOTICE OF REVISION OF PROPOSED AMENDMENTS TO FORMS S–1, S–7, AND 10

"(Securities Act of 1933, Release No. 4949; Securities Exchange Act of 1934, Release No. 8530)

"On September 4, 1968 the Commission published, in Securities Act Release No. 4922 (Securities Exchange Act Release No. 8397) certain proposals for amendments to Forms S–1, S–7, and 10. Forms S–1 and S–7 are used for the registration of securities under the Securities Act of 1933 and Form 10 is used for the registration of securities under the Securities Exchange Act of 1934.

"A large number of helpful comments were received in response to the invitation for comments and all of such comments have been carefully considered. As a result of the review of such comments and further consideration of the various matters involved, the Commission has revised the proposed amendments and is publishing them for comment by interested persons. In view of the length of time the proposals have been under consideration, the wide publicity they have received and the extensive consideration they have received from registrants, trade and professional groups and other persons, the Commission believes that a limited period of time should be adequate for the submission of additional comments.

"The amendments relate to Item 9 of Form S–1, Item 5 of Form S–7 and Item 3 of Form 10, which require a brief description of the business done and intended to be done by the registrant and its subsidiaries. The revised items require, where the registrant and its subsidiaries are engaged in more than one line of business, the disclosure for each of a maximum of five fiscal years ending subsequent to December 31, 1966, the approximate amount of percentage of total sales and operating revenues and contribution to income before income taxes and extraordinary items attributable to each line of business which contributed, during either of the last two fiscal years, 10 per cent or more to (1) the total of sales and revenues, or (2) income before income taxes and extraordinary items. Similar disclosure is also required with respect to any line of business which resulted in a loss of 10 percent or more of such income before deduction of losses. Where the number of lines of business exceeds ten, the disclosure may be limited to the ten most important lines. Where it is not practicable to state the contribution to income before income taxes and extraordinary items for any line of business, the contribution to the result of operations most closely approaching such income is to be disclosed.

"The revised requirements provide for grouping similar or related products or services in lines of business upon consideration of all relevant factors. Where material amounts of products or services are transferred from one unit to another, the transferring and receiving units may be considered a single unit for the purpose of disclosure.

"Where the registrant and its subsidiaries are not engaged in more than one line of business, the revised items require disclosure of the amount of sales or revenues during each fiscal year of the specified period for each product or service or class of similar or related products or services which contributed 10 percent or more to the total of sales and revenues in either of the last two fiscal years.

"Where a business is dependent upon a single customer, or a very few customers, the loss of any one of which would have a materially adverse effect, disclosure of the identity of the customers is required together with material facts with respect to their relationship and the importance of the business to the registrant.

"Appropriate disclosure is required with respect to business which is subject to renegotiation of profits or termination of contracts at the election of the government.

"If the registrant and its subsidaries engage in material operations outside the United States, or if a material portion of sales or revenues are received from customers outside the United States, appropriate disclosure is required with respect to the importance of that part of the business to the registrant and the risks attendant thereto.

"The revised proposals also provide that the Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of any of the required information or the substitution of appropriate information of comparable character. By this provision management may exercise judgment in designing disclosure suitable to the operations of a particular company. The Commission may also require the furnishing of information other than that specified where necessary or appropriate for an adequate description of the business.

"The text of the amendments as proposed to be revised are attached to this release.

"All interested persons are invited to submit their views and comments on the revised proposals, in writing, to the Securities and Exchange Commission on or before March 10, 1969. All such communications will be considered available for public inspection.

"By the Commission.

"ORVAL L. DUBOIS,
"Secretary."

"TEXT OF AMENDMENTS TO FORMS S-1, S-7, AND 10

"I. FORMS S-1 AND 10

"Item 9 of Form S-1 and Item 3 of Form 10 would be amended as follows:

"(a) Briefly describe the business done and intended to be done by the registrant and its subsidiaries and the general development of such business during the past five years, or such shorter period as the registrant may have been engaged in business.

"Instructions

"1. The description shall not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done. Include the business of subsidiaries of the registrant only insofar as is necessary to understand the character and development of the business conducted by the total enterprise.

"2. In describing developments, information shall be given as to matters such as the following: The nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other materially important reorganization, readjustment or seccession of the registrant or any of its significant subsidiaries: the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; any materially important changes in the types of products produced or services rendered by the registrant and its subsidiaries; and any materially important changes in the mode of conducting the business, such as fundamental changes in the methods of distribution.

"3. The business of a predecessor or predecessors shall be deemed to be the business of the registrant for the purpose of this item.

"4. Appropriate disclosure shall be made with respect to any portion of the business subject to renegotiation of profits or termination of contracts or subcontracts at the election of the government.

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"(b)(1) If the registrant and its subsidiaries are engaged in more than one line of business, state for each of its past five fiscal years, for each fiscal year ending subsequent to December 31, 1966, or for each fiscal year the registrant has been engaged in business, whichever period is less, for each line of business specified in (2) below—

"(A) the approximate amount or percentage of total sales and revenues, and

"(B) the approximate amount or percentage of income (or loss) before income taxes and extraordinary items.

"If it is impracticable to state the contribution to income (or loss) before income taxes and extraordinary items for any line of business, state the contribution thereof to the result of operations most closely approaching such income, together with a brief explanation of the reasons why it is not practicable to state the contribution to such income or loss.

"(2) The information specified in (1) above shall be furnished with respect to each line of business which, during either of the last two fiscal years, accounted for—

"(A) 10 percent or more of the total of sales and revenues,

"(B) 10 percent or more of income before income taxes and extraordinary items computed without deduction of loss resulting from operations of any line or lines of business, or

"(C) a loss which equalled or exceeded 10 percent of the amount of income specified in (B) above.

"Instructions

"1. If the number of lines of business for which information is required exceeds ten, the registrant may, at its option, furnish the required information only for the ten lines of business deemed most important to an understanding of the business. In such event, a statement to that effect shall be set forth together with a brief identification of each line of business for which the information is not furnished and an indication whether such line is comprehended by (A), (B) or (C) of paragraph (2) above.

"2. In grouping products or services as lines of business, appropriate consideration shall be given to all relevant factors, including rates of profitability of operations, degrees of risk and opportunity for growth. The basis for grouping such products or services and any material changes between periods in such grouping shall be briefly described.

"3. Where material amounts of products or services are transferred from one unit to another, the receiving and the transferring units may be considered a single unit for the purpose of reporting the operating results thereof.

"4. If the method of pricing intra-company transfers of products or services or the method of allocation of common or corporate costs materially affects the reported contribution to income of a line of business, such methods and any material changes between periods in such methods and the effect thereof shall be described briefly.

"5. Information regarding operations regulated by federal, state or municipal authorities may be limited to the information required by any uniform system of accounts prescribed by such authorities.

"(c) If we registrant and its subsidiaries are not engaged in more than one lien of business, or if two or more lines of business have been combined pursuant to instruction 3 to paragraph (b), and the business consists of the production or distribution of different kinds of products or the rendering of different kinds of service, state for each fiscal year of the applicable period specified in paragraph (b) the amount of sales or revenues contributed by each product or services or class of similar or related products or services which contributed 10 percent or more to the total of sales and revenues in either of the last two fiscal years.

"(d) If a material part of the business of the registrant and its subsidiaries is dependent upon a single customer, or a very few customers, the loss of any one of which would have a materially adverse effect on the registrant, the name of the customer or customers and other material facts with respect to their relationship, if any, to the registrant and the importance of the business to the registrant shall be stated.

"(e) If the registrant and its subsidiaries engage in material operations outside the United States, or if a material portion of sales or revenues are derived from customers outside the United States, appropriate disclosure shall be made

with respect to the importance of that part of the business to the registrant and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and relative profitability of such business.

"(f) Indicate briefly, to the extent material, the general competitive conditions in the industry in which the registrant and its subsidiaries are engaged or intend to engage, and the position of the enterprise in the industry. If several products or services are involved, separate consideration should be given to the principal products or services or classes of products or services.

"(g) The Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable character. The Commission may also require the furnishing of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for an adequate description of the business done on or intended to be done.

"II. FORMS S–7

"Item 5 of Form S–7 would be amended as follows:

"(a) Identify the business done and intended to be done by the registrant and its subsidiaries. In the case of an extractive enterprise, give appropriate information as to development, reserves and production. Appropriate disclosure shall be made with respect to any portion of the business subject to renegotiation of profits or termination of contracts or subcontracts at the election of the government.

"(b) (1) If the registrant and its subsidiaries are engaged in more than one line of business, state for each of its past five fiscal years, for each fiscal year ending subsequent to December 31, 1966, or for each fiscal year the registrant has been engaged in business, whichever period is less, for each line of business specified in (2) below—

"(A) the approximate amount or percentage of total sales and revenues, and

"(B) the approximate amount or percentage of income (or loss) before income taxes and extraordinary items.

"If it is impracticable to state the contribution to income (or loss) before income taxes and extraordinary items for any line of business, state the contribution thereof to the result of operations most closely approaching such income, together with a brief explanation of the reasons why it is not practicable to state the contribution to such income or loss.

"(2) The information specified in (1) above shall be furnished with respect to each line of business which, during either of the last two fiscal years, accounted for—

"(A) 10 percent or more of the total of sales and revenues,

"(B) 10 percent or more of income before income taxes and extraordinary items computed without deduction of loss resulting from operations of any line or lines of business, or

"(C) a loss which equalled or exceeded 10 percent of the amount of income specified in (B) above.

"*Instructions*

"1. If the number of lines of business for which information is required exceeds ten, the registrant may, at its option, furnish the required information only for the ten lines of business deemed most important to an understanding of the business. In such event, a statement to that effect shall be set forth together with a brief identification of each line of business for which the information is not furnished and an indication whether such line in comprehended by (A), (B) or (C) of paragraph (2) above.

"2. In grouping products or services as lines of business, appropriate consideration shall be given to all relevant factors, including rates of profitability of operations, degrees of risk and opportunity for growth. The basis for grouping such products or services and any material changes between periods in such grouping shall be briefly described.

"3. Where material amounts of products or services are transferred from one unit to another, the receiving and the transferring units may be considered a single unit for the purpose of reporting the operating results thereof.

"4. If the methods of pricing intra-company transfers of products or services or the method of allocation of common or corporate costs materially affects the

reported contribution to income of a line of business, such methods and any material changes between periods in such methods and the effect thereof shall be described briefly.

"5. Information regarding operations regulated by federal, state, or municipal authorities may be limited to the information required by any uniform system of accounts prescribed by such authorities.

"(c) If the registrant and its subsidiaries are not engaged in more than one line of business, or if two or more lines of business have been combined pursuant to instruction 3 to paragraph (b), and the business consists of the production or distribution of different kinds of products or the rendering of different kinds of services, state for each fiscal year of the applicable period specified in paragraph (b) the amount of sales or revenues contributed by each product or service or class of similar or related products or services which contributed 10 percent or more to the total of sales and revenues in either of the last two fiscal years.

"(d) If a material part of the business of the registrant and its subsidiaries is dependent upon a single customer, or a very few customers, the loss of any one of which would have a materially adverse effect on the registrant, the name of the customer or customers and other material facts with respect to their relationship, if any, to the registrant and the importance of the businesses to the registrant shall be stated.

"(e) If the registrant and its subsidiaries engage in material operations outside the United States, or if a material portion of sales or revenues are derived from customers outside the United States, appropriate disclosure shall be made with respect to the importance of that part of the business to the registrant and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and relative profitability of such business.

"(f) Briefly describe any pending legal proceedings to which the registrant or its subsidiaries is a party which may have a substantial effect upon the earnings or financial condition of the registrant.

"(g) The Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable character. The Commission may also require the furnishing of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for an adequate description of the business done or intended to be done.

"EXHIBIT 3

["From the Securities and Exchange Commission, Washington, D.C., July 14, 1969]

"ADOPTION OF AMENDMENTS TO FORMS S-1, S-7, AND S-10

("Securities Act of 1933, Release No. 4988; Securities Exchange Act of 1934, Release No. 8650)

"On February 18, 1969, the Securities and Exchange Commission published in Securities Act Release No. 4949 (Securities Exchange Act Release No. 8530) certain revised proposals for amendments to Forms S-1, S-7, and 10. Forms S-1 and S-7 are used for the registration of securities under the Securities Act of 1933 and Form 10 is used for the registration of securities under the Securities Exchange Act of 1934.

"A considerable number of comments were received in regard to the revised proposals and were very helpful to the Commission in reaching a decision on the proposed amendments.

"The amendments relate to Item 9 of Form S-1, Item 5 of Form S-7 and Item 3 of Form 10, which require a brief description of the business done and intended to be done by the registrants and its subsidiaries.

"Where a registrant and its subsidiaries are engaged in more than one line of business, the amendments require the disclosure for each of a maximum of the last five fiscal years subsequent to December 31, 1966, of the approximate amount or percentage of total sales and operating revenues and of contribution to income before income taxes and extraordinary items attributable to each line of business which contributed, during either of the last two fiscal years, a certain proportion to (1) the total of sales and revenues, or (2) income before income taxes and extraordinary items. For companies with total sales and revenue over $50 million, the proportion will be 10 percent; for smaller companies, 15 percent. Similar

disclosure is also required with respect to any line of business which resulted in a loss of 10 percent or more (or 15 percent or more for smaller companies) of such income before deduction of losses. Where the percentage test as applied to both sales and earnings contributions results in more than ten lines of business, the disclosure may be limited to the ten most important lines. Where it is not practicable to state the contribution to income before income taxes and extraordinary items for any line of business, the contribution to the results of operations most closely approaching such income is to be disclosed.

"Various suggestions were made for more specific indications of the meaning of "line of business." However, in view of the numerous ways in which companies are organized to do business, the variety of products and services, the history of predecessor and acquired companies, and the diversity of operating characteristics, such as markets, raw materials, manufacturing processes and competitive conditions, it is deemed feasible or desirable to be more specific in defining a line of business. Management, because of its familiarity with company structure, is in the most informed position to separate the company into components on a reasonable basis for reporting purposes. Accordingly, discretion is left to the management to devise a reporting pattern appropriate to the particular company's operations and responsive to its organizational concepts.

"The amendments continue the existing disclosure requirements on breakdown of total volume of sales and revenues by principal classes of similar products or services, except that the percentage test has been reduced from 15 percent to 10 percent in the case of companies having total sales and revenues in excess of $50 million during either of their last two fiscal years. This continued requirement is appropriate in view of the relative freedom given management in determining "line of business." Of course, for a company using classes of similar products or services as its basis for determining lines of business, repetition of the disclosure will be unnecessary. It should also be noted that to the extent such classification is not coincident with the company's determination of its lines of business or where the company is not engaged in more than one line of business, disclosure is limited to proportion of sales and revenues and does not require a showing of contribution to earnings.

"There were various comments with respect to the percentage test used in the proposed amendments. The Commission has carefully considered all of these comments and has examined financial data voluntarily furnished by numerous companies in which the information as to contribution of lines of business has been broken down on a basis of less than 15 percent and in some cases on a basis of less than 10 percent. The data indicated that in the case of many larger multiline companies, a substantial portion of the aggregate business done was represented by lines of business which individually contributed less than 15 percent to the company's aggregate business. The Commission has concluded that in the case of larger companies a breakdown of lines of business on a basis of 10 percent will provide material information regarding a significant portion of the company's aggregate business represented by lines which individually contribute less than 15 percent to its business. With respect to smaller companies, however, the Commission has concluded that a breakdown of lines of business on a basis of 15 percent will provide adequate disclosure. Accordingly it is provided that where the total sales and revenues exceeded $50 million during either of the last two fiscal years the 10 percent test shall be used and where they did not exceed that amount the 15 percent test may be used.

"Comparable amendments to other disclosure requirements are being deferred pending the completion of consideration of the recently completed study of disclosure under the Securities Exchange Act of 1934.

"The foregoing amendments, the text of which is set forth below, shall be effective with respect to registration statements filed on any of the specified forms on or after August 14, 1969.

"By the Commission.

"ORVAL L. DUBOIS,
"Secretary.

I. FORMS S–1 AND 10

"Item 9 and Form S–1 and Item 3 of Form 10 have been amended to read as follows:

"(a) Briefly describe the business done and intended to be done by the registrant and its subsidiaries and the general development of such business during the past five years, or such shorter period as the registrant may have been engaged in business.

"*Instruction.* 1. The description shall not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done. Include the business of subsidiaries of the registrant only insofar as is necessary to understand the character and development of the business conducted by the total enterprise.

"2. In describing developments, information shall be given as to matters such as the following: The nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other materially important reorganization, readjustment or succession of the registrant or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; any materially important changes in the types of products produced or services rendered by the registrant and its subsidiaries; and any materially important changes in the mode of conducting the business, such as fundamental changes in the methods of distribution.

"3. The business of a predecessor or predecessors shall be deemed to be the business of the registrant for the purpose of this item.

"4. Appropriate disclosure shall be made with respect to any material portion of the business which may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government.

"(b)(1) *Information as to lines of business.* If the registrant and its subsidiaries are engaged in more than one line of business, state, for each of the registrant's last five fiscal years, or for each fiscal year ending after December 31, 1966, or for each fiscal year the registrant has been engaged in business, whichever period is less, the approximate amount or percentage of (i) total sales and revenues, and (ii) income (or loss) before income taxes and extraordinary items, attributable to each line of business which during either of the last two fiscal years accounted for—

"(A) 10 percent or more of the total of sales and revenues.

"(B) 10 percent or more of income before income taxes and extraordinary items computed without deduction of loss resulting from operations of any line of business, or

"(C) a loss which equalled or exceeded 10 percent of the amount of income specified in (B) above:
Provided, That if total sales and revenues did not exceed $50,000,000 during either of the last two fiscal years, the percentages specified in (A), (B) and (C) above shall be 15 percent, instead of 10 percent.

"If it is impracticable to state the contribution to income (or loss) before income taxes and extraordinary items for any line of business, state the contribution thereof to the results of operations most closely approaching such income, together with a brief explanation of the reasons why it is not practicable to state the contribution to such income or loss.

"*Instructions.* 1. If the number of lines of business for which information is required exceeds ten, the registrant may, at its option, furnish the required information only for the ten lines of business deemed most important to an understanding of the business. In such event, a statement to that effect shall be set forth.

"2. In grouping products or services as lines of business, appropriate consideration shall be given to all relevant factors, including rates of profitability of operations, degrees of risk and opportunity for growth. The basis for grouping such products or services and any material changes between periods in such groupings shall be briefly described.

"3. Where material amounts of products or services are transferred from one line of business to another, the receiving and transferring lines may be considered a single line of business for the purpose of reporting the operating results thereof.

"4. If the method pricing intra-company transfers of products or services or the method of allocation of common or corporate costs materially affects the reported contribution to income of a line of business, such methods and any material changes between periods in such methods and the effect thereof shall be described briefly.

"5. Information regarding sales or revenues or income (or loss) from different classes of products or services in operations regulated by Federal, State or municipal authorities may be limited to those classes of products or services required by any uniform system of accounts prescribed by such authorities.

"(2) *Information as to classes of products or services.* State for each fiscal year specified in (1) above the amount or percentage of total sales and revenues contributed by each class of similar products or services which contributed 10

percent or more to total sales and revenues in either of the last two fiscal years, or 15 percent or more of total sales and revenues if total sales and revenues did not exceed $50,000,000 during either of the last two fiscal years.

"*Instructions.* 1. Paragraph (2) calls for information with respect to classes of products or services regardless of whether the registrant is engaged in more than one line of business as referred to in paragraph (1) above. However, this information may be combined, where appropriate, with the response to paragraph (1).

"2. Instruction 5 to paragraph (1) above shall also apply to paragraph (2).

"(c) If a material part of the business of the registrant and its subsidiaries is dependent upon a single customer, or a very few customers, the loss of any one of which would have a materially adverse effect on the registrant, the name of the customer or customers and other material facts with respect to their relationship, if any, to the registrant and the importance of the business to the registrant shall be stated.

"(d) If the registrant and its subsidiaries engaged in material operations outside the United States, or if a material portion of sales or revenues is derived from customers outside the United States, appropriate disclosure shall be made with respect to the importance of that part of the business to the registrant and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and relative profitability of such business.

"(e) Indicate briefly, to the extent material, the general competitive conditions in the industry in which the registrant and its subsidiaries are engaged, or intend to engage, and the position of the enterprise in the industry. If several products or services are involved, separate consideration shall be given to the prinicpal products or services or classes of products or services.

"(f) The Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable character. The Commission may also require the furnishing of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary for appropriate for an adequate description of the business done or intended to be done.

"I. FORMS S–1 AND 10

"Item 5 of Form S–7 has been amended to read as follows:

"(a) Identify the business done and intended to be done by the registrant and its subsidiaries. In the case of an extractive enterprise, give appropriate information as to development, reserves and production. Appropriate disclosure shall be made with respect to any portion of the business which may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government.

"(b) (1) *Information as to lines of business.* If the registrant and its subsidiaries are engaged in more than one line of business, state, for each of the registrant's last five fiscal years, or for each fiscal year ending after December 31, 1966, whichever period is less, the approximate amount or percentage of (i) total sales and revenues, and (ii) income (or loss) before income taxes and extraordinary items, attributable to each line of business which during either of the last two fiscal years accounted for—

"(A) 10 percent or more of the total of sales and revenues,

"(B) 10 percent or more of income before income taxes and extraordinary items computed without deduction of loss resulting from operations of any line of business, or

"(C) a loss which equalled or exceeded 10 percent of the amount of income specified in (B) above.

"If it is impracticable to state the contribution to income (or loss) before income taxes and extraordinary items for any line of business, state the contribution thereof to the results of operations most closely approaching such income, together with a brief explanation of the reasons why it is not practicable to state the contribution to such income or loss.

"*Instructions.* 1. If the number of lines of business for which information is required exceeds ten, the registrant may, at its option, furnish the required information only for the ten lines of business deemed most important to an understanding of the business. In such event, a statement to that effect shall be set forth.

"2. In grouping products or services as lines of business, appropirate consideration shall be given to all relevant factors, including rates of profitability of operations, degree of risk and opportunity for growth. The basis for grouping such products or services and any material changes between periods in such groupings shall be briefly described.

"3. Where material amounts of products or services are transferred from one line of business to another, the receiving and transferring lines may be considered a single line of business for the purpose of reporting the operating results thereof.

"4. If the method of pricing intra-company transfers of products or services or the method of allocation of common or corporate cost materially affects the reported contribution to income of a line of business, such methods and any material changes between periods in such methods and the effect thereof shall be described briefly.

"5. Information regarding sales or revenues or income (or loss) from different classes of products or services in operations regulated by Federal, State or municipal authorities may be limited to those classes of products or services required by any uniform system of accounts prescribed by such authorities.

"(2) *Information as to classes of praoducts or services.* State for each fiscal year specified in (1) above the amount or percentage or total sales and revenues contributed by each class of similar products or services which contributed 10 percent or more to total sales and revenues in either of the last two fiscal years.

"*Instructions.* 1. Paragraph (2) calls for information with respect to classes of products on services regardless of whether the registrant is engaged in more than one line of business as referred to in paragraph (1) above. However, this information may be combined, where appropriate, with the response to paragraph (1).

"2. Instruction 5 to paragraph (1) above shall apply to paragraph (2).

"(c) If a material part of the business of the registrant and its subsidaries is dependent upon a single customer, or a very few customers, the loss of any one of which would have a materially adverse effect on the registrant, the name of the customer or customers and other material facts with respect to their relationship, if any, to the registrant and the importance of the business to the registrant shall be stated.

"(d) If the registrant and its subsidiaries engage in material operations outside the Unitied States, or if a material portion of sales or revenues is derived from customers outside the United States, appropriate disclosure shall be made with respect to the importance of that part of the business to the registrant and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and relative profitability of such business.

"(e) Briefly describe any pending legal proceedings to which the registrant or any of its subsidiaries is a party which may have a substantial effect upon the earnings or financial condition of the registrant.

"(f) The Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable charactr. The Commission may also require the furnishing of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for an adequate description of the business done or intended to be done."

"EXHIBIT 4

"[From Securities Regulation & Law Report, June 25, 1969]

"REVISION OF DIVISIONAL REPORTING PROPOSALS DRAWS NEGATIVE COMMENT

"Critics of the proposed S-1, S-7, and Form 10 changes are not placated by the SEC's revised release (No. 33-4949, Feb. 18, 1969). The Commission's original proposals for tightening divisional reporting requirements, as a means of handling the growing number of diversified registrants, were published in Release No. 33-4922 (Sept. 4, 1968). Comments were invited and considered by the Commission. The second release reflets some of the suggested revisions—but not enough to satisfy the critics. In the second comment period, negative votes from industry, accounting firms, and professional organizations once again flooded the Commission.

"Presently, registration forms require only 'an indication, insofar as practicable, of the relative importance of each class of similar products or services

which contributed 15 percent or more to the gross volume of business done during the last fiscal year.' (Release No. 33–4922, Sept. 4, 1968). If proposed changes go through, 15 percent will be tightened to 10 percent. 'Relative importance' will be explicitly defined as "amount or percentage of sales, or contribution to net revenue," the 'last year' will be extended to cover the 'last five years.' 'Class of products' will be changed to read "line of business" and companies will have to indicate the rate of profitability, degree of risk, and opportunity for growth within each line of business reported.

"UNPOPULAR 10 PERCENT REQUIREMENT

"The proposed 10 percent divisional reporting criterion still ranks highest on the list of objections. The requirement that rate of profitability, degre of risk, and projected growth information be discussed is the target of almost as much criticism; and the possible extension of the reported time period to cover a maximum five preceeding years is another very unpopular provision retained in the revised proposals.

"BEYOND THE PALE

"Most writers favor retention of the present 15 percent criteria for determining a reportable line of business. Many note in their arguments that the 15 percent figure was recommended in the Mautz study, 'Finanical Reporting by Diversified Companies' prepared by the Financial Executives Research Foundation and referred to by the Commission in Release No. 33–4922. Excessive fragmentation of reported data was frequently cited as a reason against 10 percent reporting. One particularly strong comment, registered by J. D. Terrell Couch, General Counsel for Marathon Oil Company, claims that 'the effect of the proposed amendments is to force financial reporting beyond the pale of accepted accounting principles."

"While 10 percent reporting as applied to companies with less than $1 million annual sales might produce some fairly exhaustive data, 10 percent as applied to billion dollar conglomerates could still leave huge areas of their financial operations concealed. This point was made in a letter by James R. Russell, Vice President of Illinois Tool Works, Inc. 'In a $2,000,000,000 sales conglomerate a 10% line is a $200,000,000 business and operations of this size are still in the minority. In contrast, in a small to medium size company a 10% line could be $5,000,00 to $20,000,000.'

"COMPETITIVE HARM

"Possible competitive damage to a company as a result of revealing information about its operations was the major argument used against the requirement covering rates of profitability, degree of risk, and opportuinty for growth. It was also used by some as an argument against the 10 percent reporting requirement, since this could place smaller companies in more revealing positions than their larger competitors. Charles W. Stewart, President of the Machinery and Allied Products Institute, said that adoption of such requirements would result in 'providing priceless signals to existing or would-be conglomerates to deploy their financial resources in those areas where the registration statements of competitors suggest that better-than-average profits are to be made.'

"Incentives to innovate could be undermined by requirements forcing companies to reveal areas of high profitability, others warn. Attempts to innovate expose a company to the risk of financial loss if a new project is not a success. The potential rewards of innovation must outweigh the risks if companies are to be induced to undertake R & D projects. The high profits enjoyed by companies that first enter a hot, new area provide such incentives. Publicized information on high profit rates would serve as a signal for competition to enter the field, however, and the period of high return to the inovator would be cut prematurely short.

"COMPLAINTS FROM STOCKHOLDERS

"Revealing areas of low profitability would place companies under the burden of having to justify their actions to stockholders, say other critics.

"Management's decsions, even when sound, might be difficult to explain to the layman. James B. Ammon, Vice President and Traesurer of Baxter Laboratories notes, 'An investor might conclude that a non-profitable line of business (when charged with allocated overhead) could and will be dropped to improve earnings. Yet if marginal income exceeds marginal expense for this line, the continuation of the line contributes to the overhead for the common facilities and disruption

of it would adversely affect earnings.' Many writers point out that new lines under development often operate at a deficit before they start to show a profit, and revealing their status could produce pressure against innovation.

"IRRETRIEVABLE DATA

"The requirement that companies supply information on their various lines of business extending back over a five-year period meet vigorous opposition. Many commentators feel that this would contribute little meaningful information, and that in any case the value of such data would not justify the expense involved in gathering it. Othre companies flatly deny their ability to comply, stating that such information was not maintained in their records, and would be irretrievable.

"WHAT IS A LINE OF BUSINESS

"The lack of clear definition as to what is meant by a 'line of business' is attacked as a particular area of weakness in the SEC proposals. The difficulties such a loose definition could cause are explained with great clarity in a letter from 3M: '[T]he Company has in recent years divided its business into six product groupings. These six groupings have various components. For example, the Tape and Allied Products group has three operating divisions; the Electrical Products group has eight operating divisions. We deem it important to avoid any controversy on whether the Electrical Products group is a single line of business or eight lines of business or that any different combination of the eight are lines of business.'

"UNITARY COMPANIES GET UNFAIR TREATMENT

"Another requirement in the revised SEC proposal would make a unitary company, engaged in only one line of business, report on sales and profitability of each product or service accounting for 10 percent or more of its gross revenues. Many writers feel that this would place small unitary companies in an extremely unfair position because they would have to reveal product information that would not have to be made public by their large conglomerate competitors.

"SINGLE CUSTOMER, FOREIGN REVENUES, AND GOVERNMENT CONTRACTS

"The proposed SEC changes would require further that registrants supply information on revenues from foreign customers when those revenues represent a significant portion of total sales; that they discuss the government contracts they hold subject to renegotiation or termination at the election of a new administration; and that they reveal the identity of major customers when the loss of their business would materially affect the company's earnings.

"The government contract requirement is fairly well received. The foreign business requirement attracts only minor comment, with some writers suggesting that where political risk is not a factor (as would be the case in trade with West European nations) the information was unnecessary. But the requirement to reveal the identity of key customers draws strong protest. Many express the view that this information is purely confidential in nature, and that revealing it is unprecedented in business practice. Wells-Gardner, a small specialized electronics and firm, makes the following argument:

" 'Today, we are limiting ourselves to seven accounts—each of them important to our operation. Upon contemplation, the reason is obvious. Each account requires their own styling of their line, even though the chassis used may be quite similar. To serve more than seven accounts with their "own lines" becomes difficult, especially in the final assembly area. Contrast this with 'national brand' manufacturers who own or control their own distribution, manufacturing only one complete line.'

" 'To disclose publicly the importance of each of these customers would have a disastrous effect on this company's operation. It would not only be unhealthy information for each of our accounts to be privy to, but would make us 'open prey' for competitive action.'

"ACCOUNTING METHODS

"The Commission's proposals leave the choice of accounting methods to the discretion of the registering companies, requiring only that such methods be explained where decisions on intra-company pricing, or allocation of costs between

divisions, materially affect the 'reported contributions to income' of the various lines of business. Several commentators express concern over the looseness in this area. The Machinery and Allied Products Institute notes:

"'Given the flexibility of generally accepted accounting principles as well as the almost endless variety of methods by which common costs are distributed among differing lines of business within a diversified company, even the most sophisticated investor would be unable to compare directly the operating results of quite different companies. Moreover, cost allocation methods change over time with changes in corporate organization and product development so that year-to-year comparisons of figures within the same company are not altogether meaningful without providing a technical explanation that is unlikely to be helpful to the average investor.'

"ADEQUATE FOLLOW-UP IN PERIODIC REPORTS

"Even the most stringent requirements covering divisional data in registration statements would be of little value to potential investors if they are not backed up by equally stringent periodic reporting requirements. Especially where fast-acquiring conglomerates are involved, the information filed on the S–1, S–7, or Form 10 could be rendered effectively useless within a matter of weeks. The SEC Releases covering proposed changes in S–1, S–7, and Form 10 make no mention of the need to bring periodic reporting requirements into line with registration forms, but the Commission Staff has explained in response to specific questions on this point that there are proposals made in the Wheat Report for changes in the 10–K annual reporting form.

"WHEAT'S NEW 10–K GOES FURTHER

"The proposed 10–K Form printed in the Appendix of the Wheat Report would go well beyond the proposed S–1, S–7, and Form 10. Companies would be required to comment on the competitive conditions in their industry, and to give some indication of their own competitive position therein. Information would have to be supplied on the firm's backlog of orders from the past fiscal year, and estimates made on how much of that backlog was expected to be eliminated in the next fiscal year. Sources and availability of raw materials would have to be discussed. The relative amounts of research being financed by the company and by its customers would have to be revealed, to name just a few of the provisions.

"The Staff has no comment to make on the possibility of simultaneous implementation of the proposed registration changes and the revised 10–K however, and as yet the Commission has given no indication of when it might implement the changes in the S–1, S–7, and Form 10 requirements.

"The Commission's February release contained the following statement:

"'In view of the length of time the proposals have been under consideration, the wide publicity they have received and the extensive consideration they have received from registrants, trade and professional groups and other persons, the Commission believes that a limited period of time should be adequate for the submission of additional comments.'

"The time period for accepting comments on the revised proposals was limited to 20 days so that another release formally adopting the proposals could be issued promptly. That was four months ago. As yet the final release has not appeared.

"*SRLR Comment:* Protection of the investor is the concern of the Commission, and its objective in tailoring the S–1, S–7 and Form 10 changes has been to provide the investor with adequate information. The Senate Select Committee on Small Business (SCSB), on the other hand, serves the interest of the small businessman, and the Committee does not feel the proposed S–1, S–7, and Form 10 changes will give enough protection to small business. The SCSB supports the new registration requirements, but it feels that adequate information for the investor is not necessarily adequate information for the small businessman. Senator Gaylord Nelson (D–Wisc.), Chairman of the SCSB Subcommittee on Monopoly, has repeatedly urged the Commission to adopt the proposed registration changes without further delay, and he has also promised (in a June 15 Release) 'early introduction of a bill that would go "substantially beyond" the pending SEC requirements.' Committee spokesmen explain their position in the following manner: Given present registration and reporting requirements, the

non-diversified company completely reveals its competitive position in its annual report. Anyone can tell at a glance how it is doing, but the single-line-of-business company is not able to obtain comparable information on its diversified competitor. The unitary company is thus placed in an unfair competitive position. For example, a firm in one line of business, the manufacture of laminated windshields, may have as its supplier one of the huge basic glass manufacturers. If the supplier is diversified, the windshield manufacturer will have no way of determining what kind of profit the basic glass company is making on its business with him, whereas the supplier knows exactly how much profit it can sequeeze from its customer. Committee spokesmen further point out that, behind their consolidated balance sheets, the nation's largest corporations could conceal financial details greater than the state budget of New York.

The Nelson bill is still being written. As yet the SCSB is not ready to make a prediction as to when it will be introduced, or the form it will take."

EXHIBIT 5

(NOTE.—This exhibit, an article by Jan Nugent, "Big Firms Fight Data Requests," appears as exhibit 29 at page 553, in part 1 of this record. It is, therefore, not repeated at this point.)

"EXHIBIT 6

"[From the New York Times, July 15, 1969]

"DISCLOSURE RULES FOR BIG DIVISIONS ADOPTED BY SEC

"(By Edwin L. Dale, Jr.)

"WASHINGTON, July 14.—The Securities and Exchange Commission announced the final adoption today of its new rules requiring corporations to report the contribution to sales and earnings by each of their different product lines.

"Thus, conglomerate companiess will now have to report on the results of the various divisions that contribute 10 percent or more to sales or earnings. Howevery, details will have to be reported on only the 10 most important product lines.

"For companies with total sales of less than $50-million, only separate product lines contributing at least 15 percent to sales or earnings will have to be reported.

"SOME DISCRETION ALLOWED

"The commission decided to leave up to management the definition of a separate 'line off business.' It said:

" 'Various suggestions were made for some specific indications of the meaning of "line of business." However, in view of the numerous ways in which companies are organized to do business, the variety of products and services, the history of predecessor and acquire companies and the diversity of operating characteristics, such as markets, raw materials, manufacturing processes and competitive conditions, it is not deemed feasible or desirable to be more specific in defining a line of business.

" 'Management, because of its familiarity with company structure, is in the most informed position to separate the company into components on a reasonable basis for reporting purposes. Accordingly, discretion is left to the management to devise a reporting pattern appropriate to the particular company's operations and responsive to its organizational concepts.' "

"EXHIBIT 7

"[From the Wall Street Journal, July 15, 1969]

"SEC SETS CONGLOMERATE REPORTING GUIDE; REGULATION ALTERED TO HELP SMALLER FIRMS

"WASHINGTON.—The Securities and Exchange Commission adopted a slightly modified version of its earlier proposal to require more detailed financial reporting from conglomerates and other diversified companies.

"The new regulation will change SEC registration forms, so that when companies register securities with the SEC they must disclose the relative contribution that major product lines and services make to earnings. The action stems from the SEC's growing concern over companies that have diversified and, as a result, tended to lump together revenue and profit from a number of different activities.

"The SEC said the new requirements will be effective with respect to registration statements filed starting Aug. 14.

"The heart of the disclosure rule requires companies with sales of more than $50 million a year to report separately on those products or services that, during the previous two fiscal yers, contributed at least 10% to total sales and operating revenue, or to income before taxes and extraordinary items have been deducted.

"The requirements were lightened for smaller companies, on which a 15% test would apply. This is a change from the earlier proposal. It would have used 10% for all companies.

"The new regulation also requires separate disclosure of any product line that resulted in a loss equal to at least 10% of the gross income of the larger companies, and 15% for the smaller ones. It provides that where a company has more than 10 lines of business, disclosure may be limited to the '10 most important lines.'

"The SEC declined to define 'line of business.' It said that "management, because of its familiarity with company structure, is in the most informed position to separate the company into components on a reasonable basis for reporting purposes.' "

"EXHIBIT 8

"[From the Evening Star (Washington), July 14, 1969]

"SEC ORDERING CONGLOMERATES TO EXPLAIN NET

"The Securities and Exchange Commission ordered today new rules that would force large diversified corporations to disclose earnings and losses of their subsidiaries—or at least of their various lines of business.

"The new regulations, which go into effect Aug. 14, will require such reports any time one of these corporations decides to issue securities which will be made available to the public. The rules, therefore, will hit particularly at mergers in which a corporation would have to issue stocks or other securities as part of the transaction.

"The regulation, however, will not affect annual reports that corporations must make to the SEC, and the only time that this information will be required to be made public will be in connection with a new securities issue.

"FOR LARGE AND SMALL

"Under the new rule conglomerate corporations with total sales and revenue greater than $50 million will have to list separately the sales, operating revenue and contributions to profit separately of any of their lines of business which account for at least 10 percent of total income before taxes or 10 percent of sales and revenue.

"For smaller corporations—those with less than $50 million—a similar disclosure would have to be made for lines of business that account for 15 percent of sales and profit.

"Similar statements will also have to be made in connection with losses.

"The SEC did not specifically define what it means by 'line of business' which must be the subject of these reports. It cited the fact that companies are organized in a variety of ways, and left up to the corporations the discretion to devise proper reporting procedures which reflect their own organizations.

"Presumably, for many corporations, the line of business would be tantamount to divisions or subsidiaries.

"MATTER OF CRITICISM

"Conglomerate corporations have been criticized for decisions in some instances against showing the profits or losses of individual divisions. Some critics contend that conglomerates use this as a means to mask the actual financial

results of subsidiaries that might not be doing very well. This is especially true in the case of newly merged subsidiaries.

"The SEC announced last February its proposal to make these new rules forcing the conglomerates to disclose more of their financial activities. The SEC later studied comments furnished by a number of companies.

"The SEC action to impose new rules was by a 4–0 vote. But the chairman, Hamer H. Budge, voted against the 10 percent disclosure requirement for large corporations. Budge would have required them to report only in those instances in which a line of business accounted for 15 percent of sales or profits.

"EXHIBIT 9

"[From the Washington Post, July 15, 1969]

"SEC ADOPTS DISCLOSURE REGULATIONS

"The Securities and Exchange Commission yesterday adopted new rules that will require diversified corporations, including conglomerates, to make public more detailed financial information.

"The regulations, which become effective Aug. 14, will require companies to report separately on lines of business that contribute 10 percent or more to total sales or income, if the company sells more than $50 million annually.

"Smaller companies must report separately on items that contribute 15 percent or more to the company's earnings.

"Losses must also be reported in the same proportion as earnings.

"The new rules are part of an SEC drive toward greater disclosure of corporate information. The SEC contends this is necessary to give investors a better assessment of stocks they contemplate buying or selling.

"The adopted rule is a modification of one proposed earlier. The main change made by the SEC, after receiving comments from those interested, was to insert the 15 percent requirement for smaller companies. The earlier proposal called for 10 percent for all companies.

"The SEC did not attempt to define 'line of business,' but left that to the discretion of management to separate on a reasonable basis for reporting purposes."

B. LETTER DATED JULY 16, 1969, FROM THE HONORABLE HAMER H. BUDGE, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION, TO SENATOR NELSON

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., July 16, 1969.

Hon. GAYLORD NELSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This will supplement my letter of July 9, 1969 by furnishing Securities Act Release No. 4988, dated July 14, 1969 which sets forth the actions taken by the Commission to require companies engaged in more than one line of business to make certain disclosures of the volume and earnings contributed by each line of business.

Specifically, the Commission's Forms S–1 and S–7 under the Securities Act of 1933 and Form 10 under the Securities Exchange Act of 1934 have been amended to require, where a company and its subsidiaries are engaged in more than one line of business, disclosure, for each of a maximum of the last five fiscal years subsequent to December 31, 1966, of the approximate amount or percentage of total sales and operating revenues and of contribution to income before income taxes and extraordinary items attributable to each line of business which contributed, during either of the last two fiscal years, a certain portion to (1) the total of sales and revenues, or (2) income before taxes and extraordinary items. For companies with total sales and revenues over $50 million, the proportion will be 10 percent, for smaller companies, 15 percent. Similar disclosure is also required with respect to any line of business which resulted in a loss of 10 percent or more (or 15 percent or more for smaller companies) of such income before deduction for losses. The revised forms provide that such disclosures may be

limited to the ten most important lines of business and for other disclosures where it is not practicable to state the contribution of a line to income as specified.

There is also enclosed a copy of Securities Act Release No. 4949, dated February 18, 1969, which set forth the Commission's proposals which preceded the adoption of the revised forms announced in Release No. 4988. The principal change reflected in Release No. 4988 is the provision that the 15 percent rule mentioned will be applicable to companies whose sales and revenues do not exceed $50 million. The proposals of Release No. 4949 would have applied a 10 percent rule to all companies whether or not their sales and revenues exceeded $50 million.

Please let me know if you have further questions with regard to this matter.

Sincerely,

HAMER H. BUDGE, *Chairman.*

(EDITORIAL NOTE.—The enclosures mentioned in the foregoing letter already appear in the text, supra, and are not repeated at this point. See part A of this appendix, Exhibit 3, for the SEC's Securities Act Release No. 4988, dated July 14, 1969. See Exhibit 2C, in the same part, for the SEC's Securities Act Release No. 4949, dated February 18, 1969.)

C. EXCERPTS FROM "PUBLIC REPORTING BY CONGLOMERATES—THE ISSUES, THE PROBLEMS, AND SOME POSSIBLE SOLUTIONS," EDITED BY ALFRED RAPPAPORT, PETER A. FIRMIN AND STEPHEN A. ZEFF

1. Introductory Note by Senator Nelson

With grateful acknowledgement to Prentice-Hall, Inc., Englewood Cliffs, N.J., the publishers and copyright holders, the Senate Small Business Subcommittee on Monopoly is pleased to reprint in the following pages some excerpts from a remarkably helpful book published in 1968, *Public Reporting by Conglomerates—The Issues, the Problems, and Some Possible Solutions.* Edited by Alfred Rappaport, Associate Professor of Accounting at Northwestern University; Peter A. Firmin, W. R. Irby Professor of Accounting at Tulane University; and Stephen A. Zeff, Professor of Accounting at Tulane, the volume contains 12 papers on the title subject presented at a symposium at Tulane in 1967, two appendixes, and a bibliography. One of the 12 papers, Andrew Barr's "Conglomerate Reporting—A View from the Securities and Exchange Commission," has previously been published by this subcommittee as an exhibit presented by witness Ralph Nader for the printed record of last year's hearings on "Planning, Regulation, and Competition: Automobile Industry—1968." [1] Two others of the 12 papers, and one of the two appendixes, are reprinted below, preceded by the table of contents of the entire volume.

In a foreword to the book, C. Jackson Grayson, Jr., Dean of the Graduate School of Business Administration of Tulane University, observed:

"Call it debate, discussion, or dialogue, Americans seem to be more convinced than ever that talking before acting makes sense. Information is spread, biases revealed, opponents tested, and alliances formed. Hopefully, wiser action follows.

"This was the spirit in which a group of people assembled at Tulane University on November 13–14, 1967, to discuss the pros and cons of a controversial issue—public reporting of segmented profit information by corporations in the United States. * * *"

It is in the same spirit that the Senate Small Business Subcommittee on Monopoly is conducting its present inquiry on "The Role of Giant Corporations," and in which we are pleased to present these excerpts from the public record of the Tulane symposium.

GAYLORD NELSON,
Chairman, Subcommittee on Monopoly.

WASHINGTON, AUGUST 1969.

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[1] Hearings before subcommittees of the Senate Small Business Committee on "Planning, Regulation, and Competition: Automobile Industry—1968," 90th Congress, 2d session, p. 200 (1968). In the original text introduced by Mr. Nader, the title of Mr. Barr's paper was "Need for Product-Line Reporting."

2. Table of Contents of "Public Reporting by Conglomerates"

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3. Paper by John M. Blair, "Antitrust Implications of Conglomerate Reporting"

ANTITRUST IMPLICATIONS OF CONGLOMERATE REPORTING

(By John M. Blair)*

INTRODUCTION

I have been asked to address myself to the question of the need for divisional reporting from the antitrust point of view. That need stems from the existence and, in recent years, the rapid growth of the conglomerate corporation.

In the context of industry structure the term "conglomerate" was first used to designate a particular type of merger. It was used to refer to the "all other" category of acquisitions, i.e., those which are neither horizontal (where the acquiring and the acquired firms produce the same product) nor vertical (those where the products involved are in the same stream of production and distribution). Gradually the term has also come to be used as descriptive of the multi-industry firm itself—typically a very large enterprise engaged in a variety of different industries which have little, if any, relationship to each other.

If a conglomerate possesses substantial monopoly power in one or more of the industries in which it operates, it is in a position to engage in a practice which can probably best be referred to as "cross-subsidization." [1] This is the use of

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[1] The same practice has been referred to as "product discrimination" (John M. Blair, "The Conglomerate Merger in Economics and Law," *Georgetown Law Review,* Summer 1958); and as a form of "price discrimination" (Carl Kaysen, *United States* v. *United Shoe Machinery Corp.,* 1956, p. 127). The use of the latter term, "price discrimination," may be confusing since in its usual sense it refers to sales of a given product to different purchasers at different prices.

profits obtained in industries in which it possesses substantial monopoly power to subsidize sales in competitive industries made at a loss or at an abnormally low profit.[2]

Such a practice is destructive to competition since it makes the plight of the single-line producer all but impossible. Even though in his own industry he were more efficient than the conglomerate, there is little point in pursuing the course of action held out by classical theory, i.e., reducing his price to reflect his greater efficiency, since his price reduction would only be matched or exceeded by a firm which has already manifested a willingness to accept losses. Moreover, any attempt by the single-line producer to diversify into some other field would be hindered by a price level in his own industry which prevents both the retention of earnings and the attraction of capital from the outside.

ANTITRUST INTEREST IN DIVISIONAL REPORTING

The interest in divisional reporting of those concerned with antitrust (at least of those concerned with antitrust who are also concerned with the conglomerate problem) stems from the need to know whether, where and the extent to which conglomerate firms are engaging in cross-subsidization. At this point it should be emphasized that this practice does not constitute the whole of the concern over conglomerate expansion from an antitrust standpoint. Even if cross-subsidization were nonexistent or of minimal proportions, competition could still be lessened by virtue of the awareness on the part of the single-line producers that if they behaved in a more competitive fashion they could be subject to retaliation by a firm which in their industry could operate at a loss without materially affecting its overall profit showings. Competition could also be lessened by reciprocal arrangements among conglomerates which have the effect of denying other firms access to important markets. And it could be lessened by the unwillingness of two (or more) conglomerates who confront each other in a number of separate industries to initiate a competitive move in any one of those industries since to do so would invite retaliation from the other conglomerate in different industries in which they were both engaged.

But at least one of the ways by which competition can be lessened through conglomerate expansion will remain largely out of sight (though hopefully not out of mind) unless and until a meaningful program of divisional reporting for large conglomerate firms is put into effect.

Without divisional reporting, our knowledge of cross-subsidization is, to put it mildly, fragmentary. To some observers, this has meant that the practice is nonexistent—a figment of the imagination of those who seek to besmirch the escutcheon of corporate management.[3] To others it merely signifies the understandable reluctance of corporate officials to provide the antitrust agencies with proof of a possibly unlawful practice,[4] or dissident stockholders with evidence of high-level mismanagement. Nonetheless, despite these understandable reasons for non-disclosure, indications of cross-subsidization do on occasion come to the surface. To give some concreteness to this analysis, the practice can be illustrated by the postwar expansion of the nation's largest firm into a number of industries which are at best only distantly related and by the marked change which has taken place in the structure of the electric appliance industry.

GENERAL MOTORS' CONGLOMERATE EXPANSION

Much of the Senate Anti-Trust Subcommittee's first report on automobiles (the 1956 report) was concerned with the conglomerate nature of General Motors' expansion into the diesel locomotive, bus, and earth-moving machinery industries. The success of G.M.'s expansion into these industries was attributed in no small part to the company's monopolistic power and profits flowing from its controlling position in the manufacture and financing of automobiles. The report stated:

"In both buses and diesel locomotives it was shown that General Motors was able to give liberal financing terms through is financial affiliates, General Motors

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[2] Profits could be considered to be abnormally low if they were substantially below what would have been yielded if the firm had behaved as a competitive supplier in view of the market's prevailing cost and demand factors.

[3] Cf., e.g., Donald F. Turner, "Conglomerate Mergers and Section 7 of the Clayton Act," *Harvard Law Review*, May 1965.

[4] Cf. *U.S.* v. *Griffith*, 334 U.S. 100 (1948); *U.S.* v. *United Shoe Machinery Corp.*, 110 F. Supp., 295 (D. Mass. 1953).

Acceptance Corp. (GMAC) and Yellow Manufacturing Acceptance Corp. (YMAC), which was of inestimable advantage in securing a favored market position."

* * *

"Competition was seriously disadvantaged by the ability of General Motors to make capital investments in bus purchasers—both transit and intercity—and thus secure certain preferences. Various types of exclusive contracts have apparently been utilized by the corporation in its climb to power. Some of these, which gave it advantages over its competitors were held by a court to be part of a plan in violation of the antitrust laws."

* * *

"Railroads which were purchasers of buses and locomotives were also beneficiaries of General Motors' freight shipments. It was claimed that railroads "naturally" favored such a good freight customer in making their own purchases. The tremendous financial resources of both General Motors and GMAC, which were deposited in banks in 157 cities throughout the United States, gave it great influence."

* * *

"GMAC is also a good customer of banks, having borrowed up to the legal limit from almost every major bank in the country. It was claimed that directors of banks who also served on the boards of bus purchasers were inclined to favor General Motors over its competitors. Both in buses and diesel locomotives, there was evidence that reciprocity gave General Motors advantages."

* * *

"In acquisition of the Euclid Road Machinery Co., General Motors most recently utilized its financial ability to enter an industry by purchase, even though it was capable of doing so by internal expansion. . . . Although competition was affected by the vertical acquisition of a market for G.M. diesel engines, the conglomerate aspect of the merger raised the more serious questions".[5]

On the basis of information supplied by General Motors, it was estimated in the subcommittee's 1958 report that 35 percent of the company's total sales and costs related at that time to activities other than the production and sale of automobiles and trucks.[6] The report also revealed that over the period of 1946–1957 G.M. incurred sporadic losses in certain operating divisions. In one year, for example, its truck division suffered losses amounting to 1.8 percent of sales.[7] G.M.'s president suffered a lapse of memory when confronted with Senator Kefauver's question: "Just as an example, years ago didn't you get into a fight in the truck industry with other competitors, and for a while you operated your truck industry at a loss? You made that up by the very substantial amounts you earned in your other operations."[8] A subsequent letter from the company confirmed this loss, which is attributed to an "accounting writeoff."[9] Referring to the period 1946–1957, the company stated that "for the aggregate period of 12 years . . . every General Motors division operated at a profit."[10] Noting that 12 years is not a customary accounting period, the report observed: "The smaller single-line company competing with General Motors in any one of its industries must be concerned with what has happened to its profits in the last quarter, the last 6 months, the last year. It is the exceptional small entrepreneur who need concern himself only with his return in terms of an aggregate for a 12-year period."[11]

The report then went on to note the rapidity with which concentration tended to rise following the entrance of G.M. into an industry:

"An examination of this subcommittee's hearings in 1955 show, however, that by 1954, General Motors shipped 100% of all road freight and road passenger diesel locomotives sold in the United States. The physical volume, of course, had greatly lessened by 1954 since almost complete dieselization of the railroad industry had been accomplished by 1952. The same situation occurred in connection with diesel switchers. In 1950—the peak year in its history—there were 4,174 switchers ordered in this country, and General Motors' share was 48% of

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[5] *A Study of the Antitrust Laws*—"Bigness and Concentration of Economic Power—A Case Study of General Motors Corporation" (S. Report 1879, 84th Cong., 2d Sess.) pp. 10–11.

[6] U.S. Senate Subcommittee on Anti-Trust and Monopoly, "Administered Prices, Automobiles" (85th Cong., 2d Sess.) pp. 25–26.

[7] *Ibid.*, p. 30.

[8] *Idem.*

[9] *Idem.*

[10] *Ibid.*, p. 30.

[11] *Idem.*

switchers and 57% of road switchers. By 1954, total orders had been reduced to 983, but General Motors' portion of the business had risen to 60% and 74% respectively."

* * *

"An increase likewise occurred in the company's share of the motorbus market. In 1950 its sales amounted to 46% of the total market; a steady climb resulted in a 78% share by 1954, and by 1955 the company manufactured approximately 85% of the new buses delivered in the United States." [12]

ELECTRICAL APPLIANCES

Among the 400-odd manufacturing industries, few have experienced a more rapid increase in concentration since World War II than electrical appliances. A widely-defined area, it embraces numerous different products with different uses which are in no way substitutable for each other. Ranging from $2 fans to $500 freezers, its products have in common only the characteristics of being durable goods, powered by electricity, and customarily used in the home. Although the industry is defined so broadly as to have little meaning, concentration ratios fortunately are available for most of its individual product classes. Shown below are the shares of the four leading producers for seven different types of electric appliances, which account for more than three-fifths of the total shipments of all electric appliances:

CONCENTRATION IN SELECTED APPLIANCES, 1954, 1958, AND 1963

SIC class	Product	Concentration ratios				
		4 largest companies (percent)			Change: percent points	
		1954	1958	1963	1954–58	1954–63
36322	Home and farm freezers	44	58	63	14	19
36321	Household refrigerators	62	73	76	11	14
3633	Household laundry equipment	58	67	71	9	13
36341	Electric fans, excluding industrial	46	54	46	8	0
	Vacuum cleaners [1]	55	59	(2)	4	
36360	Sewing machines	76	(3)	82		6
36391	Household water heaters, elec	39	37	40	−2	1

[1] Household vacuum cleaners (36350) and commercial and industrial vacuum cleaners (35840) combined for 1958 to provide a comparable figure with the 1954 product class 3584.
[2] Not available.
[3] Withheld to avoid disclosure of individual company figures; concentration ratios for 8 largest companies: 89 in 1954; 92 in 1958.

Source: Concentration in Manufacturing Industry, 1958, pt. 1, table 4; Concentration in Manufacturing Industry, 1963, pt. 1, table 4.

Most of the increases, as can be seen, took place during the mid-fifties. The share held by the four largest producers of home and farm freezers registered a precipitous advance—from 44 percent in 1954 to 58 percent in 1958. Almost as large was the increase in household refrigerators—from 62 percent to 73 percent. During these four years the concentration ratio rose by 9 percentage points in household laundry equipment, while an increase of 8 percentage points was registered by electric fans. In sewing machines, the four largest companies in 1954 held 76 percent, while their share could not be revealed in 1958 because of the disclosure rule; during the same period the share held by the eight largest companies rose from 89 to 92 percent.

According to the trade press, the mid-fifties was a period of recurring weaknesses in the market. The major producers apparently did not limit supplies, as a result of which inventories accumulated and prices weakened. Paradoxically, at the same time that the market was reported to be glutted by "overcapacity," the largest and most diversified producers were making substantial expansions in their capacity. In January, 1956, General Electric, the industry's largest producer, was reported to be lowering the prices of its small appliances "up to 30 percent," featuring a reduction in the price of vacuum cleaners from $69.95 to $49.95. The purpose of the price change, it was stated, was to allow G.E. to promote new products "at more realistic prices." [13] A month later it was reported that four

[12] *Ibid.*, p. 33.
[13] *Appliance Manufacturer,* January 1956.

firms, including Westinghouse, would reduce their prices of these appliances "to stabilize the appliance industry." [14] Several months later an official of a substantial but smaller company, Borg-Warner, reacted critically to these price reductions, stating:

In an effort to buy an out-of-proportionate share of the market, a few selfish manufacturers have set off a whole chain of wheeling and dealing price merchandising tactics. A price—any price—below price of competition is their price to dealers." [15]

Between the fourth quarter of 1954 and the fourth quarter of 1960 the Wholesale Price Index rose 9.1 percent, the price index for consumer durable goods increased 8.7 percent, and the index for metals and metal products advanced 17.3 percent. In contrast, the prices of G.E. major appliances registered pronounced decreases, ranging from 9 percent for freestanding ranges to 27 percent for standard 10-cubic-foot freezers. Built-in ranges, DeLuxe refrigerators and 13-foot freezers were reduced by 19 percent. Prices of its refrigerators, freezers and washers were reduced between 1954–57 and again between 1957–60. Substantial reductions were made in the price of G.E. ranges between 1954 and 1957.

This was also a period of a wholesale exodus of single-line manufacturers—large and small—from the industry. Articles in the trade press reflected a premonition that the future of the industry lay only with the large conglomerate firms, for whom appliance manufacturing constitutes only a small but part of their business. Thus, in late 1956, *Retailing Daily* featured a front-page article which proclaimed, "The ever-changing profile of the major appliance industry suffered the most radical alteration in many a day" with the shutdown of one firm and the sale of another, which climaxed "24 months of shuffling, shifting, buying and selling. . . ." [16] The article continued, " . . . the result of all the shifting within the industry is one of reducing the number of competitive brands on the market. Like a poker game, apparently, the more players that can be knocked out of a hand, the greater is the possibility of winning." [17]

Whirlpool-Seeger's president was quoted as saying that of the twenty-six independent laundry manufacturers in 1940, ten had merged itno full-line companies, eight had been liquidated or gone into bankruptcy, leaving only eight still in business. He was also quoted to the effect that among the advantages of the "full-line company" is its ability "*to subsidize a line of appliances* in a given market or at a given season." [18]

Between 1954 and 1961, sixty formerly independent appliance manufacturers disappeared through mergers and acquisitions. More than half the casualties occurred in 1955 and 1956, during which period seven home laundry manufacturers and seven refrigerator or freezer manufacturers, as well as three electric

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[14] *Ibid.*, February 1956.
[15] *Appliance Manufacturer*, July 1956.
[16] Jerry Lansky, "C-B Moves Climax Appliance Shuffle," *Retailing Daily* (now *Home Furnishing Daily*), Nov. 15, 1956, p. 1.
[17] *Idem.*
[18] *Retailing Daily*, Nov. 15, 1956, p. 34 (emphasis added.)

range manufacturers, were eliminated through merger. A good number of these firms were sizable enterprises which could reasonably be expected to have attained the available economies of scale and had long-established and well-known trade names. Among the disappearances were firms with such well-known names—which either vanished entirely or have been used for prestige purposes by an acquiring company—as "Deepfreeze," "York," "Welbilt," "Bendix," "Speed Queen," "Easy," "Eureka," "Jordan," "Dormeyer," "Servel," "Universal," "Ever Bright," and "Philco."

The result of this period of turmoil was that a few large conglomerate corporations, notably General Electric, and to a lesser extent General Motors and Westinghouse, ended up with substantial control over most of the industry's product lines. This can be seen from the attached table, which is based upon a market survey conducted by *Look* magazine in 1961; as a service to advertisers, this survey showed market shares by individual companies.[19]

Of the eight major appliances surveyed by *Look*, General Electric had the largest market share in no less than five—ranges, refrigerators, clothes dryers, water heaters, and dishwashers. In two of the remaining products it had the second largest share—freezers and automatic clothes washers—while in the remaining product it was the third leading producer. In the five products in which it was the leading producer, G.E.'s share ranged from 24 percent (refrigerators) to 40 percent (electric ranges), while in the three remaining products it held from 9 to 21 percent. General Motors was the second largest producer of refrigerators (17 percent) and of ranges (15 percent), the third largest producer of washing machines (11 percent) and of freezers (9 percent), and in addition was the fourth largest in dryers (13 percent), dishwashers (11 percent), and electric water heaters (2 percent). Westinghouse appears as the third largest producer of ranges (10 percent), clothes dryers (13 percent), and electric water heaters (2 percent), and the fourth largest in freezers (6 percent).

Product	4 largest companies	
	Census 1958	Look survey, 1959–60
Household ranges, electric	67	74
Household mechanical washing machines, dryers, and washer-dryer combinations	68	[1] 73
		[2] 71
Vacuum cleaners	64	60
Water heaters	37	42
Household refrigerators, electric	73	64

[1] Automatic clothes washers.
[2] Electric clothes dryers.

[19] For the *Look National Survey*, Audits & Surveys Co., used a multi-stage area probability sampling technique, with interviews conducted in 4,808 households for the 1959 survey and 5,292 households for the 1961 survey. The results are subject to the qualifications that attach to any sample survey; however, the results, which are in terms of "acquired new," compare closely with the Census data, as can be seen below:

Four leading companies in appliance manufacturing, 1959–60

Appliance and manufacturer	*Households acquiring new in 1959–60 (percent)*
Vacuum cleaners:	
Hoover Co	21
Electrolux Corp	16
General Electric Co	13
Kirby	10
Total	60
Electric refrigerators, household mechanical:	
General Electric Co	24
General Motors Corp	17
Whirlpool	14
Borg-Warner	9
Total	64
Home and farm freezers:	
Whirlpool	19
General Electric Co	9
General Motors Corp	9
Westinghouse Electric Corp	6
Total	44
Dishwashing and other service machinery, n.e.c.:	
General Electric Co	36
Hobart Manufacturing Co	18
Whirlpool	13
General Motors	11
Total	79
Household mechanical washing machine:	
Whirlpool	32
General Electric Co	21
General Motors Corp	11
Maytag Co	8
Total	73
Household ranges, electric:	
General Electric Co	40
General Motors Corp	15
Westinghouse Electric Corp	10
Whirlpool	9
Total	74
Household water heaters, electric:	
General Electric Co	32
Rheem Manufacturing Co	6
Westinghouse Electric Corp	2
General Motors Corp	2
A. O. Smith Corp	2
Total	42
Electric clothes dryers:	
General Electric Co	27
Whirlpool	19
Westinghouse Electric Corp	13
General Motors Corp	13
Total	71

Source: Look National Survey, 1961.

To what extent, if at all, were the increases in concentration the result of cross-subsidization by the largest producers? Without divisional reporting we, of course, do not know. But the possibility that such was the case is suggested by the writings of T. K. Quinn, former chairman of G.E.'s sales committee, the G.E. Contracts Corp., vice-chairman of the General Electric Supply Corp., and operating head of its applance business. Holding that the company had long followed a policy of using profits from its "monopoly lines" to drive out competition in other lines, Mr. Quinn wrote that the "secret" of G.E.'s predominance and growth rested upon two foundations:

"1. As a J. P. Morgan combine originally (like General Motors and U.S. Steel) it had abundant capital, including access, through Morgan, to life insurance funds.

"2. It had high-profit, monopoly lines which enabled it to finance other lines until they, too, could reach volumes that would assure their continuance on a self-supporting and profitable basis."

Referring to the latter he went on to state:

"Notable among these lines was the incandescent electric lamp bulb monopoly. G.E.'s net profit in its lamp department at times approximated 50% of investment. . . .

"It was from its lamp profits that General Electric financed its entry into the home appliance field. . . . There was no purpose or advantage of efficiency involved." [20]

In this connection it should be observed that the manufacture of electric lamps is one of the most highly-concentrated industries in the country, with the four largest producers regularly accounting for more than 90 percent of the output. According to data put into the Court record in the 1953 case, General Electric, alone, accounted for approximately 55 percent and Westinghouse for 25 percent of lamp sales.[21] Another probable source of monopoly profits was heavy electrical machinery; it was during this same period that General Electric, Westinghouse, and most of the other producers were engaged in a far-reaching—and shockingly illegal—conspiracy, the purpose of which was, of course, to enhance prices.[22]

Another possible indication lies in the vigor with which G.E., following its conviction in the 1960 "Philadelphia" conspiracy case, opposed an attempt by the Department of Justice to enjoin the use of what has been described here as "cross-subsidization." The Department was apprehensive that G.E. and the other large companies would use their conviction for failing to compete as a pretext for competing by sales-below-costs against smaller rivals. To prevent such an eventuality, the Department attempted to write an "unreasonably low" price prohibition into the consent orders. This clause was actually signed by one defendant company [23] while four others, including Westinghouse, initially gave assurances of their acceptance.

But, preferring the possibility of a court battle, General Electric refused to sign, contending that the language was vague and would tend to stifle rather than encourage competition. For a company which during its lifetime had run afoul of the antitrust laws on so many occasions, this concern with the clause of competition was rather unexpected. Moreover, having just been convicted for engaging in the most egregious price-fixing conspiracy of modern times, resulting in the imprisonment of several of its top officials, one would not have thought that G.E. would have been eager to precipitate in still another court battle—unless the practice involved was of key importance to its corporate strategy. For reasons that have never been too clear the Justice Department quietly dropped the provision from final decree.

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[20] T. K. Quinn, *Unconscious Public Enemies*, Citadel Press, 1962, pp. 112–114.

[21] *U.S.* v. *General Electric Co. et al.,* 115 F. Supp. 835, 882–883, Appendix Tables 1 and 2.

[22] For an illustration of their success in terms of both listed and realized prices, see John M. Blair, "Administered Prices & Oligopolistic Inflation—A Reply", *Journal of Business,* January 1964, p. 75.

[23] C. H. Wheeler Manufacturing Co., Civil Action #28,229, filed May 22, 1961, in the U.S. District Court for the Eastern District of Pennsylvania. The provision which was so obnoxious to G.E. appeared as follows:

"Defendant . . . is enjoined and restrained from, directly or indirectly:

* * *

> "(F) Selling condensers at unreasonably low prices with the purpose or intent, or where the effect is, or where there is a reasonable probability that the effect will be, substantially to injure, suppress or stifle competition or tend to create a monopoly; provided, however, that in any proceeding for civil contempt based upon an alleged violation of this subsection (F) in which the plaintiff shall have sustained its burden of proving that the defendant in such proceeding has made sales which would violate this subsection (F) if such sales were at unreasonably low prices, the burden of proof shall be upon such defendant to establish that it did not sell such condensers at unreasonably low prices."

LIMITATIONS AND USES OF DIVISIONAL REPORTING

That a multi-product firm will have differing profit rates in the different industries in which it is engaged is almost inevitable and, in itself, constitutes no particular cause for concern. As Kaysen has observed, "In general, it can be said that discrimination of the kind discussed here is never entirely absent in any actual market, especially one in which the typical seller produces many products under conditions of common overhead costs of various types."[24] In one or more of the industries in which it is engaged, the conglomerate firm may be sustaining actual losses under circumstances which pose no dangers to competition. Thus, when operations within a given industry which otherwise would be profitable are transformed into losses by a decline in demand, an unfavorable reaction to a new product, or any of a multitude of circumstances beyond the control of management, the effects on the industry's structure are likely to be short-lived and devoid of any serious consequences to competition.

Moreover, the losses may be due to nothing more than inefficiency. It has long been recognized that all forms of acquisitions, the entrance into industries which are unrelated to the field of the acquiring firm offers the least potential for economies and the greatest for diseconomies. At some point the conglomerate which has entered a new field may decide to cut its losses and withdraw from the industry. Such indeed occurred in the glass fiber industry into which several of the nation's largest firms expanded, only to withdraw when it had became painfully apparent that they were unable to master the production and marketing intricacies of this new technology. If the operations of the single-line companies continue to be profitable while the conglomerate is losing money, the conglomerate's poor performance is probably due only to the inefficiency. But what if the price structure is such that in an industry in which demand is not falling, the conglomerate as well as the single-line producers are losing money? Having no other sources of profits, the latter would presumably be withdrawing from the industry, either through bankruptcy or acquisition. If the conglomerate elected to "stick with it," the result would logically be an increase in concentration and specifically its share of the industry. That such a set of circumstances is not just the product of imagination but actually takes places in the real world is suggested by the experience of the electrical appliance industry.

The danger to competition thus arises when there is a *combination* of factors, which may be summarized as follows:

1. The conglomerate is in possession of substantial monopoly power in one or more of the industries in which it is engaged;
2. Any losses (or abnormally low profits) which it incurs in one or more of such industries is *not* an episode occurrence, beyond the control of management, but continues over a period of time;
3. Such losses have only a minor effect on the corporation's overall financial showings;
4. The losses are not merely the product of inefficiency;
5. Nor can they be explained on the basis of declines in demand or costs; and
6. There are indications that the industry is becoming increasingly concentrated, as revealed by concentration statistics, data on disappearances and acquisitions, and general information in the trade press..

Obviously, most losses reported under a program of divisional reporting would therefore fall far short of constituting evidence of antitrust violation. Only those losses incurred in the context of the combination of the factors set forth above should properly be regarded as a cause for concern. But unless they are so regarded, there is no reason why what took place in the appliance industry should not occur in any number of other industries as well.

Already, conglomerate mergers have made a profound impression on the structure of industry. The share of total value added by manufacture accounted for by the 200 largest manufacturing companies increased from 30 percent in 1947 to 41 percent in 1963. Inasmuch as the number (and importance) of the *individual* industries in which concentration rose was about equally matched by the number in which it deceased, most of this rise in overall concentration must have been due to conglomerate expansion. From an antitrust point of view, this is perhaps the most compelling reason for the institution of divisional reporting by large, conglomerate corporations.

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[24] Carl Kaysen, *United States v. United Shoe Machinery Corp.*, 1956, p. 127.

4. Paper by Dudley E. Browne, "Discussion of SEC and Antitrust Viewpoints"

DISCUSSION OF SEC AND ANTITRUST VIEWPOINTS

(By Dudley E. Browne *)

In the two preceding papers, Andrew Barr explained the need for product-line reporting as a means to enhance the reliability of investment judgments in the securities market, and John Blair has established that the need for product-line reporting also exists for government investigators in the field of antitrust. A sound case for increased disclosure was made by both of these gentlemen, and, as Mr. Barr has pointed out, there seems to be substantial agreement among a variety of interested parties that such added disclosure is warranted.

As my personal contribution to the spirit of ecumenical give-and-take, which I trust will distinguish our dialogue at this symposium, I should like to open my remarks by conceding to the proponents of product-line reporting that it should be in the corporation's long-run interest to disclose information regarding sales and earnings of segments of the business.

Having made this concession, and thereby establishing my claim as a dispassionate and eminently reasonable representative from industry, I should now like to discuss certain provisos I must stipulate with respect to how industry is to furnish this information.

But before I enumerate these provisos, it might be helpful if I outlined briefly some of the work the Financial Executives Research Foundation has been doing in the area of financial reporting by conglomerate companies. I was president of the Foundation when this study was launched, and since then I have been following Professor Bob Mautz' progress with great interest. I am certain that most of you have also tried to keep current with this study. What Professor Mautz has reported to date, in my opinion, serves to identify some of the major issues that one must face in determining how to be responsible to this call for increased disclosure of segmented reporting for conglomerates.

In his July, 1967, article in *Financial Executive*, for example, he offered us a tentative definition of the conglomerate company—

". . . as one which, because it is managerially decentralized, or lacks operational integration, or has diversified markets, may experience internally varying rates of profitability, degrees of risk, and opportunities for growth."

To which he adds the following constraint:

"Only those internal variations which are of sufficient magnitude to be material to investment decisions qualify a company as conglomerate."

The article, itself, was a thorough reconstruction of the painstaking and well considered analysis that led the author to these tentative conclusions.

In his September article in *Financial Executive*, Professor Mautz addressed himself to the problems of data reliability that are inherent to providing segmented reporting. Among these problems, he noted that the allocation of common costs is founded on subjective determinations. Furthermore, he stated that the allocation of costs among segments raises questions as to applicable time periods and units of product. These are internally defined components, he pointed out; and, as such, they may or may not mean to outsiders what they mean to those inside the company.

This led to the inquiry as to whether subjectivity in common cost allocations can be eliminated or at least reduced to acceptable proportions. After considering the disadvantages of establishing "required, arbitrary allocation bases" and the dilemma the independent auditors would face if they were obligated to express their opinions on cost allocations among segments of companies, in the absence of any generally accepted accounting principles at this level of accounting, Professor Mautz reached the conclusion that neither approach offered a satisfactory solution at this time.

Then he explored the possible use of the "defined profit" for reducing subjectivity. This method, he believes, warrants careful examination before any final answer can be given to its usefulness. He listed several examples that illustrate how difficult and potentially dangerous this approach might be.

The beauty of "defined profit" is that it defines profit at a higher level on the typical income statement than the last line thereof, so that the higher you move on the income statement the less problems you have with arbitrary allocations

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of expenses. This would include the items typically treated as period costs, such as research and development expenses, general and administrative overhead, interest costs, and so forth. However, whether such a presentation reflecting distorted profitability would answer more questions than it would create is a moot question.

Another problem area cited by Professor Mautz in this article is that of intracompany transfers of materials and services. Here he reminded us that such transfers, taking place within a conglomerate company, lack the degree of objectivity of external transactions, and so there is no assurance that the transfer prices are realistic in the sense of having met any market test.

At the end of his September article, Professor Mautz advanced the following tentative conclusions:

"1. Management must have available to it information which could be misleading if supplied to others less well acquainted with the company and the purposes for which the information was supplied.

"2. Common costs and intracompany pricing pose particularly difficult problems in the preparation of operating reports for segments of companies.

"3. A possible solution to common cost allocation problems is offered by the "defined profit" approach which suggests that only direct costs be matched with revenues in segment operating statements.

"4. The relative importance of common costs in divisional reporting tends to decrease as the breadth of the reporting divisions is increased.

"5. The influence of intracompany pricing may be of so little consequence in the reports of disparate components that such influence is no serious deterrent to the presentation of operating data for such components."

In addition to his published reports, Professor Mautz has also shared his understanding of these problems with professional groups at programs such as the one we are having here today. At the 36th Annual International Conference of the Financial Executives Institute, which recently convened in Montreal, he raised the question: Are conglomerates a peculiar sort of investment situation? His answer, he stated, insofar as the research was concerned, had to be tentatively "yes," for in the absence of such an affirmative answer there would be no need for the research study.

On a more serious plane, he expressed his concern whether data pertaining to segments of conglomerate companies could be reported meaningfully, equitably, and economically. He then went on to note that if the information is to be supplied we have to answer the question: How much? Where and how should we supply it? And for whom?

He also covered some areas of second-level questions related to definitions of products, entities, organizations, and standard industrial classifications (SIC's), each of which is a possible candidate for the segment for which sales and earnings are to be reported. His tentative conclusions are that no one of the foregoing is universally applicable, and he has suggested that we must leave to the corporations a good degree of flexibility in order to have effective reporting.

I have reviewed some of the conclusions that have emerged from the Financial Research Foundation study, tentative as they are, simply to remind all of us of the character of questions that had to be answered once one started to dig into this subject in depth.

With these sobering conclusions in mind, I shall now enumerate certain provisos I think industry should be granted in making additional disclosure of segments of its business.

First, and foremost, the information so disclosed must be useful and not misleading. This may sound absurdly self-evident, but I don't think this is the case. My concern here is similar to that of Peter Drucker's when he observed that many people believe information consists in pouring out masses of data. As Drucker points out, "this is the one absolutely certain way to deprive people of information." Increased disclosure must not be allowed to fall into the category of data for data's sake.

My second proviso is derived from the fact that this further detailing of information will be based on subjective determinations, which, in turn, would be subject to less stringent audit considerations or even no audit evaluation whatsoever. This occurs because (1) there are no accounting principles to guide us in this area, and (2) the allocation of costs will typically be founded on organization or product lines, depending on management's requirements.

I fear that segmented reporting might come to be treated in the same fashion as the all-inclusive financial statements, which would place upon management the same responsibility—and hence the same legal liability—for segmented statements as those that now exist for all-inclusive statements. Now I do not want to leave the area open for management to willfully provide misleading state-

ments; however, on the other hand, I think we must recognize that by going to this lower level we are getting into an area of much less assuredness regarding the methodology of reporting. Surely, some legal distinction should be made establishing the relative responsibilities of management in providing these two levels of information.

My third proviso is that this segmented information must be provided on the basis the reporting company has chosen, reserving to the reporting company the utmost flexibility of choice. Certainly, the concepts of consistency, materiality, and going concern, which have well defined meanings with respect to the all-inclusive statement, have different meanings when applied to segmented reporting.

In this regard, I am reminded of the speech Duane Orton, chairman of the editorial board of *Think* magazine and director of research for IBM, gave in Montreal at the recent FEI conference. Two of the points he made in his address that dealt with the effects of our rapidly changing business environment on the financial executive, were: (1) to note that the changes have involved a shift from physical to intellectual power, and (2) to predict that this phenomenon would bring about wholesale changes within corporate organizations regarding the relations between superiors and subordinates, line and staff, direct and indirect workers, production and nonproduction workers, and blue collar and white collar workers.

These concepts advanced by Mr. Orton, if true, carry a significant message with respect to those changes we can envision in the future with respect to reporting on segments of the business. These changes, to the extent that cost allocations are based on existing organization, indicate that organization is in for a wholesale shakeup and change; and hence there will be little consistency from period to period in the reporting of product segments.

One example in this area can certainly be drawn from the forecasted change in the definition of what comprises direct as opposed to indirect work. Because direct work in accounting is charged to a particular project, whereas the indirect work must find its way into product cost by some arbitrary method of allocation, any change in work definitions is bound to change direct assignment of cost to an arbitrary assignment of cost, or vice versa.

I understand Dr. Blair's concern over monopolies and combinations that would restrain trade, but it is interesting to note that another point made by Mr. Orton is that technology compounds and concentrates economic power. This is undoubtedly going to provide a continuing backlog of cases for the antitrust department to concern itself with; although, in the context of his remarks. Mr. Orton was expressing his concern for the truly international company's recognizing that their obligations abroad were no different than they were in the United States. In other words, an admonition not to exploit underdeveloped countries.

To return to this matter of subjectivity, I should like to add that whereas I feel people who are calling for this added level of disclosure might be willing to accept subjectivity and might be willing to let the corporations have some flexibility in determining what are the proper segments, I am primarily worried about the future. I recall that we started reporting on an all-inclusive basis with a high amount of flexibility, and then we found a rather clear and pervasive cry for lessening of divergencies.

What will the next request be after we respond to the request for segmented reporting? There might be some merit—although I have expressed many doubts about it—in lessening divergencies of application of accounting principles in the all-inclusive statement, but we are in an entirely different ball park when we talk about segmented reporting. Even Mr. Barr has noted that he feared these things could not be done on a uniform basis as between companies.

Therefore, we are not going to get comparability and we are not going to get standardization, and we should recognize this at the outset. There can be no second step of lessening divergencies in the area of segmented reporting.

My next proviso is that segmented reporting should not result in overemphasizing the importance of financial statements. I realize that we who are assembled at this symposium are in various shades either oriented to the production of accounting information, the attesting of accounting information, or the use of accounting information. We are all somewhat biased, therefore, in respect to the importance of the accounting product.

If I understand investment circles, however, the current year is regarded as an adequate base for trending future profits—it is, in fact, necessary because companies typically do not forecast the future—but such information is of particular interest to the fundamentalists, who are but one of three types of investors. We also have the Dow-Jones theorists and, lately, the random walkers, to which I would gratuitously include the dart throwers. At least these latter

two have a lessened, if not a lack of, interest in the financial statements that we profess to be so concerned about.

Then we have the question of the imperfections of the market place and whether and to what extent financial information controls the market price. As an indication of the areas that are not usually covered in the financial statement, I would point out the necessity of having regard as an investor for the management continuity, the character of management, the company's interest in management development, and the nature of its research and development expenses.

There is also the character of the company's products, how they are received in the market place—and this is something that goes far beyond the mere reporting of sales—and how the company services its products. Actually, there is a whole host of things over which a prospective investor should concern himself that would never become a part of the financial statement.

Further dilution of the importance of segmented financials would seem to be inevitable because this level of reporting would be based on accounting concepts of allocation of costs; however, many managerial decisions are based on concepts of marginal economics, or incremental costs, or on return on investment, the details of which would never be reflected in that form in the segmented reporting now being proposed.

Since I've mentioned return on investment, I should acknowledge that some proponents of segmented reporting want the balance sheet segmented. Cost allocation appears simple compared with the problems of allocating assets and liabilities to segments. And, as Professor Ezra Solomon has noted, there are distinct limitations in the use of such data.

By reason of my position of constantly dealing with investment analysts, as well as being involved in the management of five different investment portfolios, my understanding of where we stand today is that there is no single, organized body of investment theory which, if systematically applied, could cover the transaction costs. If this truly is our situation with respect to investment theory, it raises grave doubts about the efficacy of the projected uses for this additional disclosure.

This leads me to my next proviso, that segmented reporting should not be allowed to become unduly complex. I am afraid that our present all-inclusive statements have already achieved a degree of complexity that surpasses the comprehension of many small stockholders. To further complicate matters with a new generation of abstruse applications of the accounting art at the segmented level, would not, in my opinion, be a service to many of our investors, nor would it serve to enhance the reliability of investment judgments for investors as a whole.

What could result from this added disclosure, if we do not keep it relatively simple and uncomplicated, is the possibility that the skilled analysts would obtain further advantage over the average stockholder. I have referred to this possibility in past papers and appearances before professional societies as the threat of creating "intellectual insiders." By this, I mean that the skilled analyst might possibly employ this increased disclosure, along with his time for intensive study and research and his access to corporate managers, to gain what, for all practical purposes, would amount to insider information. I do not believe this would be totally pleasing to the gentlemen at the SEC.

Another proviso I would raise is that such increased disclosure should not create kangaroo courts for management trial. Here I am concerned about the effect this disclosure could have on the managerial function. SEC Chairman Manuel Cohen, speaking before the AICPA (American Institute of Certified Public Accountants) last December, expressed the view that increased disclosure, and now I'm quoting, "serves as an important control on corporate managers by requiring them to justify the results of their stewardship," end of quote.

In the business community, this concept has caused some managers to view increased disclosure as a possible means of giving birth to a virulent form of "double management." A recent statement filed with the SEC by the Machinery and Allied Products Institute, for example, said:

"A real danger in product-line reporting—both to shareholders and, in a larger sense, the economy itself—lies in the possibility of subjecting management to a new volume of criticisms based on limited knowledge and a constricted view of management's problems, plans, and opportunities, which can only tend to reduce management's freedom of action.

"And we must not forget," the statement continues, "that this freedom of capable management to act in the corporation's best overall interests may well be the corporation's principal asset and the thing which gives to the investor's share of ownership its greatest value."

From my own experience with state and federal governments, I have formulated Browne's Law, to wit: "The larger the organization, the more diffused become its objectives." And the corollary to this law is: "The greater the diffusion of objectives, the greater is the tendency to accept mediocre performance."

Decision-making in glass houses, I have observed, where many objectives had to be composed with respect to a great variety of vested interests, seemed designed not to make a worthwhile decision, but, instead, point for a constant deferral of decision and then making the least effective decision in the hope that it would create the least trouble. I would resist the creation of this sort of saddle on management as the result of increased disclosure.

How could this come about?

First of all, this segmented disclosure could lead to a vast number of derivative shareholder suits, the only value of which would be that of nuisance. People who live in glass houses are apt to let nuisances assume far greater importance than they deserve.

I fear this increased disclosure could move us in the direction of examining means, which, in part, is certainly correct since the means should be legal and appropriate, but we should be far more concerned with the ends. Segmented reporting is fraught with the possibility of exposing management to endless discussion and justification of detailed steps, only to hide the end objectives that had been agreed upon.

I am also concerned that this disclosure will bring to the fore the diffusion of objectives that exist between shareholders and management. If this strikes anyone as being paradoxical, I should like to remind you that shareholders do not represent a homogeneous body with uniform objectives. They come to the market as small and large shareholders, as private and institutional holders, as those with short verus long-term interests; and shareholders can be further classified as past, present, and future. Management definitely has a problem in trying to reconcile these disparate objectives among its shareholders.

My final proviso is that this segmented information should be voluntarily disclosed. This is essential because at the level of reporting we are considering there are going to be many instances when this form of disclosure could be tantamount to an invasion of privacy. That this aspect of the subject under discussion has not been given its proper consideration, I would attribute to the growing ambivalence I see in American society and, more particularly, in our government.

At the present time, we are witnessing a resurgence of personal liberty that has had no equal in our history; yet, on the other hand, I observe corporations becoming increasingly hemmed in, harassed, and denied due process of law.

Consider if you will the expansion of civil rights, the rights of dissent, the rights of the accused, and the rights of personal privacy. Hardly a week goes by that there isn't a new decision in our courts that further strengthens the legal rights of the individual. Conversely, hardly a week goes by that some new inroads are not made against the legal rights of corporations. Yet, these encroachments are not protested, deplored, or feared by most Americans.

I shall now quote from the current edition of *American Jurisprudence:*

"So far as property rights are concerned, a private corporation is a 'person' within the meaning of the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States that no person shall be deprived of life, liberty, or property without dues process of law."

This, I believe, indicates that under our laws the legal rights of corporations are not so inferior to human rights as many people are apt to believe. This had led me in past papers to make a rather clear call for the examination as to whether we were not due for the drafting of a Corporate Bill of Rights.

I have made this call because I feel the corporation should not be denied those rights that have been so basic to the economic growth of the American society. In the context of this symposium, I believe corporations should not unwittingly be exposed to their customers or competitors by the forced disclosure of segmented information. It should be possible for such information to be disclosed voluntarily, and in such a manner that all parties will be satisfied, without eroding or destroying the legal rights of the reporting company.

In this regard, I would caution the proponents of product-line reporting to proceed carefully in their efforts. Remember that American business has a spectrum of responsibilities, to its customers, employees, present shareholders, communities, and to society as a whole.

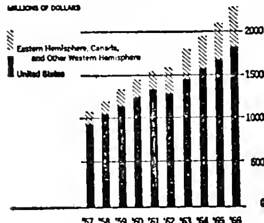
In conclusion, I should like to remind you of my opening position statement. I believe it should be in the corporation's long-run interests to disclose information regarding sales and earnings of segments of the business . . . with certain provisos.

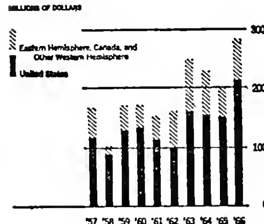
5. *Examples of Segmental Reporting.*

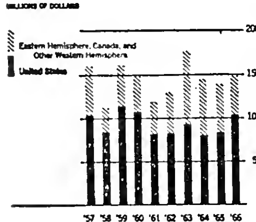
[From *Public Reporting by Conglomerates—The Issues, the Problems, and Some Possible Solutions,* appendix A.]

Ten-Year Financial Review 1957-1966[1] Dollars in millions, except for per share amounts

CONTINENTAL OIL COMPANY
ANNUAL REPORT 1966







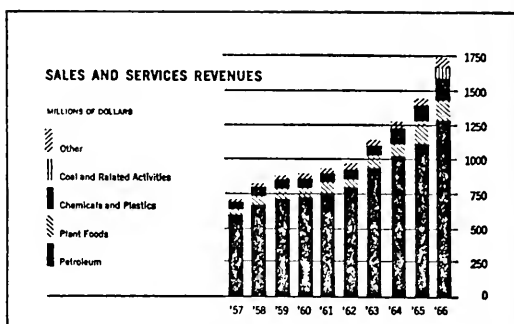
		1966
Revenues	Sales—Refined petroleum products (excluding excise taxes)	$ 772.9
	—Excise taxes collected	145.4
	—Crude oil	463.6
	—Natural gas	58.1
	—Coal and related activities	83.5
	—Plant foods	140.0
	—Chemicals and plastics	166.1
	Other sales and operating revenues	69.9
	Nonoperating revenues	15.1
	TOTAL REVENUES	1,914.6
	Purchases of crude oil	443.5
Income and Dividends	Funds derived from operations	256.4
	Net income	115.6[2]
	Dividends on Preferred Stock ($2.00 per share)[6]	4.1
	Net income applicable to Common Stock—total	111.5[2]
	—per share[4]	5.08[2][3]
	Dividends on Common Stock—total	53.8
	—per share[4]	2.45
Balance Sheet Data[3]	Net working capital	272.8
	Ratio of current assets to current liabilities	1.64
	Long-term debt	363.6
	Stockholders' equity	1,117.2
Gross Property Accounts[3]	Leases	267.7
	Wells and equipment	1,013.8
	Total petroleum production	1,281.5
	Refineries and natural gasoline plants	239.2
	Petroleum marketing	170.8
	Petroleum transportation	148.0
	Coal and related activities	54.8
	Plant foods	161.0
	Chemicals and plastics	117.0
	Other	73.7
	TOTAL GROSS PROPERTY ACCOUNTS	2,246.0
	Per cent of total gross property accounts in United States	80.2
Capital Expenditures	Petroleum production	112.6
	Refineries and natural gasoline plants	17.5
	Petroleum marketing	29.0
	Petroleum transportation	11.8
	Total petroleum	170.9
	Coal and related activities	54.8
	Plant foods	26.4
	Chemicals and plastics	13.6
	Other	16.7
	TOTAL CAPITAL EXPENDITURES	282.4
	Per cent of total capital expenditures in United States	76.4
Expenditures For Petroleum Production	Exploratory expense, including land, geological, and geophysical activities	28.6
	Lease rentals	7.3
	Acquisition of new and renewal leases	29.9
	Producing wells and equipment	64.3
	Dry holes	18.4
	TOTAL EXPENDITURES FOR PETROLEUM PRODUCTION	148.5
	Surrendered leases	8.4
	Number of employees[5]	31,959
	Number of stockholders—Common[5]	50,796
	—Preferred[5] [6]	7,641
	Shares outstanding—Common (thousands)[4] [5]	22,678.1
	—Preferred (thousands)[5] [6]	2,040.3

[1] The figures in this table are for Continental and consolidated subsidiaries. The American Agricultural Chemical Company, which was acquired in a pooling-of-interests in 1963, has been included commencing in 1957. Companies acquired in pooling transactions in 1959 and 1961 have been included beginning in 1958.

1965	1964	1963	1962	1961	1960	1959	1958	1957
$ 671.0	$ 627.3	$ 581.1	$ 523.7	$ 477.5	$ 449.6	$ 441.7	$ 419.7	$ 342.2
140.5	134.8	126.2	115.6	109.4	103.3	93.8	86.3	68.8
414.5	354.8	322.6	250.4	249.0	250.5	244.4	244.6	243.5
51.2	48.2	42.8	36.0	26.6	25.9	21.8	17.5	15.2
—	—	—	—	—	—	—	—	—
130.0	110.0	95.0	76.1	77.0	71.2	73.3	64.6	59.0
132.3	86.9	64.8	51.9	50.5	49.8	48.9	44.1	37.0
55.5	45.2	51.0	41.4	25.9	22.5	26.4	18.5	12.5
14.6	13.6	15.8	10.8	9.1	8.8	7.4	10.2	10.0
1,609.6	1,420.8	1,301.3	1,105.9	1,025.0	981.6	959.7	905.5	788.2
406.2	357.7	314.9	267.5	270.4	271.5	262.4	263.2	249.6
226.8	228.8	212.4	186.8	171.5	171.3	173.6	152.4	150.3
96.2	100.1	87.4	73.8	68.3	65.8	74.7	65.1	63.8
4.1	4.1	4.1	4.1	4.1	4.1	3.7	3.7	3.7
92.1	96.0	83.3	69.7	64.2	61.7	71.0	61.4	60.1
4.25	4.44	3.88	3.26	3.00	2.89	3.33	3.01	3.06
52.0	45.4	40.7	37.4	36.2	35.8	35.2	31.4	31.4
2.40	2.10	1.90	1.75	1.70	1.70	1.70	1.60	1.60
204.9	191.9	184.7	194.6	194.7	163.0	164.0	177.1	155.0
1.80	1.95	1.96	2.22	2.50	2.18	2.21	2.66	2.80
359.3	324.4	292.5	240.1	247.2	188.1	185.1	205.0	202.6
939.3	898.1	836.3	787.1	756.6	726.6	699.1	604.0	555.2
262.7	253.9	266.3	223.7	213.7	209.8	194.7	146.0	140.1
983.5	942.4	878.7	815.9	768.7	734.2	682.3	628.7	579.2
1,246.2	1,196.3	1,145.0	1,039.6	982.4	944.0	877.0	774.7	719.3
227.5	216.7	207.7	182.9	179.5	164.7	154.7	151.3	131.7
151.0	138.3	127.5	116.9	129.5	114.2	104.2	97.4	86.7
142.8	129.9	112.6	77.0	69.5	62.2	51.5	45.5	45.5
—	—	—	—	—	—	—	—	—
135.3	101.0	84.6	70.1	68.9	62.0	53.2	47.4	41.7
98.1	87.9	45.6	36.9	37.8	30.6	27.2	23.1	15.6
60.5	59.9	57.0	44.1	53.2	46.0	36.3	33.0	32.3
2,061.4	1,930.0	1,780.0	1,567.5	1,520.8	1,423.7	1,304.1	1,172.4	1,072.8
80.3	80.9	81.4	82.7	86.5	87.8	88.0	89.1	89.1
102.3	110.7	143.7	98.3	85.3	116.6	133.9	84.7	129.1
13.9	10.7	26.3	7.1	16.6	10.1	9.2	6.0	8.6
20.9	19.9	18.2	25.7	17.7	17.0	8.5	4.6	11.8
10.3	17.2	29.4	20.7	8.0	3.1	4.5	1.6	3.6
147.4	158.5	217.6	151.8	127.6	146.8	156.1	96.9	153.1
—	—	—	—	—	—	—	—	—
36.3	19.8	13.3	3.2	8.0	10.4	6.8	6.6	5.1
9.4	39.6	6.6	1.4	11.1	6.6	4.4	.9	1.6
6.7	7.1	11.7	4.4	9.1	10.7	3.6	1.9	3.4
199.8	225.0	249.2	160.8	155.8	174.5	170.9	106.3	163.2
73.5	69.5	65.4	62.7	72.9	78.7	77.6	83.3	71.0
30.1	29.1	23.2	27.1	26.0	24.9	21.4	20.8	23.3
7.6	7.1	7.4	8.2	7.9	7.8	6.9	6.6	7.7
22.3	16.3	58.8	24.0	18.9	34.6	52.6	15.0	38.0
60.6	76.5	64.8	55.2	50.5	58.9	62.9	55.7	68.9
19.4	17.9	20.1	19.1	15.9	23.1	18.4	14.0	22.2
140.0	146.9	174.3	133.6	119.2	149.3	162.2	112.1	160.1
12.6	11.5	13.4	12.0	11.4	8.8	9.8	9.1	7.6
21,261	20,022	19,211	18,303	17,110	16,716	16,348	15,874	13,882
38,400	38,715	38,319	39,895	40,104	40,329	37,550	31,017	30,504
7,615	7,739	7,160	10,967	11,350	10,300	9,500	8,100	8,200
21,670.0	21,648.1	21,442.0	21,396.8	21,395.4	21,349.2	21,329.3	20,426.7	19,627.5
2,040.9	2,040.9	2,040.9	2,040.9	2,040.9	2,040.9	1,853.8	1,824.8	1,824.8

(2) Excludes gain (net of related income taxes) of $41.3 million, or $1.88 per Common share, from liquidation of Great Lakes Pipe Line Company in March 1966.
(3) Based on the weighted average number of shares outstanding during the year.
(4) For comparative purposes, the figures for 1957 have been adjusted to reflect the share-for-share distribution made in February 1957.
(5) At December 31.
(6) Pro forma prior to October 21, 1963.

CONTINENTAL OIL CO.
ANNUAL REPORT 1966



	Per Cent of Total	
	1966	1965
Refined products (excluding excise taxes)	44%	46%
Crude oil	27	29
Natural gas	3	4
Coal and related activities	5	—
Plant foods	8	9
Chemicals and plastics	10	9
Other	3	3
Total	100%	100%
Total sales and service revenues (millions of dollars)	$1,749	$1,450

CONTINENTAL OIL COMPANY ANNUAL REPORT 1966

Significant Areas of Undeveloped Acreage

At December 31, 1966

	Net Acres
Anadarko Basin (Oklahoma, Texas, Colorado)	251,000
Delaware Basin (New Mexico, Texas)	188,000
Eastern Platform (Texas)	275,000
Gulf of Mexico (Offshore Louisiana & Texas)	76,000
Powder River Basin (Wyoming, Montana)	324,000
South Texas Cretaceous Area (Texas)	283,000
Sweetgrass Arch (Montana)	119,000
Williston Basin (Montana, North Dakota)	605,000

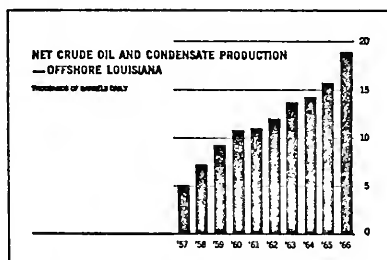
Discoveries and Extensions

NEW FIELDS

Block 33, Grand Isle Area (Offshore Louisiana)	Oil & Gas
Block 41 E/2, Grand Isle Area (Offshore Louisiana)	Oil & Gas
Block 119, Vermillion Area (Offshore Louisiana)	Oil & Gas
Block 83, East Cameron (Offshore Louisiana)	Gas
Heart River (Stark Co., North Dakota)	Oil
Tinsley (Yazoo Co., Mississippi)	Gas-Condensate
Southwest Shelfield (Pecos Co., Texas)	Oil
Kyle "A" Block (Loving Co., Texas)	Gas-Condensate
Lyons Point (Acadia Parish, Louisiana)	Gas-Condensate

NEW RESERVOIRS AND EXTENSIONS

Block 43, Grand Isle Area (Offshore Louisiana)	Oil & Gas
Block 120, Eugene Island Area (Offshore Louisiana)	Oil
Block 58, West Delta Area (Offshore Louisiana)	Gas-Condensate
Block 22 S/2, South Timbalier Area (Offshore Louisiana)	Oil
Block 64, East Cameron Area (Offshore Louisiana)	Gas
Anadarko Basin (Oklahoma)	Oil & Gas-Condensate



Significant Development Drilling Activity

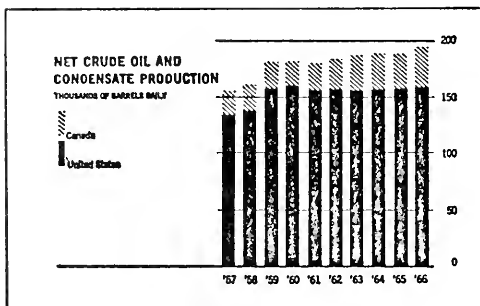
	Type Of Well	Producing Wells Completed In 1966 Gross	Net
Chittim Anticline (Southwest Texas)	Oil	178	178.0
San Juan Basin (Northwest New Mexico)	Gas	135	54.0
Gulf Coast Salt Dome (Offshore Louisiana)	Oil & Gas	70	18.3
Powder River Basin (Central Wyoming)	Oil	48	4.8
Central Basin Platform (West Texas & Southeast New Mexico)	Oil & Gas	28	10.7
Jackson & Frio Trend Areas (South Texas)	Oil & Gas	24	11.7
Anadarko Basin (West Oklahoma)	Oil & Gas	20	4.5
Santa Maria Province (California)	Oil	12	12.0
North Central Oklahoma Platform	Oil & Gas	8	6.2
Midland Basin (West Texas)	Oil	7	6.9

Drilling Program

	Gross Wells 1966	1965	Net Wells 1966	1965
EXPLORATORY WELLS				
Oil	9	9	4	6
Gas	8	10	3	6
Dry	49	75	31	42
	66	94	38	54
DEVELOPMENT WELLS				
Oil	431	384	261	167
Gas	209	136	78	56
Dry	71	73	38	36
	711	593	377	259
TOTAL	777	687	415	313

Changes in Net Crude Oil and Condensate Production

	Barrels Daily 1966	1965	% Change
PRORATED STATES			
Louisiana — Offshore	19,226	15,881	21.1
Oklahoma	10,289	9,710	6.0
Texas	46,064	43,874	5.0
New Mexico	9,647	9,531	1.2
Other	15,905	16,674	(4.6)
	101,131	95,670	5.7
NONPRORATED STATES			
Illinois	1,683	1,484	13.4
California	7,481	7,721	(3.1)
Wyoming	37,885	40,902	(7.4)
Utah	1,586	1,870	(15.1)
Colorado	1,785	2,168	(17.7)
Other	6,097	6,278	(2.9)
	56,517	60,423	(6.5)
TOTAL	157,648	156,093	1.0



CONTINENTAL OIL COMPANY ANNUAL REPORT 1966

Sales of Refined Products

PRODUCT	Barrels Daily 1966	Barrels Daily 1965	% Change
Motor gasoline	114,807	106,556	7.7%
Other gasoline	24,462	27,602	(11.4)
Commercial jet fuel	11,101	8,848	25.5
Other kerosene and distillate	82,506	73,085	12.9
LPG and natural gasoline	34,402	33,089	4.0
Asphalt and residual fuel oil	33,446	28,909	15.7
Lubricating oil	5,744	4,793	19.8
Other products	6,690	7,021	(4.7)
TOTAL	313,158	289,903	8.0%

Undeveloped Net Acreage Holdings

At December 31, 1966

LOCATION	Thousands of Acres: Crown permits or Reservations*	Leaseholds	Options to Lease Hudson's Bay Company Lands	Fee Lands	Total
Alberta	2,944	1,887	1,519	84	6,434
British Columbia	567	452	6	—	1,025
Saskatchewan	2,686	85	2,324	101	5,196
Yukon and Northwest Territories	2,033	—	—	—	2,033
Maritime Provinces	9,167	—	—	—	9,167
Other	—	—	700	89	789
TOTAL	17,397	2,424	4,549	274	24,644

**Convertible into leases to the extent of approximately 50%.*

CONTINENTAL OIL COMPANY
ANNUAL REPORT 1966

Discoveries and Extensions

NEW FIELDS

Zama Lake Area (Alberta)....Oil & Gas
Hummingbird Area (Saskatchewan)....Oil
Beatty Lake Area (Alberta)....Oil

NEW RESERVOIRS AND EXTENSIONS

Brazeau River Area (Alberta)....Gas
Kaybob South Area (Alberta)....Gas-Condensate
Clarke Lake Area (British Columbia)....Gas

Drilling Program

	Gross Wells		Net Wells	
EXPLORATORY WELLS	1966	1965	1966	1965
Oil	14	12	9	7
Gas	14	8	9	4
Dry	75	49	40	29
	103	69	58	40
DEVELOPMENT WELLS				
Oil	60	74	35	39
Gas	37	31	10	10
Dry	22	21	12	11
	119	126	57	60
TOTAL	222	195	115	100

Changes in Net Crude Oil Production

	Barrels Daily		
PROVINCE	1966	1965	% Change
Alberta	25,856	25,456	1.6
British Columbia	5,247	3,083	70.2
Saskatchewan	4,826	4,582	5.3
Manitoba	14	13	7.7
TOTAL	35,943	33,134	8.5

Undeveloped Acreage Holdings

At December 31, 1966

	Thousands	
	Gross Acres	Net Acres
EASTERN HEMISPHERE		
Africa		
Libya	24,437	8,295
Tunisia	4,683	1,561
Middle East		
Bahrain	880	440
Dhofar	19,200	6,400
Dubai	1,756	797
Iran	3,127	262
Qatar	5,694	2,847
Turkey	494	213
Europe		
Germany	914	294
United Kingdom	4,648	1,118
Asia-Pacific		
Australia	129,185	36,358
Papua-New Guinea	24,544	12,182
OTHER WESTERN HEMISPHERE		
Guyana	10,256	5,128
TOTAL	229,818	75,895

Drilling Program

	Gross Wells		Net Wells	
	1966	1965	1966	1965
Oil	6	50	2	17
Dry	19	28	6	11
TOTAL	25	78	8	28

Sales and approximate earnings by markets served were as follows:

	1966 (Amounts in Millions)			
	SALES		EARNINGS	
	Amount	% of Total	Amount	% of Total
Products for the Home	$ 672.5	64%	$29.4	62%
Products for Industry	217.4	21	8.3	18
Products for Business	159.3	15	9.6	20
TOTAL	$1,049.2	100%	$47.3	100%

Sales increased 7.1 per cent over 1965 with improvement in all markets served:

	1966	1965	CHANGE
	(Amounts in Millions)		
Products for the Home	$ 672.5	$642.8	+ 4.6%
Products for Industry	217.4	198.7	+ 9.4
Products for Business	159.3	138.3	+15.2
TOTAL	$1,049.2	$979.8	+ 7.1%

U.S. sales accounted for 48.7 per cent of the total in 1966, increasing at a faster rate than foreign sales. Sales by major geographical areas were as follows:

	1966	1965	CHANGE
	(Amounts in Millions)		
United States	$ 510.7	$470.3	+ 8.6%
Europe	248.4	237.1	+ 4.8
Latin America	124.4	110.6	+12.5
Far East	82.9	87.5	− 5.3
Africa and the Near East	50.1	46.1	+ 8.7
Canada	32.7	28.2	+16.0
TOTAL	$1,049.2	$979.8	+ 7.1%

THE SINGER COMPANY
ANNUAL REPORT 1966

In addition to household sewing machines and related products, principal consumer products include home entertainment equipment, refrigerators, washing machines, portable electric hand tools, floor-care equipment, knitting machines, kitchen ranges, typewriters and wood products.

Sales of products for the home by major categories were as follows:

	1966	1965	CHANGE
	(Amounts in Millions)		
Sewing machines	$471.7	$454.9	+ 3.7%
Major appliances	72.9	58.5	+24.6
Home entertainment equipment	67.3	64.6	+ 4.2
Other	60.6	64.8	− 6.5
TOTAL	$672.5	$642.8	+ 4.6%

Sales of products for the home by major geographical areas were as follows:

	1966	1965	CHANGE
	(Amounts in Millions)		
United States	$244.4	$234.4	+ 4.3%
Europe	182.9	176.1	+ 3.9
Latin America	111.2	94.7	+17.4
Far East	69.4	75.2	− 7.7
Africa and the Near East	44.5	41.3	+ 7.7
Canada	20.1	21.1	− 4.7
TOTAL	$672.5	$642.8	+ 4.6%

THE SINGER COMPANY
ANNUAL REPORT 1966

Major industrial products and services are industrial sewing machines and allied equipment, heating and air conditioning, tufting, knitting and other textile machinery, instrumentation, information systems, industrial controls and special purpose electric motors.

Sales of industrial products by major product categories were as follows:

	1966	1965	CHANGE
	(Amounts in Millions)		
Industrial sewing equipment..	$88.8	$79.9	+11.1%
Heating and air conditioning..	31.7	24.6	+28.9
Textile machinery	29.4	33.9	−13.3
Instrumentation	25.8	23.4	+10.3
Information systems	23.2	19.1	+21.5
Other	18.5	17.8	+ 3.9
TOTAL	$217.4	$198.7	+ 9.4%

Sales of products and services for industry by major geographical areas were as follows:

	1966	1965	CHANGE
	(Amounts in Millions)		
United States	$155.7	$139.4	+11.7%
Europe	34.6	32.2	+ 7.5
Other	27.1	27.1	—
TOTAL	$217.4	$198.7	+ 9.4%

Systems equipment, calculators, graphic arts equipment, adding machines, postage meters and mailing equipment are our principal products for business. Virtually all business equipment produced and sold by the Company bears the Friden trademark.

Sales of products and services for business by major categories were as follows:

	1966	1965	CHANGE
	(Amounts in Millions)		
Systems equipment	$ 60.8	$ 57.1	+ 6.5%
Calculators and adding machines	47.0	40.8	+15.2
Repairs and services	31.6	27.9	+13.3
Other	19.9	12.5	+59.2
TOTAL	$159.3	$138.3	+15.2%

Sales of products for business by major geographical areas were as follows:

	1966	1965	CHANGE
	(Amounts in Millions)		
United States	$110.6	$ 96.5	+14.6%
Europe	30.9	28.8	+ 7.3
Other	17.8	13.0	+36.9
TOTAL	$159.3	$138.3	+15.2%

NET SALES

Sales in 1966 totaled a record $1,049.2 million, and were $69.4 million or 7.1 per cent higher than 1965 net sales.

Sales of our traditional products, household and industrial sewing machines and related items, amounted to $560.5 million in 1966 and were 53.5 per cent of the total. In 1965, sales of such products were $534.8 million or 54.6 per cent of the total.

Sales of other products, which comprised 46.5 per cent of the total, were $488.7 million. This was an increase of 9.8 per cent over 1965 sales of $445.0 million.

In 1966, foreign sales were 51.3 per cent of the total, compared with 52.0 per cent in 1965. Sales in the United States increased 8.6 per cent while foreign sales increased 5.7 per cent.

Sales by major geographical area are shown in the following table:

	1966		1965	
	(Amounts in Millions)			
	Amount	% of Total	Amount	% of Total
United States	$ 510.7	48.7%	$470.3	48.0%
Europe	248.4	23.7	237.1	24.2
Latin America	124.4	11.8	110.6	11.3
Far East	82.9	7.9	87.5	8.9
Africa and the Near East	50.1	4.8	46.1	4.7
Canada	32.7	3.1	28.2	2.9
	$1,049.2	100.0%	$979.8	100.0%

OTHER ASSETS

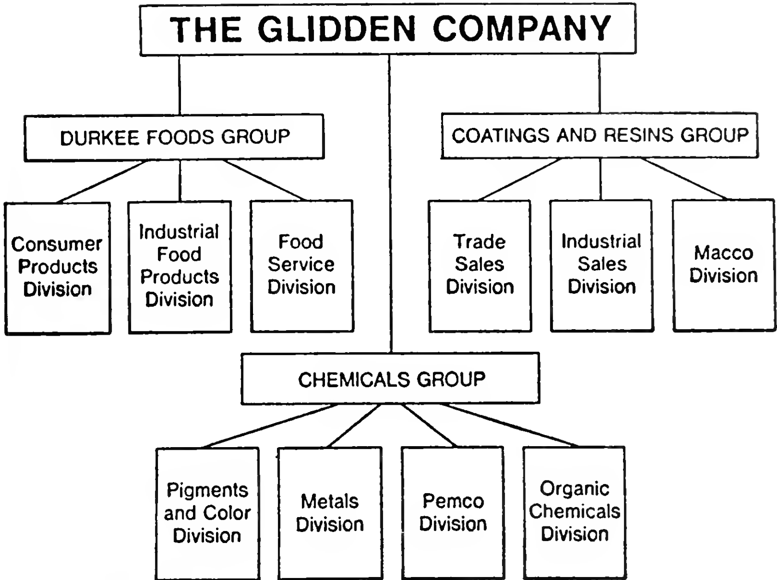
Other assets at December 31, 1966 and 1965 were as follows:

	1966	1965
	(Amounts in Millions)	
Prepaid expenses and deferred charges	$ 19.1	$ 15.5
Mortgages and other	14.0	12.6
Intangibles, less amortization	9.6	10.2
Deposits	5.7	7.6
	$ 48.4	$ 45.9

FOREIGN NET ASSETS

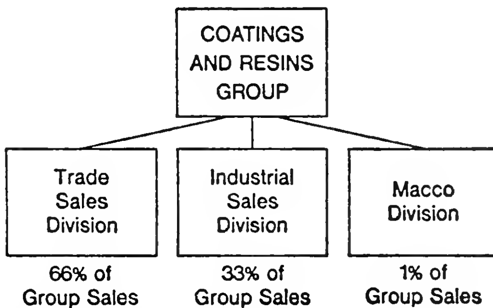
Net assets located outside the United States are expressed in U.S. dollars at appropriate exchange rates. Foreign net assets at December 31, 1966 and 1965 by major geographical area were:

	1966	1965
	(Amounts in Millions)	
Europe	$134.3	$124.4
Latin America	82.7	66.9
Far East	44.0	49.2
Africa and the Near East	29.8	24.9
Canada	17.7	16.8
	$308.5	$282.2

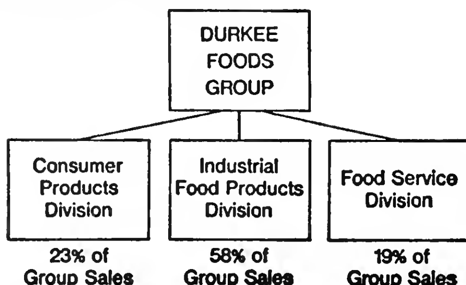


THE GLIDDEN COMPANY ANNUAL REPORT 1966

Coatings and Resins Group

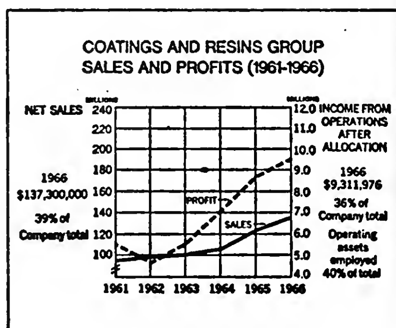


Durkee Foods Group

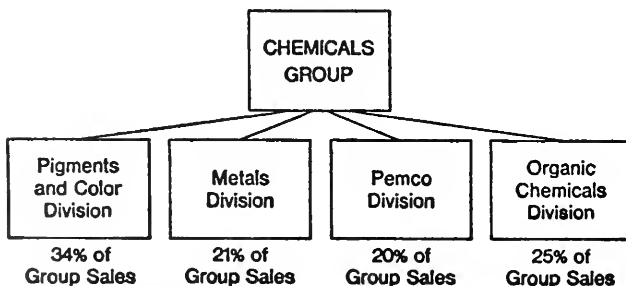


NUMBER OF PLANTS—15

THE GLIDDEN COMPANY
ANNUAL REPORT 1966



Chemicals Group



NUMBER OF PLANTS—9

THE GLIDDEN COMPANY
ANNUAL REPORT 1966

DISTRIBUTION OF TITANIUM DIOXIDE INDUSTRY SALES

PAINT	56%
PAPER	15%
FLOOR COVERINGS	5%
RUBBER	4%
OTHER	20%
TOTAL	100%

Sales

Consolidated sales of The Glidden Company were $351,888,467 in fiscal 1966, compared with $303,991,184 in 1965. Sales by operating groups were:

	1966 (000)	1965 (000)	Change
Durkee Foods	$154,500	$126,700	+22%
Coatings & Resins	137,300	121,800	+13%
Chemicals	60,100	55,500	+ 8%
	$351,900	$304,000	

Sales and Profits

Following is the amount and percentage of income from operations after allocating corporate items on the basis of assets employed, along with the percentage of sales and total assets of each operating group in 1966.

	Profit	Profit %	Sales %	Assets %
Durkee Foods	$ 7,844,410	30	44	32
Coatings & Resins	9,311,976	36	39	40
Chemicals	8,690,664	34	17	28
Income from Operations	$25,847,050	100%	100%	100%

Capital Expenditures

Capital expenditures in fiscal 1966 amounted to $11,685,824, compared with $9,866,067 for the previous fiscal year. Here is how capital was invested in the operating groups during the year:

Durkee Foods	30%
Coatings and Resins	47%
Chemicals	23%

NATIONAL DISTILLERS AND CHEMICAL CORPORATION

Results in Brief

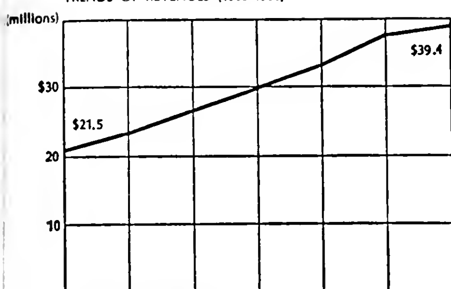
	% Change 1966-65	1966	1965	1964
Net sales	+8	$898,312,000	$829,031,000	$810,941,000
Net income	+30	$40,680,000	$31,285,000	$27,127,000
Net earnings per common share, after preferred dividends	+30	$3.09	$2.37	$2.02
Cash dividends on common stock—per share*	+14	$1.60	$1.40	$1.20
Funds provided by operations	+9	$56,577,000	$51,907,000	$49,[illegible]4,000
Book value per common share	+3	$29.28	$28.34	$27.40
Holders of common stock		73,864	74,238	73,578
Employees		14,601	13,615	13,835

*The quarterly dividend on the common stock was increased to 45 cents per share in January 1967.

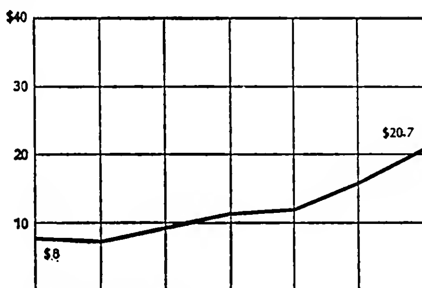
Divisional Operating Results

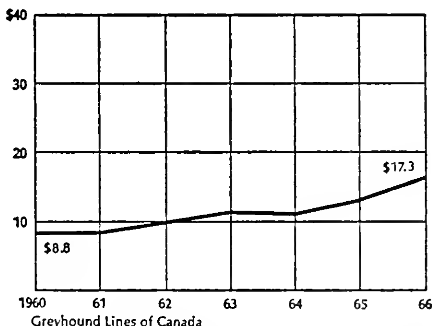
Divisions	Net Sales (000 omitted)			Operating Profit (000 omitted)		
	1966	1965	1964	1966	1965	1964
Liquor	$497,474	$469,828	$430,471	$46,840	$45,763	$39,467
Chemicals	133,432	135,952	137,554	24,216	16,444	14,633
Metals	235,095	193,677	216,962	19,933	10,486	5,923
International	11,696	10,924	9,841	*2,553*	*966*	*28*
H. W. Loud Co.	20,615	18,650	16,113	76	*1,213*	963
Totals	$898,312	$829,031	$810,941	$88,512	$70,514	$59,032

NOTE: Sales of 50 per cent owned domestic affiliates are not included in consolidated net sales; however, the Company's share of net earnings of these affiliates, including Reactive Metals, Inc., is allocated to the Chemical Division.



THE GREYHOUND CORPORATION
ANNUAL REPORT 1966





Revenue trends were decidedly upward in 1966 in these three transportation service areas of your company. Greyhound Package Express—the 24-hour, 7-day-a-week package-shipment service—continued its dramatic rise. Its revenues climbed from $21.5 million in 1960 to $39.4 million last year, an 83.6 per cent increase. Revenues of Greyhound Van Lines, our moving and storage subsidiary, rose 157.9 per cent—from $8 million in 1960 to $20.7 million last year. And Greyhound Lines of Canada, another rapidly growing phase of your company, reported 1966 revenues of $17.3 million, up 96.6 per cent from $8.8 million in 1960.

The Greyhound Corporation and Consolidated Subsidiaries

Consolidated Income Statement

	Year ended December 31	
REVENUES:	1966	1965
Transportation:		
Passenger	$305,381,786	$297,447,148
Package express	39,371,952	38,081,819
Charter and other	29,543,886	27,994,543
Household moving and storage	20,746,029	15,970,082
Sightseeing, tours and bus manufacturing	9,708,498	7,636,386
	$404,752,151	$387,129,978
Food services	115,777,115	105,118,213
Insurance	11,974,234	10,438,319
Money orders	6,339,526	5,919,589
Dividends and interest	7,052,642	4,689,801
	$545,895,668	$513,295,900
EXPENSES AND MINORITY INTERESTS:		
Operating costs and expenses	$444,915,643	$414,934,189
Depreciation	21,517,329	20,979,672
Interest	4,913,197	3,230,996
Net income applicable to minority interests	1,240,732	985,776
	$472,586,901	$440,130,633
INCOME BEFORE INCOME TAXES	$ 73,308,767	$ 73,165,267
PROVISION FOR INCOME TAXES	32,802,000	33,863,000
NET INCOME OF THE CORPORATION AND CONSOLIDATED SUBSIDIARIES	$ 40,506,767	$ 39,302,267
NET INCOME OF GREYHOUND LEASING & FINANCIAL CORPORATION AND SUBSIDIARIES (Note A)	6,216,415	4,127,068
NET INCOME FOR THE YEAR	$ 46,723,182	$ 43,429,335
Net income per share of common stock	$1.49	$1.38

See notes to financial statements.

STATISTICS IN BRIEF (Dollar data in millions)	1966	1965	1964	1963	1962	1961	1960	1959	1958	1957
REVENUES										
Transportation Services	$404.7	387.1	365.3	349.8	334.4	311.2	302.4	297.9	283.2	273.7
Food Services (2)	$115.8	105.1	94.8	82.8	73.3	59.2	56.2	23.8	22.0	21.7
Financial Services and Other (2)	$ 25.4	21.1	8.2	6.9	6.2	5.3	5.2	1.6	.6	1.2
Total	$545.9	513.3	468.3	439.5	413.9	375.7	363.8	323.3	305.8	296.6
NET INCOME										
Total Dollars (2)	$ 46.7	43.4	38.7	34.3	30.2	23.6	22.7	21.4	14.0	13.4
Per Common Share After Preferred Dividends (1)	$ 1.49	1.38	1.23	1.10	.97	.75	.72	.75	.49	.48
PREFERRED DIVIDEND REQUIREMENTS	$ .5	.5	.6	.8	1.3	1.4	1.5	.4	[illegible]	.4
COMMON DIVIDENDS										
Cash	$ 28.0	27.2	22.1	18.7	14.7	13.9	11.9	11.3	10.8	10.6
Per Share, as Adjusted for Stock Dividends and 1964 2-for-1 Stock Split	$ .90	.875	.725	.645	.515	.49	.425	.405	.395	.395
Stock				5%	5%		10%	5%		
TAXES (2)										
Income	$ 32.8	33.9	31.3	35.3	32.7	24.9	24.3	25.0	15.1	14.4
Other	$ 34.3	30.8	29.2	28.1	27.6	26.6	26.1	23.7	23.6	23.6
Total—Per Common Share	$ 2.10	2.04	1.91	2.05	1.99	1.71	1.68	1.71	1.36	1.36
OTHER STATISTICS										
Number of Stockholders	124,784	115,168	103,705	87,141	84,830	83,664	82,508	79,778	76,057	73,103
Number of Employees (Average)	33,930	32,422	31,807	24,264	24,191	24,236	24,387	24,775	26,542	28,140
Miles of Routes	102,181	100,944	100,434	100,302	101,731	101,068	100,433	101,120	101,711	99,896
Bus Miles Operated (Millions)	535.1	526.1	528.4	513.9	508.0	489.5	481.5	485.5	496.4	517.7
Miles Traveled by Passengers (Billions)	10.7	10.3	10.4	10.2	10.1	9.2	9.3	9.5	9.8	10.1
Buses Owned End of Year	5,422	5,216	5,293	5,171	5,324	5,200	5,214	5,383	5,595	5,931

Per share statistics are based on average number of common shares outstanding.

(1) Earnings per common share for all years have been restated for 1964 stock split and for stock dividends. Net income of companies acquired under pooling principle included for years 1960 to 1965.

(2) Includes acquired companies years 1960 to 1965 under pooling principle.

D. STATISTICAL MATERIALS FROM THE BUREAU OF THE CENSUS ON THE REPORTED ENTERPRISE INDUSTRY CATEGORY ACTIVITIES OF THE 200 LARGEST MANUFACTURING COMPANIES

1. Letter dated October 23, 1968, from Russell C. Parker, Senior Staff Economist, Cabinet Committee on Price Stability, to Murray D. Dessel, Coordinator, Enterprise Statistics, Bureau of the Census

EXECUTIVE OFFICE OF THE PRESIDENT,
CABINET COMMITTEE ON PRICE STABILITY,
Washington, D.C., October 23, 1968.

MURRAY D. DESSEL,
Coordinator, Enterprise Statistics,
Statistical Analysis Division,
Bureau of the Census,
Washington, D.C.

DEAR MURRAY. This letter is to confirm the request for a special tabulation which I have discussed with you over the telephone during the last several days.

For purposes of estimating the coverage that will be achieved under reporting rules currently being promulgated by the Securities and Exchange Commission requiring large corporations to prepare reports to their stockholders and to the SEC showing certain financial information for each major activity engaged in, I request that you prepare the tabulation indicated by the attached table format. [Omitted]

To determine the percentage share of a company's sales in an Enterprise Statistics industry category, we suggest that you divide the sales from establishments of the category by the company's total sales from all of its establishments except sales branches, administrative offices and out-of-scope activities. We are aware that the sales figure for the denominator will tend to be slightly larger than the net sales of the company because of double-counting due to intra-company transfers. However, it is our understanding that this is the only way that the sum of the sales shares of the various activities of a company will total to approximately 100 percent.

I want to thank you very much for providing the tabulation. The results of the tabulation will be invaluable in determining the type of reporting requirement to adopt.

Sincerely yours,

RUSSELL C. PARKER,
Senior Staff Economist.

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2. Letter dated December 31, 1968, from Murray D. Dessel to Russell C. Parker

U.S. DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS,
Washington, D.C., December 31, 1968.

RUSSELL PARKER,
Senior Staff Economist,
Cabinet Committee on Price Stability,
Executive Office of the President,
Washington, D.C.

DEAR RUSSELL: In response to your October 23rd letter and subsequent discussions, there is enclosed a special tabulation on the extent and significance of secondary industrial activities of the largest 200 manufacturing companies in 1963. The enclosed tables were compiled in accordance with your specifications, based on information derived from reference listings and tabulations developed while preparing ENTERPRISE STATISTICS: 1963, *Part 1.*—"General Report on Industrial Organization." Although the tables have been rearranged to present a more generalized format, the data are identical to the preliminary figures sent to you earlier by Mr. Robert Parker of my staff.

As indicated in the titles, captions, and footnotes in the enclosed tables, we have attempted to provide you with a meaningful approximation of the in-

formation you requested. ("For purposes of estimating the coverage that will be achieved under reporting rules currently being promulgated by the Securities and Exchange Commission requiring large corporations to prepare reports to their stockholders and to the SEC showing certain financial information for each major activity engaged in, . . .".) Because of the existing constraints, however,—i.e., (a) to use the company-establishment data records already available from the ENTERPRISE STATISTICS: 1963 tabulations, and (b) to avoid disclosing figures for individual companies—the following limitations should be kept in mind if you or others attempt to relate these tables with other data available on the "largest" manufacturing companies:

1. For reasons of technical feasibility (as noted in the third paragraph of your letter), the company sales totals distributed in the enclosed tables actually represent the aggregate sales of each company's in-Census-scope "operating" establishments (after excluding the duplicative sales reported by the manufacturer's sales branches, central administrative offices, and auxiliaries, as well as omitting the firm's out-of-Census scope activities, for which sales data were not collected in the Census). While some "double counting" of sales still resulted for integrated companies with significant amounts of inter-establishment transfers, the derived aggregate "gross" sales used to prepare the enclosed tables were not much higher, for most companies, than the reported consolidated "net" company sales. Thus, we find on p. 56 in Enterprise Statistics: 1963, *Part 1*, Table 4A, that the "not" sales and receipts total for all manufacturing companies (in column e) was $430.5 billion, while the corresponding "gross" sales figures of their operating establishments (in columns f and g) totalled $466.1 billion, or roughly 8 percent higher.

2. The "200 largest manufacturing companies," as shown in the enclosed tables, were selected on the basis of the above-defined "gross" establishment sales aggregates of each company from among the 219 companies previously identified for the 1963 Enterprise Statistics publication as (a) primarily classified in manufacturing and (b) reporting 10,000 or more employees in the 1963 Economic Censuses (see p. 163 of *Part 1*, Table 8, column k). Thus selected, these "200 largest" companies do not represent the same "200 largest" manufacturing companies ranked by value added in the Census-compiled 1963 *Concentration Ratios in Manufacturing Industry* report; nor do they represent the 200 largest publicly-held "industrial" companies, as ranked by their published 1963 company sales figures in *Fortune* magazine. Because of these differences in size criteria and data sources, we found that of the 200 largest manufacturing companies selected from the 1963 Enterprise Statistics source tabulations and distributed in the enclosed tables, approximately 20 percent were not included among the top 200 appearing in the *Concentration Ratios* report, while some 10 percent do not appear among the top 200 industrial firms listed by *Fortune* magazine.

3. The concept of "major activity" (for proposed SEC reporting purposes, as described in the second paragraph of your letter) was necessarily translated, for the enclosed tables, to mean the "enterprise industry category" classification system developed for the 1963 Enterprise Statistics publication series. Essentially, the latter system entailed regrouping the approximately 650 SIC 4-digit industry codes assigned to in-Census-scope operating establishments into 179 "enterprise industry categories." Each company's establishment data records (containing the SIC codes previously assigned in the 1963 Economic Censuses) was regrouped by their equivalent enterprise industry category codes. The company's "primary" enterprise industry category was then determined, as were the number and extent of the firm's secondary category activities, if any. These derived establishment aggregates of enterprise category groupings, therefore, provided the basis for the various counts shown in the enclosed tables.

This predetermined level of Census enterprise industry classification detail necessarily resulted in company distributions in the enclosed *Table 1* (showing the importance of "primary" activities in the largest manufacturing companies) and *Table 2* (showing the effects of various proposed SEC rules on the "separate" reporting of major activities of large companies) that would have been quite different if the 4-digit SIC level of establishment classification or a more detailed individual product classification had been used. Furthermore, it cannot be assumed that, even at the more aggregative Census enterprise industry category

level, it would be feasible for SEC to obtain separately reported *financial* data from accounting records that are often kept only at the company or broad divisional levels of organizational detail within the reporting firm.

Despite these limitations, however, the enclosed tables should provide a useful statistical summary of the underlying 1963 industrial diversification patterns found among the largest manufacturing firms, in the context of their approximate effects on various proposed SEC financial data reporting rules. An amplification of these and other points to be kept in mind when interpreting the enclosed tables are contained in the *Technical Notes* attached and in the Introductory Text of the source publication, Enterprise Statistics: 1963, *Part 1.*—"General Report on Industrial Organization."

Because of their previously expressed interest in this subject, I am taking the liberty of sending copies of this letter and the enclosed materials to Mr. John T. Woodward, Chief of the Financial Reports Branch, Securities and Exchange Commission, and to Dr. John M. Blair, Chief Economist of the Subcommittee on Antitrust and Monopoly, of the U.S. Senate Judiciary Committee.

If you have any questions regarding the enclosed tables, please let me know.

Sincerely yours,

MURRAY D. DESSEL,
Coordinator, Enterprise Statistics, Statistical Analysis Division.

3. *Tables prepared by the Enterprise Statistics Staff, U.S. Bureau of the Census*

TABLE 1.—COUNTS OF THE 200 LARGEST MANUFACTURING COMPANIES[1] AND THEIR REPORTED ENTERPRISE INDUSTRY CATEGORY ACTIVITIES,[2] CROSS-CLASSIFIED BY COMPANY SALES RANK AND BY PERCENT OF TOTAL SALES REPORTED IN THE PRIMARY ENTERPRISES INDUSTRY CATEGORY, 1963

Sales rank of manufacturing company	Counts of the 200 largest manufacturing companies and their reported enterprise industry category activities, distributed by primary industry category sales as percent of total company sales									
	Primary category less than 20 percent of company sales		Primary category 20 to 39.9 percent of company sales		Primary category 40 to 59.9 percent of company sales		Primary category 60 to 79.9 percent of company sales		Primary category 80 or more percent of company sales	
	Number of companies	Their industry categories	Number of companies	Their industry categories	Number of companies	Their industry categories	Number of companies	Their industry categories	Number of companies	Their industry categories
200 largest companies, total	12	229	33	470	67	764	48	515	40	286
50 largest companies	1	35	4	85	21	309	11	165	13	162
51 to 100 largest companies	2	50	14	214	10	129	16	190	8	57
101 to 150 largest companies	4	65	8	98	19	183	12	93	7	30
151 to 200 largest companies	5	79	7	73	17	143	9	67	12	37

[1] Represents the 200 largest manufacturing companies, based on total compnay sales and receipts (both manufacturing and nonmanufacturing), selected from the 219 companies primarily classified in manufacturing and reporting 10,000 or more employees in the 1963 economic censuses.

[2] Activities reported by companies covered in the 1963 economic censuses were classified among 179 different "enterprise industry categories"; these encompassed all the approximately 650 standard industrial classification 4-digit codes coming within the scope of the economic censuses (i.e., mining, manufacturing, wholesale trade, retail trade, and selected services).

Source: Reference listings and tabulations developed during the preparation of enterprise statistics, 1963, Pt. 1, "General Report on Industrial Organization." (See that report for additional details on concepts and definitions. For procedures used in preparing the above table, see attached technical notes.)

TABLE 2.—COUNTS OF THE 200 LARGEST MANUFACTURING COMPANIES [1] AND THEIR ENTERPRISE INDUSTRY CATEGORY ACTIVITIES [2] IN 1963, CROSS CLASSIFIED BY COMPANY SALES RANK AND BY PERCENTAGE OF TOTAL COMPANY SALES THAT WOULD BE REPORTED FOR SEPARATE ENTERPRISE INDUSTRY CATEGORIES UNDER VARIOUS PROPOSED SEC REPORTING RULES

Proposed SEC reporting rule and sales rank of manufacturing company, by data item.	Percent of total company sales that would be reported to SEC for separate enterprise industry categories—				
	Less than 20	20 to 39.9	40 to 59.9	60 to 79.9	80 or more
A. PROPOSED 10-PERCENT REPORTING RULE					
Number of companies:					
50 largest companies			1	19	30
51 to 100 largest companies	1		2	16	31
101 to 150 largest companies			2	10	38
151 to 200 largest companies			2	10	38
Total number of enterprise industry categories they reported in 1963 economic censuses:					
50 largest companies			29	356	371
51 to 100 largest companies	36		44	228	332
101 to 150 largest companies			34	138	297
151 to 200 largest companies			33	116	250
Number of enterprise industry categories they would report separately to SEC under proposed rule:					
50 largest companies			3	39	63
51 to 100 largest companies	1		5	36	76
101 to 150 largest companies			5	23	92
151 to 200 largest companies			6	28	124
B. PROPOSED 5-PERCENT REPORTING RULE					
Number of companies:					
50 largest companies				5	45
51 to 100 largest companies			1	4	45
101 to 150 largest companies			1	2	47
151 to 200 largest companies					50
Total number of enterprise industry categories they reported in 1963 economic censuses:					
50 largest companies				128	628
51 to 100 largest companies			36	82	522
101 to 150 largest companies			13	31	425
151 to 200 largest companies					399
Number of enterprise industry categories they would report separately to SEC under proposed rule:					
50 largest companies				22	167
51 to 100 largest companies			7	17	152
101 to 150 largest companies			2	7	160
151 to 200 largest companies					186
C. PROPOSED 5-PERCENT OR $25,000,000 REPORTING RULE					
Number of companies:					
50 largest companies					50
51 to 100 largest companies				1	49
101 to 150 largest companies			1	2	47
151 to 200 largest companies					50
Total number of enterprise industry categories they reported in 1963 economic censuses:					
50 largest companies					756
51 to 100 largest companies				36	604
101 to 150 largest companies			13	31	425
151 to 200 largest companies					399
Number of enterprise industry categories they would report separately to SEC under proposed rule:					
50 largest companies					317
51 to 100 largest companies				9	219
101 to 150 largest companies			2	7	161
151 to 200 largest companies					186

[1] See footnote 1 of table 1.
[2] See footnote 2 of table 1.

Source: Reference listings and tabulations developed during the preparation of enterprise statistics: 1963, pt. 1—"General Report on Industrial Organization." (See that report for additional details on concepts and definitions. For procedures used in preparing the above table, see attached "Technical Notes.")

TECHNICAL NOTES[1]

A. *Procedure.*—In accordance with the specifications described in the attached October 23, 1968 letter from Russell Parker (Senior Staff Economist, Cabinet Committee on Price Stability) to Murray D. Dessel (Coordinator, Enterprise Statistics, Bureau of the Census), the procedures used to prepare the enclosed special tabulations are described below:

1. From among the 219 companies reporting in the 1963 Economic Censuses as primarily engaged in manufacturing and each having 10,000 or more employees,[2] the largest 200 companies were selected, based on company aggregates of establishment sales and receipts.

2. For each selected company, the following information was determined:

a. The number of different Enterprise Industry Categories[3] engaged in by the "operating" establishments comprising the company.

b. The percentage of aggregate establishment sales and receipts of the company accounted for each of these enterprise industry categories.

B. *Concepts and Definitions.*—In the procedure described above, the following definitions and concepts were used.[4]

1. For Census purposes, a "company" consisted of all domestic "operating" establishments (such as factories, mines, stores, shops, etc.), central administrative or auxiliary units (such as central offices, central warehouses, research and development laboratories, and other within-company support activities), and manufacurers' sales branches and sales offices that were reported in the 1963 Economic Censuses under common ownership or control. If the owning or controlling firm was a "parent" company, with one or more subsidiary firms, the establishments of these subsidiaries were also included in the Census Bureau definition of the company.

2. Total company employment consisted of the number of employees at *all* domestic establishments reported by the company in 1963, *regardless* of the industrial activity or "Census scope" of the establishments involved, in determining the initial group of 219 manufacturing companies with 10,000 or more employees.

3. Classification of Census establishment reports—In the 1963 Economic Censuses, the value of shipments, sales, or receipts was reported by each establishment for individual classes of products, commodities, or services. Based on this detailed information, the establishment was classified into one of the approximately 650 SIC (4-digit code) industries falling within the scope of the 1963 Economic Censuses. (The definition of each 4-digit industry appears in the 1957 Standard Industrial Classification Manual, as revised in 1963 by the U.S. Bureau of the Budget, Office of Statistical Standards.)

In the course of processing the 1963 Census reports, each "operating" establishment (i.e., factory, store, mine, shop, etc.) determined to be within the industrial scope of the Economic Censuses was assigned a "primary" 4-digit SIC industry code. The assignment was ordinarily determined on the basis of the establishment's principal products made, lines of merchandise sold, or types of service rendered, as measured by their reported dollar value of shipments, sales, or receipts during the Census year. In some instances, the industry code was based on the principal materials consumed or fabricating processes used. (A comprehensive description of the Census Bureau's establishment classification procedure is presented in the introductory texts and appendixes of the various 1963 Economic Census volumes.) These assigned establishment industry codes subsequently provided the basis for determining the primary industry classification of the companies owning or controlling these establishments.

4. Each census company was classified into one of the 179 "Enterprise Industry Categories" developed specifically for the Enterprise Statistics: 1963, *Part 1*, report. The category assigned to each company represented the *primary* industrial activity in which the firm's operating establishments were engaged during the

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[1] Prepared as attachment to special tabulations compiled in response to the October 23, 1968 request by Mr. Russell Parker, Senior Staff Economist for the Cabinet Committee on Price Stability.

[2] See table 8 of Enterprise Statistics: 1963, pt. 1.—"General Report on Industrial Organization" (page 163).

[3] 179 different Enterprise Industry Categories were used to classify companies, both manufacturing and non-manufacturing, whose activities were primarily within the industrial scope of the 1963 Economic Censuses.

[4] For a more detailed explanation of these definitions and concepts, see the introductory text of the Enterprise Statistics: 1963, pt. 1, report.

census year. The 179 enterprise industry categories consisted of various groupings of the approximately 650 Standard Industrial Classification (SIC) 4-digit industries covered in the 1963 Economic Censuses. (A convenient listing of the 1963 Enterprise Industry Categories and their comparable 1963 Census (SIC) Establishment Industry Classifications appears in *Appendix H* of the 1963 Enterprise Statistics, *Part 1*, report.)

5. The company sales totals used in preparing these special tabulations represent the "gross" aggregates of operating establishments' sales and receipts (including inter-establishment transfers); the totals, exclude as duplicative, however, all reported sales of establishments classified as manufacturers' sales branches and sales offices, central administrative offices and auxiliaries. (Also excluded from the company figures were sales from those activities falling outside the scope of the 1963 Censuses—e.g., agriculture, construction, transportation, pipelines, radio and TV stations, insurance agencies, banks, etc.—for which no establishment sales data were collected.) These gross sales aggregates derived for each company from its Census establishment records excluded all manufacturing plants excise taxes but included excise and sales taxes reported by retail trade establishments.

These derived "gross" company sales figures are not entirely comparable, therefore, to the "net" company sales and receipts figures appearing in Enterprise Statistics: 1963, *Part 1*.—"General Report on Industrial Organization." The "net" company sales and receipts figures shown in the latter report for the 200 largest manufacturing companies systematically *excluded* intra-company transfers, *included* excise and sales taxes, and *included* sales of company activities falling outside the scope of the Economic Censuses.

6. 200 largest manufacturing companies—The 200 largest manufacturing companies, ranked in accordance with the procedures described earlier, are not the same at the 200 largest manufacturing companies defined in the Census-compiled *Concentration Ratios in Manufacturing Industry: 1963* report, nor are they the same as the 200 largest "industrial" companies listed by *Fortune* magazine. In the former case, approximately 20 percent of the companies comprising the 200 selected for the enclosed special tabulations do not appear in the *Concentration Ratios* top 200 manufacturing companies. The difference is due primarily to the fact that: (1) the company definition for *Concentration Ratios* was limited to the manufacturing activities only of each company; (2) the selection of companies eligible for the *Concentration Ratios* list of 200 largest was not limited to companies with a specified minimum employment size; and (3) the *Concentration Ratios* rankings were based on "value added" size rather than sales size. (Sales-to-value added ratios vary considerably among manufacturing industries.) When compared with the *Fortune* listing of the 200 largest industrial companies ranked by their published net company sales, approximately 10 percent of the 200 companies selected for the enclosed special tabulation do not appear on the *Fortune* listing. The difference is due primarily to the fact that: (1) company sales figures shown by *Fortune* include sales of foreign subsidiaries and of domestic company activities outside the industrial scope of the 1963 Economic Censuses; and (2) the *Fortune* list includes only those firms whose stock are publicly held (and, therefore, for which adequate published data are avaliable).

C. *Effects of the Above Procedures and Definitions on the Enclosed Special Tables.*—The characteristics of the source data available from the 1963 Economic Census enterprise statistics tabulations and the procedures used in preparing the enclosed tables may result in either overstating or understating significantly the actual number and extent of "major activities" of these large manufacturing companies. The following factors should be kept in mind, therefore, in any analysis of the enclosed distributions:

1. The 1963 Economic Census establishment classification system (and the SIC system from which it was derived) provided the "building blocks" on which the Census enterprise industry category classification system was based. Under this system, the *establishment* is the basic reporting unit and *all* sales reported by an establishment are attributed to the "primary" activity of the establishment (i.e., the 4-digit SIC). Since it is *not* clear what constitutes a "major activity" for SEC purposes (i.e., a market, a product, a grouping of establishments or other recognizable organization unit within a company), the Census Bureau's "enterprise industry category" classification may or may not be relevant in providing functional definitions of "major activity," in the context of the proposed SEC reporting requirements.

2. Since the Census Bureau's "Enterprise Industry Category" classification system (essentially a regrouping of 4-digit SIC industries) was used to define each "major activity" in the enclosed tables, the tabulated number of different major activities for each company may have represented an understatement or overstatement, if alternate definitions had been used (e.g., the 4-digit SIC system; Census classification of individual products made; types of processes used; etc.). Thus, a company that operated one or more establishments classified in Enterprise Industry Category 36A, "Radio, TV, and communications equipment," may have manufactured at its plants any combination of radios, TV's, phonographs, phonograph records, telephones, radar, and related assembled equipment. If each of these individual products was considered to be a distinct "major activity," then the Census "enterprise industry category" definitions used understated the number of "major activities" engaged in by these companies.

On the other hand, if the popularly termed "container industry" were defined for SEC purposes as a "major activity," then a company with four different SIC-coded plants (e.g., each manufacturing only paper, plastic, glass, and metal containers, respectively) would nevertheless be considered as engaged in a single "major activity." In the enclosed tables, however, such a company would be considered to be engaged in four distinct "major activities," since the four different SIC codes of these establishments were each assigned to a different Enterprise Industry Category classification. (Under the SIC coding system, these establishments would be classified properly into industries whose "primary" products are typically defined on the basis of distinctive *materials used*, rather than on the basis of a similarity of *end use or function* of their products.)

3. Substituting the "gross" aggregates of operating establishment sales and receipts as approximations to "net" company sales totals (for the sake of consistency in computing major activity percent-of-sales distributions for each company) may result in large discrepancies in some instances. For a vertically integrated company with substantial intra-company transfers among its operating establishments, a significant amount of duplication will result in its derived "gross" company sales total, even though sales branches, sales offices, etc., have been excluded. For a fully integrated steel company which owns and operates iron ore mines, blast furnaces, and metal fabricating plants, for example, the derived "gross" company sales total used in preparing the enclosed tables might overstate the actual consolidated "net" company sales total by as much as three-fold. On the other hand, the duplication of these intra-company transfers in the derived gross sales figure might reduce the number of secondary enterprise industry categories successfully meeting the proposed SEC 10 percent or 5 percent rule for "separate" major activities, since the total company sales figure (the denominator in the calculation) would be overstated by the amount of these intra-company transfers.

4. The exclusion of sales and receipts for those activities of a manufacturing company which fall outside the scope of the 1963 Economic Censuses also results in an understatement of the number of "major activities" that could be reported separately under various proposed SEC rules. The lack of Census establishment sales data for the construction, communications, transportation, utilities, and finance activities of these large manufacturing companies may have significantly affected the derived company sales total and the "major activity" percentage calculations in some cases.

5. The exclusion of foreign affiliate sales from the Census report totals may also have resulted in undercoverage for SEC purposes, since the consolidated company figures reported to SEC will typically *include* the sales activities of a U.S. company's foreign affiliates. For example, based on the 1958 Census-IRS comparison of corporate reporting patterns, an estimated 25 to 30 percent of the consolidated net sales and receipts being reported to SEC by integrated petroleum extracting and refining companies may represent the sales activities of their foreign subsidiaries.[5]

6. Finally, the sales of manufacturers' sales branches and sales offices were typically excluded from the computation of the derived "gross" company sales figures and from the tallying of "major activities." In some cases, however, the manufacturers' sales branches and sales offices were systematically classified during the 1963 Wholesale Trade Census as "independent wholesalers" (e.g., steel service centers). Also, some manufacturers' sales offices and sales branches were

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[5] See paragraph d, page 20 of the Introductory Text of Enterprise Statistics: 1958, pt 3—"Link of Census Establishment and IRS Corporation Data."

classified as "independent wholesalers" because their principal activity consisted of *both* the selling of their own company's products and the selling of products of other companies. Such classification "exceptions" not only resulted in overstating the gross sales totals of these manufacturing companies, but they also resulted in overstating the number of enterprise industry categories reported by these companies (i.e., "independent wholesaler" establishments, unlike manufacturers' sales branches and sales offices, were considered to be "operating" establishments in the Wholesale Trade sector of the 1963 Economic Census; as such, they were assigned distinctive enterprise industry category codes and were, therefore, eligible for selection as separate major activities in the enclosed tables.)

(Prepared by: Enterprise Statistics Staff, U.S. Bureau of the Census, December 1968.)

E. STAFF OF THE CABINET COMMITTEE ON PRICE STABILITY, "PUBLIC FINANCIAL REPORTING BY CONGLOMERATE FIRMS"

(Excerpt from Study Paper Number 2: *Industrial Structure and Competition Policy*, by the Staff of the Cabinet Committee on Price Stability, December 1968)

STUDY PAPER NUMBER 2

INDUSTRIAL STRUCTURE AND COMPETITION POLICY

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POLICIES DESIGNED TO FOSTER COMPETITION

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Public Financial Reporting by Conglomerate Firms

The growing conglomeration of business enterprise is reducing the quality and usefulness of the public financial statements of many corporations. Commonly, corporations that operate across many industries report their operating results on a consolidated basis, thereby clouding from public view their product, financial, and other pertinent operating characteristics. The failure to make public detailed financial reports deprives investors of the data needed to make informed investment judgments. Moreover, information is an essential component of a viable competitive system that places heavy reliance on the self-corrective mechanism of the market to keep competition vigorous. All competitors would be on a more nearly equal footing if conglomerate enterprises reported financial information for each of their major product lines or fields.

Some conglomerate corporations have voluntarily begun reporting more financial detail than the minimum currently required by the Securities and Exchange Commission. This is a salutary beginning and demonstrates the practicality of such reporting. Recently the Securities and Exchange Commission announced proposed amendments to existing reporting requirements. In essence, the proposed changes would require companies to report sales and net income attributable to each class of related or similar products that contributed 10 percent or more to sales or income. Although this change would improve the quality of knowledge, it appears to fall short of the degree of specificity required to provide the public with adequate information. As discussed above, some conglomerate enterprises sell literally thousands of products falling into numerous "product classes," few of which constitute as much as 10 percent of total sales. Thus, the SEC standard would require complete reporting by the medium and large corporations whose output falls into only a few product classes, but the huge conglomerate would be required to make public the financial details of only a small share of its operations. For example, if the SEC 10 percent rule were interpreted to cover Census "industry categories," the 50 largest manufacturing companies would be required to provide financial information for only 14 percent of the industry categories in which they operated in 1963.[1] This almost certainly overstates the amount of coverage called for by the SEC proposal, since Census

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[1] See Appendix Table 11.

"industry categories" are very likely broader than the "product classes" required by the SEC rule.[2] On the other hand, companies included among the 151 to 200 largest class would be required to provide reports on 40 percent of their industry categories.

If the SEC rule were changed to cover all "product categories" which accounted for 5 percent of sales or which involved sales of over $25 million, whichever were smaller, the coverage would increase to 42 percent of the "industry categories" in which the top 50 companies operated in 1963. This is about the same degree of coverage provided by a 10 percent rule for companies ranking among the 151 to 200 largest size class.

It appears that the proposed SEC rules does not provide sufficient reporting coverage. Although additional study of this matter is required, it would seem appropriate to consider the following:

the 10 percent level should be lowered to 5 percent or less;

a corporation should be required to report its sales and revenues on all product classes with sales exceeding a specified absolute amount, say $25 million;

after making a substantial acquisition, conglomerate corporations should be required, for a period of years, to report separately the financial results of the acquired company without changing accounting rules;

because of the growing importance of conglomerate enterprise for investors and competitive performance, the SEC should consult with the Federal Trade Commission and the Department of Justice, as well as the public, in establishing future reporting requirements.

APPENDIX TABLE 11.—NUMBER OF BROADLY DEFINED INDUSTRIAL CATEGORIES FOR WHICH THE 200 LARGEST COMPANIES WOULD PROVIDE SEPARATE REPORTS UNDER SELECTED REPORTING RULES

	Number of enterprise categories which would be represented							
	50 largest companies		51 to 100 largest companies		101 to 151 largest companies		151 to 200 largest companies	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total number of categories in which companies operated	756		604		469		399	
Categories whose sales are 10 percent or more of the total company sales	105	14	117	19	120	26	158	40
Categories whose sales are 5 percent or more of total company sales	189	25	176	29	169	36	186	47
Categories whose sales are 5 percent of total sales or exceeded $25,000,000	317	42	228	38	170	36	186	47

Source: A special tabulation of the Enterprise Statistics data prepared by the Bureau of the Census.

F. COMMENTARY OF THE CHRYSLER CORPORATION, FORD MOTOR COMPANY, AND GENERAL MOTORS CORPORATION ON THE SEPTEMBER 1968 AND FEBRUARY 1969 PROPOSALS OF THE SECURITIES AND EXCHANGE COMMISSION ON PRODUCT-LINE AND LINE-OF-BUSINESS REPORTING

NOTE.—On September 4, 1968, in Securities Act of 1933 Release No. 4922 (Securities Exchange Act of 1934 Release No. 8397), the Securities and Exchange Commission announced proposed amendments to the product-line reporting requirements of its registration forms, Forms S-1, S-7 and 10, and invited comments. On February 18, 1969, in Securities Act of 1933 Release No. 4949 (Securities Exchange Act of 1934 Release No. 8530), the Commission gave notice of revision of the proposed amendments to the forms, and invited further comments.

[2] All manufacturing is divided into 112 enterprise industry categories. These include such broad industrial areas as: all tobacco products; all soap detergents and cleaning preparations; perfumes, cosmetics and other toilet preparations; all drugs and biologicals; all rubber products; all glass products; all nonferrous metals; all of the motor vehicles, trucks, trailer buses and parts industries.

The texts of the September 1968 and February 1969 releases will be found at pages 764 and 766, supra, respectively. (The text of the amendments as finally adopted on July 14, 1969, will be found at page 770, supra.)

Following are the texts of all comments filed on the September and the February proposals by the "big three" of the automobile industry, Chrysler Corporation, Ford Motor Company, and General Motors Corporation. American Motors Corporation did not file comments with the Commission on either proposal.

All of the documents published in this part "F" are from the public records of the Securities and Exchange Commission.

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1. Comments filed by the Chrysler Corporation

(a) Letter dated Nov. 1, 1968, from R. J. Helder, Comptroller, Chrysler Corporation, Detroit, Mich. 48231, to Orval L. DuBois, Secretary, Securities and Exchange Commission

CHRYSLER CORP.,
Detroit, Mich., November 1, 1968.

Mr. ORVAL L. DUBOIS,
Secretary, Securities and Exchange Commission,
Washington, D.C. 20549

DEAR MR. DUBOIS: We appreciate having the opportunity to state our position on the proposed amendments to Form S-1, S-7 and 10 contained in Release Number 4922 of the Securities Act of 1933 and Release Number 8397 of the Securities Exchange Act of 1934.

The position of Chrysler Corporation is not one of opposition to an objective of furnishing more complete and meaningful information to shareholders and prospective investors. However, our company feels that the proposals of the Commission do not afford the flexibility necessary to achieve this objective. Therefore, we are offering suggestions that may be helpful to the Commission in reaching its final position on this matter.

The language used in the amendments as to the application of the 10% factor is not altogether clear. We assume that it is not the intent to require disclosure of operating results and assets employed for its major product separately from other product classes when the major product accounts for a high percentage, e.g., for 90 percent of total operations and that it is not the intent to require disclosure for only those products and services, other than the principal class, which account for 10 percent or more of the total. However, if it is the intent to require information on the major product, we are strongly opposed to these amendments since such disclosure would be detrimental; because it would place undue emphasis on the operating results of a minor part of the business.

Perhaps a more appropriate approach to the determination of when segments of a company should be reported would be one based on the contribution of the major or dominating product class. If a product class exceeds, e.g., 75% to 80% of the total, the reporting of the total alone would be preferable and less apt to be misinterpreted than the reporting of segments. If, on the other hand, a company conducts business in a number of different product classes, none of which is predominant, then that company should probably be required to report the operating results of each product class regardless of its relationship to the total.

At Chrysler, we have no serious objection to disclosing sales, profit contributions, and assets employed by overseas operations if material in relation to total operations. Sales and assets outside the U.S. and Canada are provided for our shareholders in our annual report since these operations constitute 20–25% of our operations and we feel that our overseas operations involve a greater degree of risk than do our North American operations.

We would find it extremely difficult to present sales and net income derived from governmental sources on a realistic basis. Our transactions with various levels of government cut across many product lines. We have difficulty in envisioning how financial data by product class, government source and any single customer is to be presented at the same time without burdening the investor with numerous sets of financial statements. Also, since many companies such as ours do business with many levels of government, including the United States, foreign, state and local agencies, a clear definition of "government" is necessary.

We are generally opposed to presenting operating results and financial position by product class. One of the basic reasons for our opposition is the fact that in Chrysler the emphasis is on operational costs and capital employment rather

than costs by product classes. This policy permits us to exercise financial control by holding each manager responsible for the control of costs and assets under his jurisdiction and enables us to reward him for satisfactory performance and to discipline him for unsatisfactory performance. If we are required to adopt an accounting and reporting system developed around product classes rather than by operational centers as is currently the case, financial controls of this type would be increasingly difficult to maintain and would be very costly.

A second reason for our opposition to presenting financial data by product class is that we believe neither the investor nor management will benefit from it since such presentations would require the arbitrary segmentation of unified activities and the arbitrary allocation of centrally incurred costs to the various product classes.

Further, presenting financial data along product classes would not necessarily permit an investor to draw valid conclusions from the comparison of such data for the various companies in the automotive industry. Currently, an investor is able to draw such conclusions through the use of consolidated corporate statements, however, he would be unable to do so from product type financial data due to dissimilarities in organizational structures, and divergent accounting and reporting systems. Accordingly, if meaningful comparisons are to be made from product class statements, all companies in the industry must use identical reporting systems, which would require a regulated system prescribed and enforced by a central agency, presumably the Commission.

Additionally, the presentation of financial data by product classes could result in the disclosure of highly confidential information to our competitors. These presentations might permit them to determine costs, and profitability of each product class which we manufacture. We do our utmost to guard closely this information since we believe that its disclosure could cause irreparable damage to any highly competitive business.

We repeat that we appreciate the opportunity to state our position on these matters of such vital importance to all of us.

Very truly yours,

R. J. HELDER,
Comptroller.

(*b*) *Letter dated Feb. 28, 1969, from R. J. Helder to Orval L. DuBois*

CHRYSLER CORP.,
Detroit, Mich., February 28, 1969.

Mr. ORVAL L. DUBOIS,
Secretary, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. DUBOIS: We would like to comment on the proposed amendments to Forms S-1, S-7 and 10 published in Release No. 4949 dated February 18, 1969. In general, the changes from the earlier proposed revision overcame many of the areas of concern to us. However, still included in the latest proposal is one provision about which our position has not changed, and therefore we wish to restate the suggestion offered by Chrysler in its comments on the earlier proposal.

Where a company is engaged in more than one line of business the proposed amendment appears to require disclosure of sales and earnings for a single line of business even though it may constitute over 90% of sales and earnings. We believe that in such a case total reporting would be preferable. Perhaps a more appropriate approach to the determination of when segments of a company should be reported would be one based on the contribution of the major or dominating product class. If a product class exceeds, e.g., 75% to 80% of the total, the reporting of the total alone would be preferable and less apt to be misinterpreted than the reporting of segments. If, on the other hand, a company conducts business in a number of different product classes, none of which is predominate, then that company should probably be required to report the operating results of each product class regardless of its relationship to the total.

Should the Commission decide to use a specified percent of sales and income to determine when "line of business" disclosure is required, we would recommend 15 percent rather than a 10 percent cutoff.

Again, we appreciate the opportunity to comment on the proposal.

Sincerely,

R. J. HELDER,
Comptroller.

2. Comments filed by the Ford Motor Company

(a) Letter dated Oct. 28, 1968, from Fred G. Secrest Vice President-Controller, Ford Motor Company, The American Road, Dearborn, Mich. 48121, to Orval L. DuBois, Secretary, Securities and Exchange Commission

FORD MOTOR CO.,
Dearborn, Mich., October 28, 1968.

MR. ORVAL L. DUBOIS,
Secretary, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. DUBOIS: We wish to present our views concerning the Securities and Exchange Commission's proposed amendments to Forms S–1, S–7, and 10, as set forth in Release No. 4922 of the Securities Act of 1933 and Release No. 8397 of the Securities Exchange Act of 1934.

We at Ford Motor Company do not foresee much difficulty in our being able to comply, in general, with the proposed amendments. We believe, however, that certain parts of the proposal are unnecessary to meet your objectives and others require further clarification.

The proposal to measure materiality as being 10% or more of total sales or net income before extraordinary items and income taxes is unnecessarily restrictive and, in our view, might lead to the segmentation of the business enterprise to a point that the results are not meaningful to stockholders or potential investors. We think sufficient reason has not been shown for a change from the long-established SEC policy of using 15% as the determinant of materiality.

Although not a problem for Ford Motor Company, the proposal requiring disclosure of operating results from a single customer source could have a potentially damaging effect on a company's competitive position. The requirement might mean releasing information that should remain confidential and which could be contrary to the interests of a company's stockholders. We believe that this requirement should be deleted from the proposed amendments.

The proposed amendment requiring a company to ". . . state, if practicable, the assets employed in each segment of the business for which operating results are reported" would create practical difficulties for many companies and, consequently, the data might be meaningless and misleading. Clearly, methods can be devised for the allocation of "indirect assets", such as a Head Office building, research and development facilities and goodwill. The allocations, however, would be arbitrary and are unlikely to be consistent even among companies within a particular industry. You have recognized the difficulty in giving this type of information by requiring that these data be stated only "if practicable". The exception you are permitting, however, is likely to lead to non-uniform compliance in reporting. For this reason, we believe that serious consideration should be given to eliminating this requirement.

There are other elements of the proposed amendments that we think require clarification and these are:

1. Items 9(a) of Form S–1, 5(a) of Form S–7 and 3(a) of Form 10 would require ". . . the approximate amount or percentage of sales or operating revenues and *contributions to net income, excluding extraordinary items*, attributable to each class of related or similar products or services which contributed 10 percent or more to the total of sales and revenues, or to *net income, before extraordinary items and income taxes* . . ." We have supplied the italic to point out that the meanings of these two phrases are not necessarily the same because the first phrase omits reference to income taxes. We have interpreted the proposed amendment as requiring disclosure of income before extraordinary items and income taxes, but this is not absolutely clear from the wording of the proposal. Furthermore, *net* income usually refers to the last item in a statement of income and this would be after income taxes and extraordinary items.

2. In the same Items of Forms S–1, S–7 and 10, there is a reference to "Government procurement". We think it will be necessary to define the scope of the term as it is possible to interpret this in a number of ways. In our view, it would be appropriate to include in this category only procurements of other than commercial products by the U.S. Department of Defense and such U.S. agencies as the National Aeronautics and Space Administration.

We hope our views will be helpful to the Commission in arriving at its final position on a matter of such vital interest to the business community.

Very truly yours,

F. G. SECREST,
Vice President-Controller.

(b) Letter dated March 7, 1969, from Allan Wear, Assistant Controller, Ford Motor Company, Dearborn, to Orval L. DuBois

FORD MOTOR CO.,
Dearborn, Mich., March 7, 1969.

Mr. ORVAL L. DUBOIS,
Secretary, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. DUBOIS: We wish to offer for your consideration our views on the Securities and Exchange Commission's latest proposal to amend Forms S–1, S–7 and 10 as set forth in Release No. 4949 of the Securities Act of 1933 and Release No. 8530 of the Securities Exchange Act of 1934.

In general, we think your latest disclosure proposal meets the interests of the investing public and, at the same time, is more consistent with managements' responsibilities to their stockholders. There are three requirements, however, with which we disagree and we ask that the Commission give further consideration to these before issuing the final amendments.

In our letter to you of October 28, 1968, we commented on your earlier proposal and we opposed the introduction of a 10% measure of materiality. In our opinion, a good case still has not been made for a change from your present policy of using 15%.

We note that a new proposal for disclosure is contained in Paragraph (c) of the Release. We believe that you are requesting, in the context of this specific requirement, information that has no relevance to investment decisions. It seems to us that the provisions of the proposal requiring disclosure of sales and profits (or losses) already give the essential information. We recommend strongly that Paragraph (c) be eliminated in its entirety.

Your earlier proposal included the interesting feature of indicating the importance of foreign subsidiaries as being those outside 'he United States *and Canada*. One of the main concerns of an investor is the risk associated with foreign operations and we thought the approach taken in the earlier proposal was a sensible one because it recognized the special inter-relationship between the economies of the United States and Canada. We should like you to reappraise this question and we recommend that Paragraph (e) of the Release be changed to refer to operations outside the United States and Canada.

We hope the Commission will find our comments and suggestions helpful.

Sincerely yours,

ALLAN WEAR,
Assistant Controller.

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3. Comments Filed by the General Motors Corporation

(a) Letter dated November 4, 1968, from R. C. Gerstenberg, Executive Vice President, General Motors Corporation, General Motors Building, Detroit, Mich. 48202, to Orval L. DuBois, Secretary, Securities and Exchange Commission

GENERAL MOTORS CORP.,
Detroit, Mich., November 4, 1968.

Mr. ORVAL L. DUBOIS,
Secretary, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. DUBOIS: We appreciate the opportunity to comment on the proposed amendments to Form S–1, S–7 and 10, as set forth in the Commission's Releases dated September 4, 1968.

The releases refer to companies which are engaged in "more than one line," "various lines," or "different lines" of business. The proposed amendments thus appear to concern themselves only with so-called conglomerate or diversified companies. General Motors is not, of course, a conglomerate or diversified company in the generally accepted meaning of those terms. It is instead a unitary operation as evidenced, among other things, by the fact that automotive products account for approximately 90% of net sales from all sources.

We were most gratified to find that the basis of reporting that we have voluntarily followed meets the recommendations set forth in Dr. Robert K. Mautz's study, "Financial Reporting by Diversified Companies", to which the SEC releases refer. The study thus confirms our belief that we have discharged our responsibility, which we view very seriously, to report General Motors' financial

results in a meaningful manner. Accordingly, it is our understanding that the proposed amendments, if adopted, would not, and are not intended to, require any change in our method of reporting. Nevertheless, we are pleased to offer our comments, as we have under similar circumstances in the past, in the hope that they may be of assistance to the Commission in its continuing efforts to improve corporate financial reporting.

The release states that the Commission has been studying "the necessity for clarification of its requirements for disclosure of the importance of the various lines of business to companies' end results" and that "the proposed amendments would supply information on the basis of which existing holders and new investors may be able to determine the approximate contribution which the various lines of business make to a company's overall profitability, or lack of it." It is evidently assumed that the additional information to be supplied under the proposed amendments, which would apply to all companies alike, would uniformly benefit their existing security holders and new investors. This assumption, we believe, is not sound in all cases.

In our opinion, financial reporting is basically of an accountability nature arising from the fiduciary responsibility of management. Accordingly, management has the primary responsibility for the financial reports and has the clearest understanding of the needs and problems of the business. It seems logical, therefore, that management should select the reporting principles and practices to be applied. If it is to discharge the obligation it has to its stockholders, to report correctly and clearly on the affairs of the company, it must not be deprived of the use of the reporting practices which will best accomplish the discharge of that obligation and best tell the company's story according to its needs. The proposed amendments would restrict management's freedom of action in this area since the amendments would apply to all companies whether or not, under a company's particular circumstances, the additional reporting might be harmful rather than helpful to its stockholders and to investors. Accordingly, we feel that segmental disclosure should not be required when, in the opinion of its management, a company's circumstances are such that segmental disclosure would be harmful rather than helpful.

We also believe that in proposing to prescribe reporting requirements applicable to business segments, the Commission is entering into relatively uncharted areas with which neither it nor the majority of reporting companies have had any extensive experience. We suggest, therefore, a more gradual approach to this subject both by limiting the initial requirements and by conforming them closely to the recommendations in Dr. Mautz's study. This approach has the advantage of making available to both the Commission and the registrants a great amount of authoritative explanatory information. After a reasonable period of experience and experimentation, additional and more detailed requirements might be formulated on the basis of demonstrated benefit and feasibility.

Since the proposed amendments necessitate such an extensive fractionalization of the total business, we seriously doubt that the resultant segments and the data which must be reported in relation thereto, would be meaningful or useful.

Before it can be determined whether or not the reporting of segmental operating results, and related assets employed, is required, the total business must be fractionalized to the following extent:

(1) by product (to determine whether any product contributes 10% or more to the total operations);

(2) by geographic source (to determine whether operations outside the United States and Canada contribute 10% or more of the total operations); and

(3) by customer source (to determine whether sales derived from Government procurement or any single customer contribute 10% or more of the total operations).

If either the operations outside the United States and Canada or sales derived from Government procurement or any single customer constitute 10% or more of the total operations, these segments would then, in turn, have to be fractionalized by product. Then a determination would have to be made as to whether it would be "practicable" to report the assets employed in each of the segments.

The operating results to be reported with respect to each segment of the business would be the approximate amount or percentage of sales or operating revenues and contribution to net income, excluding extraordinary items, for each of the past five years. In addition, it would be necessary to state, if practicable, the amount of assets employed in each segment of the business for which

operating results are reported. Even though a company feels that it has satisfactory methods and means to compile the necessary data and to report the information as required, we have serious reservations that such detailed information will be sufficiently understood so as to be useful and helpful to the ordinary stockholder or investor, particularly, when such information is based on numerous allocations and reallocations. Further, the triple method for segmentation of the total business could also, in our view, contribute towards erroneous conclusions by security holders and investors, rather than enable them to determine the approximate contribution by the various lines of the business, because the data will cover only pieces of the operations and, in most cases, include duplications.

Now, we would like to comment on specific items in the proposed amendments.

Terminology—What Constitutes a Reportable Segment of the Business

The research study by Dr. Mautz dealth with the matter of segmentizing a business in a most comprehensive manner. We understand that the proposed amendments are intended to accept the recommendations of the study by requiring that in establishing segments appropriate consideration be given to all relevant factors, including rates of profitability of operations, degrees of risk and opportunity for growth. However, the use of differing terms and language may give a contrary interpretation. We understand that the requirement of the proposed amendments to segment the portions of a business on a basis "attributable to each class of related or similar products or services" is considered to be equivalent, in this respect, to the recommendation of the research study to segment the portions which operate "in more than one broadly-defined industry". We recommend that the proposed amendments, particularly those portions which refer to products and services, be revised to follow the language of the research study. This, we believe, will avoid misunderstanding and achieve the desired clarification.

Determination of Significance

Current Forms S–1, S–7, and 10 require an indication of the relative importance of each class of product or service which contributes 15% or more to the gross volume of business. The proposed amendments would change this percentage to 10%, although the releases do not set forth any reasons for doing so.

In his study, Dr. Mautz concluded that "a guide set at 15% of gross revenue (already accepted by the Securities and Exchange Commission as a significance test for certain purposes) with recourse to and equivalent portion of net income or total assets when revenue is an unsatisfactory indicator, appears reasonable." This conclusion, stated on Page 156 of the study, was based on responses received from financial analysts and corporate executives. In view of this determination and in the absence of any reasons in the release for changing to 10%, we strongly recommend that the 15% guide be continued in determining the reporting requirements.

Customer Source

This area of the proposed amendments would not affect General Motors since it does not sell any significant portion of its volume to a single customer. On the other hand, the proposed amendment could work to General Motors' advantage in that sales to General Motors may in many cases represent a signifiant portion of the seller's volume, thereby requiring the seller to disclose publicly the financial information called for under the amendment.

Nonetheless, we view with strong disfavor a requirement which would place management in the position of being required to disclose publicly information concerning sales, profits and assets employed in connection with sales to an individual customer. It has been suggested that large customers have a "pretty good idea" of the profits made by its suppliers. Undoubtedly this is true, but the proposed amendments would furnish the customer with the exact amount and any reduction in selling price resulting from such disclosure would reduce profits correspondingly. We consider this proposed requirement to be especially objectionable where overseas sales are involved for the additional reason that overseas competitors, not under the jurisdiction of the Securities and Exchange Commission, would not have to make similar public disclosures.

In our view, the foregoing disadvantages of the proposed financial disclosures and their adverse effect upon both management and stockholders far outweigh any possible benefit that existing stockholders and new investors might derive from them. In fact, it is difficult for us to conceive of a situation wherein it would be to the advantage of management and stockholders to make such a dis-

closure to its customers and competitors. Accordingly, we feel very strongly that this proposal should not be adopted. If some detail by customers is deemed necessary, such information should be limited to the amount of sales and revenues, or their relative importance, and only when they constitute a substantial portion of the total.

Assets Employed

The proposed amendments require reporting, if practicable, the amount of assets employed in each segment of the business for which operating results are reported. In addition, similar information is required to be reported for each customer source and for certain categories of products or services within such sources. It is assumed that "similar information" has reference to operating results and assets employed and that "assets employed" has reference to a segment of total assets and not just property, plant and equipment. Obviously, any attempt to determine the assets employed for segments as fine as those required by the proposed amendments will necessitate numerous allocations. We are sure it is realized that there are no generally accepted procedures for making such allocations and, consequently, many will be made on a subjective or an arbitrary basis. Such subjective determinations might produce data which could be misleading to the investor because of his lack of knowledge, or possible misunderstanding, of the basis on which the data were prepared.

We agree with the conclusion of the research study that assets committed to reporting segments provide a satisfactory measure only if a high percentage of assets can be identified with segment operations. The numerous segments which the proposed amendments require would, it can be expected, make it impracticable for most companies to determine the assets employed by segments. Accordingly, we recommend that this proposal be omitted.

Instructions

1. The proposed amendments would require disclosure of operating results, and assets employed, attributable to each class of product which contributes 10% or more of sales. Literally read, the proposal would require such a disclosure even though more than 90% of a company's sales were attributable to one class of product. No useful purpose would appear to be served to report the significant portion of the business, in addition to the total operations, simply because there are insignificant sales of other products. Dr. Mautz recommended that "companies which are unitary in nature, that is, which operate almost completely within a single broadly-defined industry, or which are highly integrated, should not be expected to fractionalize themselves for reporting purposes." We understand that the proposed amendments are intended to coincide with this view, even though different terminology is used. To avoid misunderstanding, we suggest that the instructions include a similar exemption for companies which are highly integrated or have, say 85%, of their operations in a single broadly-defined industry.

2. In view of its responsibilities for the conduct of the business, management must be allowed reasonable freedom in deciding what and how segments of a business are to be disclosed. Management must answer for the consequences resulting from disclosures which may prove adverse to the interests of its present stockholders. Unquestionably, this problem of product-line reporting touches upon interests which go beyond financial considerations alone. For example, those who are in the operating and sales areas of management would have a vital interest in the consequences of the public disclosure of the information in question. Accordingly, we believe that the instructions should be expanded to make it clear that the decision as to how products and services are to be classified for product-line reporting rests solely with the registrant and not individuals outside the organization.

3. Finally, the meaning of the phrase "Government procurement" is not entirely clear. We understand that the phrase means business (including sales of commercial products) with the United States Government and does not include business with foreign federal governments or business with domestic or foreign state and local governments, unless a substantial portion of the company's business is with such governments. We suggest that the instructions confirm this interpretation, if it is correct.

Recommended Revisions

In summary, we respectfully suggest that the Commission give consideration to revising the requirements of Item 9(a) of Form S-1 to include the following:

(1) State for each of the last five years the approximate amount or percentage of gross revenue attributable to each segment of the business which contributed 15% or more to total gross revenue for the last fiscal year.

(2) State for the last fiscal year and, to the extent available, for each of the four preceding years the approximate amount or percentage of net income or loss, excluding extraordinary items, contributed by each of such segments of the business.

(3) If it is not practicable to state the contribution to net income or loss, excluding extraordinary items, by any such segment of the business, disclose the contribution to earnings most closely approaching such net income or loss.

(4) For purposes of this Item, activities in an industry, as broadly defined by management, may be considered to be a segment of the business.

(5) Where the business is substantially unitary in nature or highly integrated or where information by any segment otherwise required would in management's opinion have a significantly adverse effect upon the registrant or the interests of its security holders, segmental disclosure of the business may be omitted, provided that a statement to that effect is made.

In addition, we recommend that corresponding revisions be made in Item 5(a) of Form S-7 and Item 3(a) of Form 10 and that the related instructions be revised accordingly.

We would be pleased to discuss with you any of the above comments and recommendations.

Very truly yours,

R. C. GERSTENBERG,
Executive Vice President.

(b) Letter dated November 4, 1968, from T. A. Murphy, Comptroller, General Motors Corporation, General Motors Building, Detroit, Mich. 48202, to Orval L. DuBois

GENERAL MOTORS CORP.,
Detroit, Mich., November 4, 1968.

Mr. ORVAL L. DUBOIS,
Secretary, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. DUBOIS: This will acknowledge receipt of your invitation to submit views and comments on proposed amendments to Forms S-1, S-7 and 10 as set forth in the Commission's Release No. 4922 under the 1933 Act and No. 8397 under the 1934 Act. I appreciate the opportunity afforded me to comment on this particular area in view of my membership on the committee appointed by the Financial Executives Research Foundation to administer the research study by Professor Robert K. Mautz.

The Release states that "In view of the increasing number of companies which are engaged in more than one line of business, the Commission has for several years been studying the necessity for clarification of its requirements for disclosure of the importance of the various lines of business to companies' end results. The proposed amendments would supply information on the basis of which existing security holders and new investors may be able to determine the approximate contribution which the various lines of business make to a company's overall profitability, or lack of it."

As a businessman it has been my observation that industrial management views its reporting responsibilities most seriously. Its objective has been, as it should be, to report clearly and completely data meaningful to its security holders and others interested in the business. Much progress has been made and this trend, in my opinion, could best be accelerated by encouraging those who have not already done so to adopt the recommendations of Dr. Mautz's study. For that reason, I find the departures from the study inherent in the proposed rules most disturbing and respectfully suggest that the Commission give further consideration to the findings of the research study as a basis for formulating any extended reporting. I recognize that the proposed rules apply to registration statements, rather than reports to stockholders, but it is my opinion that the spirit of Dr. Mautz's recommendations can be applied to both.

Specifically, I am greatly concerned that one of the major thrusts of the proposed amendments would be to require additional disclosure for those companies which are engaged primarily in a single line of business. As I read the proposed

amendments, a company which is, in Dr. Mautz's terminology, "unitary" in nature would be required to disclose:

(1) the amount of sales, the contribution to net income and, if practicable, the amount of assets employed in its major line of endeavor, even if the line represented well over 90% of the total,

(2) the amount of sales, the contribution to net income and, if practicable, the amount of assets employed in business done with the Government or any single customer representing 10% or more of sales or net income, even if the company is engaged in only one line of business, and

(3) similar information for the business done outside the United States and Canada, if such business represented 10% or more of the total.

It also appears that the proposal would require a further breakdown of the three categories covered by items (2) and (3) above if any single class of products or services sold to any of the categories by itself contributed as much as 10% to total sales and revenues or net income.

I think it is fair to state that in all the consideration which has been given to the matter of additional financial reporting, nowhere has it been suggested that such extensive reporting by a non-diversified company was necessary. Such an expansion of reporting requirements seems to be unjustified.

I agree that those companies whose *major* business is with a single customer should be required to indicate such a relationship with regard to sales volume. I think they would do so in the normal course. But to require such disclosure for a single customer representing as little as 10% of sales volume and to add a requirement to disclose data on net income and assets employed as well in such areas is, in my judgment, most onerous and unfair. It would, I am sure, seriously prejudice the position of many companies. Accordingly, I would strongly urge the Commission to reconsider this requirement.

Similarly, I recognize that under existing requirements most companies have been disclosing information on the volume of business done outside the United States and Canada. To quote Dr. Mautz (page 9 of the research study), "In any event, the problem of reporting foreign activities by American business companies has been dealt with elsewhere, and this particular problem seems to be satisfactorily covered by generally accepted accounting principles. Thus it is unnecessary to regard this kind of activity as a method of diversification requiring attention in this study." I would think that the Commission similarly would agree that this kind of activity does not require attention in its reporting requirements.

My second major concern is the reduction of the guideline for additional disclosure from 15% to 10%. The 15% benchmark has been used in the Commission's requirements for many years and the research study of Dr. Mautz validated this percentage as both reasonable and equitable. I should also like to point out that elsewhere in the Commission's regulations a 15% test is applied for the determination of a "significant" subsidiary and as a basis, in a sense, for determining whether both registrant and consolidated financial statements are required. In view of all this, it is my feeling that the proposal to reduce the benchmark to 10% would require rather extensive justification which I find absent from the Release. On the contrary, I find every reason to believe that the 15% benchmark has proven quite satisfactory and, based on the research study, can be relied on to continue to be so. Therefore, I recommend that the 15% benchmark be retained.

The proposed requirement to disclose assets employed by segments represents a third departure from the findings of the research study. The findings recognized that a breakdown of a company's assets is not a common practice and that such information would be of limited usefulness to the average investor. In view of the research findings and their acceptance by both the financial community and the financial analysts, my feeling is that it would be inadvisable to require such disclosure. In particular, I find objectionable the provision that a company must report such information if it finds it "practicable" to do so, while permitting other companies to avoid such disclosure if they feel it is not "practicable" to do so.

Recognizing the desirability of maintaining as much of the language of the current forms as possible, I still have some difficulty in accepting the proposed language "related or similar products or services" in view of the findings of the research study. Dr. Mautz devoted a considerable portion of his research to this area and found (paragraph 51, page 154) that, "Activity in different industries remains as the only practicable basis for identifying diversified companies. Even here difficulties appear. No single, inclusive industry classification appears to provide the well-defined, mutually exclusive categories needed. And

if one were established, its application to all companies might well be undesirable." He added that "Considerable discretion to management in defining broad industry groupings for the purpose of meeting the disclosure requirements . . . is essential." He further pointed out that "Management, because of its familiarity with company structure, is in the most informed position to separate the company into realistic components for reporting purposes." Finally, he concluded that "In those cases where management sincerely believes the recommended disclosures, if followed, would have a significantly adverse effect upon the interest of shareholders, a statement to this effect should be made in lieu of extended disclosures."I believe this aspect of Dr. Mautz's findings deserves the most careful consideration by the Commission.

The foregoing personal observations are offered in the hope that they might be of assistance to the Commission in its consideration of this important area of corporate reporting.

Very truly yours,

T. A. MURPHY, *Comptroller.*

(*e*) *Letter dated March 7, 1969, from T. A. Murphy, Treasurer, General Motors Corporation, to Orval L. DuBois*

GENERAL MOTORS CORP.,
Detroit, Mich., March 7, 1969.

Mr. ORVAL L. DUBOIS,
Secretary, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. DUBOIS: I welcome the opportunity to offer my personal comments on the revised proposed amendments to Forms S–1, S–7 and 10 as set forth in Securities Act Release No. 4949 (Securities Exchange Act Release No. 8530). Both these and my earlier comments submitted on November 4, 1968, are offered in the hope that they may be of assistance to the Commission in resolving the problems created by the requirements for segmental reporting.

Obviously, the Staff and the Commission have considered the comments received from interested persons on the original proposal and have responded to the recommendations included therein. The Staff and the Commission should be commended for their action. In my opinion, the revised draft is a distinct improvement over the earlier proposal. Most of the more sensitive areas in the earlier proposal have been dealt with in a manner which should enhance the meaningfulness of the information and avoid practical difficulties. The new proposal, for example, should provide data when meaningful, with respect to single customers, government business and foreign operations, but without requiring a great deal of information which could be potentially harmful to the company. The provision for a transition period to assist in the development of the required data is very helpful and the removal of the requirement regarding assets employed in each segment is a further indication of the understanding of the practical problems in this area.

I was particularly pleased by the provision whereby the Commission may, upon request, and where consistent with the protection of investors, permit the omission of any of the information required or the furnishing in substitution therefor of appropriate information of comparable character. I recognize that such an approach has always been possible and was inherent in the earlier requirements, both existing and proposed, but the drafting of a definite provision should encourage the business community to continue to work toward the objective of meaningful disclosures in all areas. This broadened approach indicates to me that the Commission recognizes the need for flexibility in financial reporting and the importance of management judgment in determining the most meaningful basis for reporting. In that same vein, I would suggest incorporation in the language of the provision, the following descriptive sentence from the Release: "By this provision management may exercise judgment in designing disclosure suitable to the operations of a particular company." I think this would be reassuring to many in the business community who feel that it is premature to impose rigid rules in this area rather than to see what further progress is made with regard to voluntary disclosures in the light of the Mautz Study.

The disclosure of information regarding each line of business which accounts for a loss equalling or exceeding 10% of income before taxes and extraordinary items computed before such losses, is an addition which seems to me to be a fair requirement for disclosure from the investor's standpoint. Under most circum-

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stances this should be workable and, taken in conjunction with the provision for omission of information "where consistent with the protection of investors", should not prove harmful.

I still find it disturbing that the revised proposal provides for a reduction of the guideline for additional disclosure from 15% to 10%. As I pointed out in my letter to the Commission last November, in view of all the background and the use of the 15% benchmark for many years, any change should require rather extensive justification but this still is not forthcoming. I would be hopeful that the final amendments would retain the 15% benchmark. I would also like to point out that, as I have noted previously, the proposal as drafted would require disclosure of sales and net income by a "unitary" company separately for its major line of business, even if the line represented well over 90% of the total. I think this is an inadvertent oversight in the drafting which could be corrected by an instruction pointing out that additional disclosures for the "unitary" type of company are not required.

I note that the new proposal has modified the description of segments to each "line of business" rather than "class of related or similar products or services". Both terms are an attempt to describe what Dr. Muntz referred to in his Study as a "broadly defined industry" group. While I think the term "line of business" is preferably to the launguage of the earlier proposal, the intent could further be clarified by modifying Instruction 2 to Paragraph 9(b) by adding a new first sentence along the following lines: "For purposes of this requirement, a line of business represents a grouping of similar or related products or services which operate in a singly broadly defined industry based upon management's considerations of all relevant factors." Such an addition would, it seems to me, implement the ideas expressed in the paragraph at the top of page 2 of the recent Release.

I would also like to respectfully suggest that new Paragraph 9(c) be omitted in its entirety. To my mind this requirement for an additional breakdown of "sales or revenues contributed by each product or service or class of similar or related products or services" is confusing, to say the least. As drafted, the requirement would be limited to those companies who are "not engaged in more than one line of business" or where the company is vertically integrated. As I read this, it would impose a requirement on the "unitary" company which is not present for its "diversified" counterpart. I sincerely believe that there is no investor need for this further segmentation either for a "diversified" or a "unitary" company. The requirement also carries with it the unhappy connotation that it might be the intent of the Commission to expand the requirement at some later date to require disclosure of net income for these additional segments as well. As a possible alternative, perhaps you would like to consider a less restrictive requirement or an exhortation to registrants to disclosure additional detail on the volume of business done during the last year where such information would be appropriate to inform investors. This would be in keeping with the flexible approach to which I referred above.

On balance the new proposal seems to me an important step forward in implementing the findings of Dr. Mautz's Study and in achieving the objective of meaningful information for investors. I hope that my comments may be of some assistance in further defining this important area of corporate reporting.

Sincerely,

T. A. MURPHY,
Treasurer.

(d) Letter dated March 10, 1969, from R. C. Gerstenberg, Executive Vice President, General Motors Corporation, to Orval L. DuBois

GENERAL MOTORS CORP.,
Detroit, Mich., March 10, 1969.

MR. ORVAL L. DUBOIS,
Secretary, Securities and Exchange Commission,
Washington, D.C.

DEAR MR. DUBOIS: This will acknowledge receipt of Securities Act Release No. 4949 (Securities Exchange Act Release No. 8530) which includes an invitation to submit views and comments on revised proposed amendments to forms S–1, S–7 and 10. On November 4, 1968 we submitted our comments and recommendations on the original proposed amendments to these forms as published by the Commission on September 4, 1968.

As we pointed out in our previous letter, General Motors is not a conglomerate or diversified company in any accepted sense—it is an integrated company engaged primarily in the manufacturing and wholesale marketing of automotive products. Accordingly, as we see it, our business is concentrated in one "broadly-defined industry" as comprehended by the definition set forth in Dr. Mautz's study on "Financial Reporting by Diversified Companies." As an indication of the degree of integration, less than one-half of our sales dollar represents purchases from other companies. In other words, the value we add in our manufacturing process is more than half of our total sales.

As to our published reports, it has been our practice to report on certain major categories of our business over the years. For example, in our Annual Report for 1968, a copy of which is attached, we pointed out that commercial automotive products accounted for 90% of total sales, commercial nonautomotive products (many related to transportation) for 7%, and defense and space items (including automotive) for 3%. Further information on our product sales is shown on pages 10 to 14 of the Report. We also set out separately in our Annual Report the operating results of our overseas operations (page 30) and of General Motors Acceptance Corporation, our wholly-owned nonconsolidated financing subsidiary (page 33). (GMAC publishes its own separate report.) Our reporting practices, adopted voluntarily a number of years ago in the interest of providing meaningful data for our stockholders and other interested parties, would, we assume, be consistent with the intent of the requirements of the devised proposed amendments.

The comments which we offer are in the spirit of assisting the Commission in its objective of providing a meaningful but flexible reporting practice. We would be deeply concerned if the revised requirements were, in any way, to require a highly integrated unitary company such as ours to "fractionalize" itself for reporting purposes. We are satisfied that this is not the Commission's intent. However, paragraph (b) of the revised proposal would require a company engaged in more than one line of business to report operating results for each line of business which accounts for 10% or more of total sales and revenues or 10% or more of income. Literally read, the proposal would require such disclosure even though more than 90% of a company's sales were attributed to only one line of business. In our case certainly no useful purpose would be served by reporting the principal line of business in addition to the total operations. Therefore, it is recommended that instructions to paragraph (b) include a specific exemption from the requirements of the paragraph for integrated companies such as ours whose principal line of business constitutes 90% or more of its total business.

In reviewing the revised proposed amendments, it is clear that the Staff and the Commission have given careful consideration to the comments received on the original proposal. The extensive revisions, for the most part, represent commendable improvements. It is encouraging that the revised proposal omits some of those requirements of the original proposal which, although not affecting us to any extent, we had indicated would be impracticable from the viewpoint of management, such as the requirements (1) to report, by products or services, the amount or percentage of sales and net income derived from sales to any single customer, from operations outside the United States and Canada, or from government procurement, and (2) to report the amount of assets employed in each segment of the business for which operating results are reported. The revised requirements as to business dependent on a single customer (paragraph (d)) and to operations outside the United States (paragraph (e)) appear to be a much more practicable approach to providing meaningful information to the investor; however, we feel that for this purpose operations in Canada should be combined with those in the United States, especially so where the line of business is the same.

The provisions of proposed paragraph (b)(1) which permit omission of data for fiscal years ended on or prior to December 31, 1966 and the provisions of paragraph (g) which permit the omission of required information or the substitution therefor of comparable information upon request of the company, overcome certain objections we expressed to the original proposal. We endorse these provisions of the revised proposed amendments.

Paragraph (c) of the proposed amendments introduces a new reporting requirement not in the original proposal. Under the proposal, companies engaged in only one line of business which consists of the production or distribution of different kinds of products would seem to be required to report the amount of

sales or revenues contributed by each product which contributed 10% or more to the total of sales and revenues. It appears to us that such information would not normally be useful to an investor in a company which is engaged in only one line of business. We question whether such reporting was intended and it seems to us that this requirement could be eliminated.

Incidentally, we are disappointed that the proposed guidelines for segmental reporting would be reduced from the current 15% to 10%. In his study, Dr. Mautz concluded thta 15% was a reasonable indicator. In view of the numerous similar recommendations by members of the financial community and in the absence of any convincing arguments for adoption of a lower percentage, we would suggest that the Commission reconsider its decision and leave the percentage at 15%.

The Mautz study concluded that only companies having activities in more than one "broadly-defined industry" should be required to report segments of its operations. We assume that in interpreting the proposed amendments "a line of business" will be considered to be the same as "a broadly-defined industry".

We hope these comments will be helpful to the Commission. They are based upon our experience which I think is typical of a well integrated company operating over the years in a most competitive environment with one basic line of products and with a sizable stockholder group representing a broad cross section of investors. We would be pleased to discuss with you any of the above comments and recommendations.

Very truly yours,

R. C. GERSTENBERG,
Executive Vice President.

G. SECURITIES AND EXCHANGE COMMISSION PROPOSALS OF SEPTEMBER 4, 1969, FOR REVISION OF ANNUAL REPORT FORM 10–K, TO REQUIRE LINE-OF-BUSINESS REPORTING BY CONGLOMERATES, AND OTHER PROPOSALS

1. Securities and Exchange Commission News Digest No. 69–169, "Disclosure Rule Modifications Proposed," dated Sept. 4, 1969

[News Digest from the Securities and Exchange Commission, Washington, D.C., Sept. 4, 1969]

Disclosure Rule Modifications Proposed.—The SEC today announced (*for September 5 newspapers*) certain proposals designed to implement in part the recommendations contained in the Disclosure Policy Study Report submitted to the Commission last March by a staff group under the direction of Commissioner Wheat. That report made recommendations for the modification of the disclosure and other requirements under both the Securities Act of 1933 and the Securities Exchange Act of 1934. Comments and suggestions upon such proposals may be submitted by October 30, 1969.

(*Please Note:* The several releases announcing these proposals were printed for the Commission by GPO. They were dated in advance for release on September 15; however, in view of the fact that the printing was completed well in advance of the release date, it was determined to publish the rule proposals today (September 4) rather than September 15. Commencing today, copies of the rule proposals are being mailed to reporting companies, lawyers and others on the Commission's mailing lists. The distribution process is expected to take about eight work-days. Accordingly, persons on those lists should await such ditribution, NOT write the Commission for copies.)

Rules proposed under the Securities Act (Release 33–4997) are designed to provide objective tests for determining when a person who acquires securities from an issuer or a person controlling an issuer is an underwriter under Section 2(11) of the Act. The rules define the term "restricted security" and provide that if a restricted security has been such for a period of five years during each of which the issuer had gross revenues of at least $250,000 then the security ceases to be restricted and may be sold without registration. The rules also define "distribution" and provide in substance that restricted securities of an issuer which files annual and other periodic reports with the Commission may be sold in limited quantities without registration if they have been held for one year and are sold in ordinary brokerage transactions.

It is proposed to amend the rule as to the use of Form S–7 (Release 33–4996) to broaden the availability of that form. Form S–7 is a short form for the registration of securities of certain established companies. The amendments would

permit its use by a much larger group of companies. It is pointed out, however, that relaxation of the present rule as to the use of the form depends in part on the adoption of certain proposed amendments to the Commission's rules and forms relating to disclosure under the Securities Exchange Act, referred to below.

In connection with the proposed revision of the disclosure requirements under the Securities Exchange Act it is proposed to amend certain of the general rules under that Act relating to the preparation and filing of registration statements and reports (Release 34–8680). Certain rules which no longer apply would be rescinded and others would be amended to conform to the proposed revision of the registration and reporting forms.

It is proposed to revise Form 10 which is the principal form for registration of securities under Section 12 of the Securities Exchange Act (Release 34–8681). The revision would consist largely of the amplification of the General Insrtuctions and the instructions to the items of the form to indicate more precisely the information required to be given. A 5-year summary of earnings would be required and the items relating to management, remuneration and transactions with insiders would be amended to bring them into accord with the corresponding requirements of the Commission's proxy rules. The financial instructions would be amended to add a requirement for furnishing statements of source and application of funds for the past three years.

Form 10–K would be revised to keep up to date the information and documents required by the revised Form 10. The form would be divided into two parts. Companies which file reports pursuant to Section 13 of the Securities Exchange Act and are subject to the Commission's proxy and information rules under Section 14 of the Act would file only Part I of the form, together with the required financial statements and exhibits. Companies which file reports pursuant to Section 15(d) of the Act would file both Parts I and II, together with the required financial statements and exhibits. *Where a reporting company is engaged in more than one line of business, it would be required to furnish information separately as to the results of operations for each such line of business to the same extent as required by the recent amendments to Form 10.*[1]

Form 8–K (current reports) and Form 9–K (mid-year financial reports) would be rescinded and replaced by a new quarterly report form, Form 10–Q (Release 34–8683). Form 7–K (quarterly financial report for certain real estate companies) would be rescinded and replaced by a new quarterly report form, Form 7–Q (Release 34–8684). Reports on this form would also replace the Form 8–K reports presently filed by such companies.

The Commission has also adopted a revised Form 8–A (Release 34–8685) which is to be used for registration under the Securities Exchange Act of 1934 of securities of certain issuers which have previously registered securities under the Act or under the Securities Act of 1933. The revised form supersedes Forms 8–A and 8–C and Rule 12b–35 as previously in effect. Form 8–C and Rule 12b–35 have been rescinded. The foregoing action becomes effective October 30, 1969.

Regulation S–X, the Commission's accounting regulation, would be amended to specify the form and content of the statements of source and application of funds required by the revised Forms 10 and 10–K.

[1] Emphasis supplied.

2. Securities and Exchange Commission, Securities Act Release No. 8682, dated Sept. 4, 1969, "Notice of Proposed Revision of Form 10-K."

For RELEASE Monday, September 15, 1969 *

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 8682

NOTICE OF PROPOSED REVISION OF FORM 10-K

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposed revision of its Form 10-K under the Securities Exchange Act of 1934. That form is a general form for annual reports by companies having securities registered pursuant to Section 12 of the Act and companies having securities registered under the Securities Act of 1933 which are required to file reports pursuant to Section 15(d) of the Securities Exchange Act. The proposed revision is a part of the program for the revision of the Commission's disclosure requirements recommended by the recent Disclosure Study Report.

It is proposed to divide the form into two parts. Companies which file reports pursuant to Section 13 of the Act and are subject to the Commission's proxy and information rules under Section 14 of the Act would file only Part I of the form, together with the required financial statements and exhibits. Companies which file reports pursuant to Section 15(d) of the Act would file both Part I and Part II, together with the required financial statements and exhibits.

The proposed revision consists largely of the amplification of the General Instructions and the instructions to the items of the form to indicate more precisely the information required to be given in annual reports. After the filing of the first report on the revised Form 10-K, subsequent reports will consist largely of an updating of the information previously filed.

Item 2 of the existing Form 10-K which calls for information regarding all increases and decreases during the fiscal year of equity securities of the registrant would be omitted from the revised form. It is proposed to require the reporting of such increases and decreases in the proposed new Form 10-Q reports.

A new item would be added to the form calling for a summary of earnings for the past five years. This summary would be similar to the one proposed to be included in the revised Form 10.

The items relating to management, remuneration and transactions with insiders contained in Part II of the form, would be revised to bring them into accord with the corresponding requirements of the Commission's proxy rules. Thus the revised form would include requirements for the disclosure of indebtedness of insiders to the registrant and its subsidiaries and transactions between insiders and pension, retirement, savings and similar plans provided by the registrant or its parents or subsidiaries.

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* The release date was changed to Sept. 4, 1969, by SEC News Digest No. 69-169 of Sept. 4, 1969, above.

The instructions as to financial statements would be revised to require comparative financial statements, including source and application of funds statements, for the last two fiscal years. Comparative statements for the last two fiscal years are now required to be included in annual reports to stockholders by Rule 14a-3 and 14c-3 of the proxy and information rules under Section 14 of the Act.

A copy of the form as proposed to be revised is attached to this release.

All interested persons are invited to submit their views and comments on the proposed revision, in writing, to the Securities and Exchange Commission, Washington, D. C. 20549, on or before October 30, 1969. All such communciations will be considered available for public inspection.

By the Commission.

Orval L. DuBois
Secretary

(PRELIMINARY DRAFT)

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.
20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10-K

(a) Form 10-K shall be used for annual reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for which no other form is prescribed.

(b) Reports on this form shall be filed within 90 days after the end of the fiscal year covered by such report or within 5 days of the mailing of the annual report to stockholders, whichever occurs first. However, Schedule XVI required by Rule 12-16 of Regulation S-X may, at the option of the registrant, be filed not later than 120 days after the end of the fiscal year. Such schedule, if not filed as part of Form 10-K , shall be filed as an amendment under cover of Form 8. Notwithstanding the foregoing, reports on this form filed on or before 1970 need only be filed within 120 days after the end of the fiscal year covered by such reports.

B. Application of General Rules and Regulations.

(a) The General Rules and Regulations under the Act contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(b) Particular attention is directed to Regulation 12B which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in Rule 12b-2 should be especially noted. See also Regulations 13A and 15D.

C. Preparation of Report.

(a) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b-12. The report shall contain the item numbers and captions of all items but the text of such items may be omitted. The answers to the items shall be prepared in the manner specified in Rule 12b-13.

(b) Except where information is required to be given for the fiscal year or as of a specified date, it shall be given as of the latest practicable date.

(c) Attention is directed to Rule 12b-20, which states: "In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading."

D. Signature and Filing of Report.

Three complete copies of the report, including financial statements, exhibits and all other papers and documents filed as a part thereof, and five additional copies which need not include exhibits, shall be filed with the Commission. At least one complete copy of the report, including financial statements, exhibits and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

E. Disclosure with Respect to Foreign Subsidiaries.

Information with respect to any foreign subsidiary which is required by any item or other requirement of this form may be omitted from the report to the extent that the required disclosure would be detrimental to the registrant, provided a statement is made that such information has been omitted. Where the names of foreign subsidiaries are omitted pursuant to this instruction, the number of subsidiaries whose names are omitted shall be stated in the report and the names of such subsidiaries shall be separately furnished. The Commission will accord confidential treatment to such names, but may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Incorporation of Certain Information by Reference.

Attention is directed to Rule 12b-23 which provides for the incorporation by reference of information contained in certain documents in answer or partial answer to any item of a report.

G. Information as to Employee Stock Purchase, Savings and Similar Plans.

Attention is directed to Rule 15d-21 which provides that separate annual and other reports need not to be filed pursuant to Section 15(d) of the Act with respect to any employee stock purchase, savings or similar plan if the issuer of the stock or other securities offered to employees pursuant to the plan furnishes to the Commission the information and documents specified in the rule. If the registrant elects to follow the procedure permitted by Rule 15d-21, the information, financial statements and exhibits specified in paragraph (a)(2) of the rule shall be furnished on Form 11-K as an exhibit to the registrant's annual report. Such exhibit need not be signed, but the accountant's certificate accompanying the financial statements included therein shall be manually signed.

H. Omission of Information Previously Filed.

(a) Except as provided in paragraph (b) below, the information called for by Part I of this form (Items 1 through 9) is to be furnished by all registrants required to file a report on this form. Part II (Items 10 through 14) may be omitted from the report by any registrant which, since the close of the fiscal year, has filed with the Commission a definitive proxy statement pursuant to Regulation 14A, or a definitive information statement pursuant to Regulation 14C, which involved the election of directors, or which proposes to file such a proxy or information statement not later than 90 days after the close of the fiscal year.

(b) If the information called for by Items 4, 5, 8 or 10 would be unchanged from that given in a previous report on this form, a reference to the previous report which includes the required information will be sufficient.

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.
20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended ________________. Commission file number _________

____
(Exact name of registrant as specified in its charter)

____________________	________________
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
____________________	________________
(Address of principal executive offices)	(Zip Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
____________________	________________
____________________	________________

Securities registered pursuant to Section 12(g) of the Act:

____
(Title of class)

____
(Title of class)

PART I

(See General Instruction H)

Item 1. Business.

(a) Identify the principal products produced and services rendered by the registrant and its subsidiaries, the principal markets for, and methods of distribution of, such products and services. Briefly describe any significant changes in the kinds of products produced or services rendered, or in the markets or methods of distribution, since the beginning of the fiscal year.

(b) To the extent material to an understanding of the business, and with particular emphasis on significant changes and developments since the beginning of the fiscal year, briefly describe the following:

(1) Competitive conditions in the industry or industries involved and the competitive position of the enterprise.

(2) The dollar amount of backlog of firm orders as of the end of the registrant's last fiscal year, and as of the end of preceding fiscal year, together with an indication of the proportion thereof not reasonably expected to be filled within the current fiscal year, and any seasonal or other significant aspects of the backlog.

(3) The sources and availability of raw materials essential to the business.

(4) The importance and effect of all material patents, licenses, franchises and concessions held.

(5) Any material research activities relating to the development of new products or services or the improvement of existing products or services. (If research activities are described, estimate the dollar amount spent during the last fiscal year on such research which was company-sponsored and on that which was customer-sponsored and indicate the approximate number of professional employees employed full time to each such category of activity during the fiscal year.)

(6) The number of persons employed by the enterprise.

(c) (1) Information as to lines of business. If the registrant and its subsidiaries are engaged in more than one line of business, state, for each of the registrant's last five fiscal years, or for each fiscal year ending after December 31, 1966, or for each fiscal year the registrant has been engaged in business, whichever period is less, the approximate amount or percentage of (i) total sales and revenues, and (ii) income (or loss) before income taxes and extraordinary items, attributable to each line of business which during either of the last two fiscal years accounted for --

(A) 10 per cent or more of the total of sales and revenues,

(B) 10 per cent or more of income before income taxes and extraordinary items computed without deduction of loss resulting from operations of any line of business, or

(C) a loss which equalled or exceeded 10 per cent of the amount of income specified in (B) above;

provided, that if total sales and revenues did not exceed $50,000,000 during either of the last two fiscal years, the percentages specified in (A), (B) and (C) above shall be 15 per cent, instead of 10 per cent.

If it is impracticable to state the contribution to income (or loss) before income taxes and extraordinary items for any line of business, state the contribution thereof to the results of operations most closely approaching such income, together with a brief explanation of the reasons why it is not practicable to state the contribution to such income or loss.

Instructions. 1. If the number of lines of business for which information is required exceeds ten, the registrant may, at its option, furnish the required information only for the ten lines of business deemed most important to an understanding of the business. In such event, a statement to that effect shall be set forth.

2. In grouping products or services as lines of business, appropriate consideration shall be given to all relevant factors, including rates of profitability of operations, degrees of risk and opportunity for growth. The basis for grouping such products or services and any material changes between periods in such groupings shall be briefly described.

3. Where material amounts of products or services are transferred from one line of business to another, the receiving and transferring lines may be considered a single line of business for the purpose of reporting the operating results thereof.

4. If the method of pricing intra-company transfers of products or services or the method of allocation of common or corporate costs materially affects the reported contribution to income of a line of business, such methods and any material changes between periods in such methods and the effect thereof shall be described briefly.

5. Information regarding sales or revenues or income (or loss) from different classes of products or services in operations regulated by Federal, State or municipal authorities may be limited to those classes of products or services required by any uniform system of accounts prescribed by such authorities.

(2) Information as to classes of products or services. State for each fiscal year specified in (1) above the amount or percentage of total sales and revenues contributed by each class of similar products or services which contributed 10 per cent or more to total sales and revenues in either of the last two fiscal years, or 15 per cent or more of total sales and revenues if total sales and revenues did not exceed $50,000,000 during either of the last two fiscal years.

Instructions. 1. Paragraph (2) calls for information with respect to classes of products or services regardless of whether the registrant is engaged in more than one line of business as referred to in paragraph (1) above. However, this information may be combined where appropriate, with the response to paragraph (1).

2. Instruction 5 to paragraph (1) above shall also apply to paragraph (2).

(d) If a material part of the business of the registrant and its subsidiaries is dependent upon a single customer, or a very few customers, the loss of any one of which would have a materially adverse effect on the registrant, the name of the customer or customers and other material facts with respect to their relationship, if any, to the registrant and the importance of the business to the registrant shall be stated.

(e) If the registrant and its subsidiaries engage in material operations outside the United States, or if a material portion of sales or revenues are derived from customers outside the United States, appropriate disclosure shall be made with respect to the importance of that part of the business to the registrant and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and relative profitability of such business.

(f) The Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable character. The Commission may also require the furnishing of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for an adequate description of the business done or intended to be done.

Item 2. Summary of Earnings.

Furnish in comparative columnar form a summary of earnings for the registrant, or for the registrant and its subsidiaries consolidated, or both, as appropriate, for each of the last five fiscal years of the registrant. Include comparable data for any additional fiscal years necessary to keep the summary from being misleading. Where necessary, include information or explanation of material significance to investors in appraising the results shown, or refer to such information or explanation set forth elsewhere in the report. An analysis of earned surplus shall be furnished for each fiscal year covered by the summary, as a continuation thereof or elsewhere in the report.

Instructions. 1. Subject to appropriate variation to conform to the nature of the business, the following items shall be included: net sales or operating revenues; cost of goods sold or operating expenses (or gross profit); interest charges; income taxes; net income before extraordinary items; extraordinary items; and net income. The summary shall reflect the retroactive adjustment of any material items affecting the comparability of the results.

2. If a period or periods reported or include operations of a business prior to the date of acquisition or for other causes differ from reports previously issued for any period, the summary shall be reconciled as to sales or revenues and net income in the summary or by footnote with the amounts previously reported.

3. (a) If common stock is registered, the summary shall be prepared to show earnings applicable to common stock. Per share earnings applicable to common stock and common stock equivalents, per share earnings on a fully diluted basis, and dividends declared for each period of the summary shall also be included, unless inappropriate, and the basis of computation, including the number of shares used, shall be stated.

(b) The registrant shall file as an exhibit a statement setting forth in reasonable detail the computations of earnings per share.

4. (a) If debt securities are registered under Section 12 of the Act, the registrant may, at its option, show in tabular form for each fiscal year the ratio of earnings to fixed charges.

(b) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated persons. In the case of utilities, interest credits charged to construction shall be added to gross income and not deducted from interest.

(c) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) one-third of all rentals reported in the schedule prepared in accordance with Rule 12-16 of Regulation S-X, or such portion as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

(d) Any registrant electing to show the ratio of earnings to fixed charges, in accordance with this instruction, shall file as an exhibit a statement setting forth in reasonable detail the computations of the ratios shown.

Item 3. Properties.

State briefly the location and general character of the principal plants, mines and other materially important physical properties of the registrant and its subsidiaries, whether held in fee or leased, and if leased, the expiration dates of material leases.

Instructions. 1. What is required is such information as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

2. (a) Where mining is of material importance, show for each important mine or, if appropriate, for each group of mines in a mining district, the total tonnage of ore produced during the last fiscal year.

(b) Where material to evaluation of mining properties, furnish for each such mine or group of mines for the last fiscal year: (1) the average grade of ore produced; (2) the average direct operating cost per ton of ore produced; (3) the aggregate of all additional costs per ton of ore produced, to the extent practicable; and (4) the average dollar amount realized per ton of ore produced.

(c) Where mining is of material importance state whether, between the beginning of the last fiscal year and the present, there have been material changes in the principal ore bodies or in the physical mining conditions at each such mine or group of mines and whether any such changes are anticipated. If so, describe such changes and state their significance.

(d) In the case of coal mining, the term "ore" as used in this instruction refers to coal; the term "ore body" refers to the coal bed or coal seam; and information as to the average grade of ore need not be furnished.

3. Where oil and gas operations are of material importance, show: (1) net oil and gas production, preferably in tabular form, for oil in barrels and gas in MCF for the last fiscal year; (2) the gross and net productive wells, and the gross and net producing acres as of a recent date; (3) undeveloped acreage, including gross acres and net acres, either located as to states or geological areas, and whether the acreage is in blocks or in checker-board together with the minimum and maximum remaining terms of leases on such acreage; (4) present activities, such as, the number of wells in the process of drilling, waterfloods in the process of installation, and other related operations of material importance.

4. Where the report of an engineer or other expert is referred to in the annual report, a copy of the full report shall be furnished for the information of the staff but shall not be filed as a part of the annual report.

Item 4. Parents and Subsidiaries.

(a) Furnish a list or diagram of all parents and subsidiaries of the registrant and as to each person named indicate the percentage of voting securities owned, or other basis of control, by its immediate parent, if any.

Instructions. 1. The list or diagram shall include the registrant and shall be so prepared as to show clearly the relationship of each person named to the registrant and to the other persons named. If any person is controlled by means of the direct ownership of its securities by two or more persons, so indicate by appropriate cross reference.

2. Designate by appropriate symbols (a) subsidiaries for which separate financial statements are filed; (b) subsidiaries included in consolidated financial statements; (c) subsidiaries included in group financial statements filed for unconsolidated subsidiaries; and (d) other subsidiaries, indicating briefly why financial statements of such subsidiaries are not filed.

3. Include the name of the State or other jurisdiction in which each subsidiary was incorporated or organized.

4. The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

5. The names of consolidated totally-held multiple subsidiaries carrying on the same line of business, such as chain stores or small loan companies, may be omitted, provided the name of the immediate parent, the line of business, the number of omitted subsidiaries operating in the United States and the number operating in foreign countries are given. This instruction shall not apply, however, to banks, insurance companies, savings and loan associations or to any subsidiary subject to regulation by another Federal agency.

Item 5. Pending Legal Proceedings.

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings were instituted, the date instituted and the principal parties thereto.

Instructions. 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 15 per cent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described. Any material proceedings to which any director, officer or affiliate of the registrant, any security holder named in answer to Item 10(a), or any associate of any such director, officer or security holder, is a party, or has a material interest, adverse to the registrant or any of its subsidiaries shall also be described.

Item 6. Approximate Number of Equity Security Holders.

State in the tabular form indicated below the approximate number of holders of record of each class of equity securities of the registrant as of the end of the fiscal year:

(1) Title of class	(2) Number of record holders

Instructions. 1. Attention is directed to the definition of the term "equity security" in Section 3(a)(11) of the Act and Rule 3a11-1 thereunder and the definition of the term "held of record" in Rule 12g5-1.

2. Information need not be given with respect to the number of holders of "restricted stock options," "qualified stock options" or options granted pursuant to an "employee stock purchase plan," as those terms are defined in Sections 422 through 425 of the Internal Revenue Code.

Item 7. Executive Officers of Registrant.

List the names and ages of all executive officers of the registrant, state the nature of any family relationships between them and indicate all positions and offices held by each person named.

Instruction. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) and any other officer who performs similar policy-making functions for the registrant.

Item 8. Indemnification of Directors and Officers.

State the general effect of any charter provision, bylaw, contract, arrangement or statute under which any director or officer of the registrant is insured or indemnified in any manner against any liability which he may incur in his capacity as such.

Item 9. Financial Statements and Exhibits Filed.

List all of the following documents filed as a part of the report:

(a) All financial statements.

(b) All exhibits, including those incorporated by reference.

Instruction. Where any financial statement or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item.

PART II

(See General Instruction H)

Item 10. Principal Holders of Securities.

(a) Furnish the following information in the tabular form indicated as to all voting securities of the registrant, and all securities convertible into voting securities of the registrant, owned of record or beneficially by each person who owns of record, or is known by the registrant to own beneficially, more than 10 per cent of any class of such securities. Show in Column (3) whether the securities are owned both of record and beneficially, of record only, or beneficially only, and show in Columns (4) and (5) the respective amounts and percentages owned in each such manner.

(1) Name and Address	(2) Title of class	(3) Type of Ownership	(4) Amount owned	(5) Per cent of class

(b) Furnish the following information in substantially the tabular form indicated as to each class of equity securities of the registrant or any of its parents or subsidiaries, other than directors' qualifying shares, beneficially owned directly or indirectly by all directors and officers of the registrant, as a group, without naming them.

(1) Title of class	(2) Amount beneficially owned	(3) Per cent of class

Instructions. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the issuer. In any case where the amount owned by directors and officers as a group is less than 1 per cent of the class, the per cent of the class owned by them may be omitted.

2. If, to the knowledge of the registrant, more than 10 per cent of any class of voting securities of the registrant is held or to be held subject to any voting trust or other similar agreement, state the title of such securities, the amount held or to be held and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the agreement.

Item 11. Directors of Registrant.

Furnish the following information, in tabular form to the extent practicable, with respect to each director of the registrant:

(a) Name each such director, state the date on which his present term of office will expire and list all other positions and offices with the registrant presently held by him.

(b) State his present principal occupation or employment and give the name and principal business of any corporation or other organization in which such employment is carried on. If not previously reported, give a brief account of his business experience during the past 10 years, including his principal occupations or employments during that period.

Instruction. Where a director's business experience during the past 10 years is described, the occurrence of an event referred to in (a), (b) or (c) below during the previous 10 years may be material to an evaluation of his ability and integrity. If so, appropriate disclosure should be made. If such an event has occurred

but disclosure thereof is omitted on the ground that it is not material, registrant shall furnish, as supplemental information and not as a part of this report, (1) a description of the omitted information and (2) a statement of the reasons for its omission:

(a) A petition under the Bankruptcy Act or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for business or property of, such person, or any partnership in which he was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within 2 years before the time of such filing;

(b) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses) or is the subject of a criminal proceeding which is presently pending; or

(c) Such person was the subject of any order, judgment, or degree of any court of competent jurisdiction permanently or temporarily enjoining him from acting as an investment adviser, underwriter, broker, or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security, or was the subject of any order of a Federal or state authority barring or suspending for more than sixty days the right of such person to be engaged in any such activity which order remains in effect.

(c) State, as of the most recent practicable date, the approximate amount of each class of equity securities of the registrant or any of its parents or subsidiaries, other than directors' qualifying shares, beneficially owned directly or indirectly by him. If he is not the beneficial owner of any such securities, make a statement to that effect.

(d) If more than 10 per cent of any class of securities of the registrant or any of its parents or subsidiaries are beneficially owned by him and his associates, state the approximate amount of each class of such securities beneficially owned by such associates, naming each associate whose holdings are substantial.

Item 12. Remuneration of Directors and Officers.

(a) Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the registrant and its subsidiaries during the registrant's last fiscal year to the following persons for services in all capacities:

(1) Each director of the registrant whose aggregate direct remuneration exceeded $40,000, and each of the three highest paid officers of the registrant whose aggregate indirect remuneration exceeded that amount, naming each such director and officer.

(2) All directors and officers of the registrant as a group, stating the number of persons in the group without naming them.

(A)	(B)	(C)
Name of individual or number of persons in group	Capacities in which remuneration was received	Aggregate direct remuneration

Instructions. 1. Except as provided in Instruction 2, paragraph (a) of this item applies to any person who was a director or officer of the registrant at any time during the period specified. However, information need not be given for any portion of the period during which such person was not a director or officer of the registrant.

2. Paragraph (a)(1) of this item does not apply to any person who was not named as a director or officer of the registrant in the first registration statement filed on Form 10 for the registration of a class of securities pursuant to Section 12 of the Act, provided (i) such person has not been a director or officer of the registrant since the filing of such statement and (ii) the same information is not otherwise required to be disclosed in any other material filed with the Commission.

3. The information is to be given on an accrual basis if practicable. The tables required by this paragraph and paragraph (b) may be combined if the registrant so desires.

4. Do not include remuneration paid to a partnership in which any director or officer was a partner, but see Item 14.

5. If any part of the remuneration shown in response to this item was paid pursuant to a material bonus or profit-sharing plan, briefly describe the plan and the basis upon which directors or officers participate therein. See Instruction 1 to paragraph (b) for the meaning of the term "plan."

(b) Furnish the following information in substantially the tabular form indicated as to all annuity, pension or retirement benefits proposed to be paid to the following persons in the event of retirement at normal retirement date pursuant to any existing plan provided or contributed to by the issuer or any of its subsidiaries:

(1) Each director or officer named in answer to paragraph (a)(1), naming each such person.

(2) All directors and officers of the registrant who are eligible for such benefits, as a group, stating the number of persons in the group without naming them.

(A) Name of individual or number of persons in group	(B) Amount set aside or accrued during issuer's last fiscal year	(C) Estimated annual benefits upon retirement

Instructions.1.The term "plan" in this paragraph and in paragraph (c) includes all plans, contracts, authorizations or arrangements, whether or not set forth in any formal document.

2. Column (B)need not be answered with respect to payments computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service. In such case, Columns (A) and (C) need not be answered with respect to directors or officers as a group.

3. The information called for by Column (C) may be given in the form of a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

4. In the case of any plan (other than those specified in Instruction 2) where the amount set aside each year depends upon the amount of earnings of the issuer or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated benefits upon retirement, there shall be set forth, in lieu of the information called for by Column (C), the aggregate amount set aside or accured to date, unless it is impracticable to do so, in which case there shall be stated the method of computing such benefits.

(c) Describe briefly all remuneration payments (other than accured payments reported under paragraph (a) or (b) of this item) proposed to be made in the future, directly or indirectly, by the registrant or any of its subsidiaries pursuant to any existing plan or arrangement to (i) each

director or officer named in answer to paragraph (a)(1), naming each such person, and (ii) all directors and officers of the registrant as a group, without naming them.

Instruction. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remuneration payments proposed to be made, the aggregate amount set aside or accured to date in respect of such payments shall be stated, together with an explanation of the basis for future payments.

Item 13. Options Granted to Management to Purchase Securities.

Furnish the following information, in substantially the tabular form indicated, as to all options to purchase any securities from the registrant or any of its subsidiaries which were granted to or exercised by the following persons since the beginning of the fiscal year, and as to all options held by such persons as of the latest practicable date regardless of when such options were granted: (i) each director and officer named in answer to Item 12(a)(1), naming each such person; and (ii) all directors and officers of the registrant as a group, without naming them:

	(Insert name)	(Insert name)	(Insert name)	All directors and officers as a group
Options granted:				
Number of shares	______	______	______	______
Average option price per share	$______	$______	$______	$______
Options exercised:				
Number of shares	______	______	______	______
Aggregate option price of shares purchased	$______	$______	$______	$______
Aggregate market value of shares on date options were exercised	$______	$______	$______	$______
Unexercised options held at (insert date) :				
Number of shares	______	______	______	______
Average option price per share	$______	$______	$______	$______

Instructions. 1. The term "options" as used in this item includes all options, warrants or rights, other than those issued to security holders as such on a pro rate basis. Where the average option price per share is called for, the weighted average price per share shall be given.

2. The extension, regranting or material amendment of options shall be deemed the granting of options within the meaning of this item.

3. (i) Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed $10,000 for any officer or director named in answer to paragraph (a)(1) or $40,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such person or group. (ii) Where the total market value on the dates of purchase of all securities purchased through the exercise of options during the period specified does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options exercised by such person or group. (iii) Where the total market value as of the latest practicable date of the securities called for by all options held at such time does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options held as of the specified date by such person or group.

4. If the options relate to more than one class of securities, the information shall be given separately for each such class.

Item 14. Interest of Management and Others in Certain Transactions.

(a) Describe briefly any transactions since the beginning of the last fiscal year or any presently proposed transactions, to which the registrant or any of its subsidiaries was or is to be a party, in which any of the following persons has or is to have a direct or indirect material interest, naming such person and stating his relationship to the registrant, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the registrant;

(2) Any security holder named in answer to Item 10(a);

(3) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any parent or subsidiary of the registrant.

Instructions. 1. This Item 14(a) applies to any person who held any of the positions or relationships specified at

any time during the period specified. However information need not be given for any portion of the period during which such person did not hold any such position or relationship.

2. No information need be given in response to this item as to any remuneration or other transaction reported in response to Items 12 or 13, or as to any transaction with respect to which information may be omitted pursuant to Instruction 2 to Item 12(b), the instruction to Item 12(c), or Instruction 2 or 3 to Item 14(b)

3. No information need be given in answer to this Item 14(a) as to any transaction where --

(a) the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier,.or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) the transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) the amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $30,000; or

(d) the interest of the specified person arises solely from the ownership of securities of the registrant and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

4. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the registrant or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item 14(a) where --

(a) the interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (3) above, in the aggregate, of less than a 10 per cent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) the interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (3) above had an interest of less than 10 percent; or

(c) the interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to such other person.

5. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

6. In describing any transaction involving the purchase or sale of assets by or to the registrant or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

7. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize non-disclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item.

(b) State as to each of the following persons who was indebted to the registrant or its subsidiaries at any time since the beginning of the last fiscal year of the registrant, (i) the largest aggregate amount of indebtedness outstanding at any time during such period, (ii) the nature of the indebtedness and of the transaction in which it was incurred, (iii) the amount thereof outstanding as of the latest practicable date, and (iv) the rate of interest paid or charged thereon:

(1) Each director or officer of the registrant; and

(2) Each associate of any such director or officer.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. This paragraph does not apply to any person whose aggregate indebtedness did not exceed $10,000 or one per cent of the registrant's total assets, whichever is less, at any time during the period specified. Exclude in the determination of the amount of indebtedness all amounts due from the particular person for purchases subject to usual trade terms, for ordinary travel and expense advances and for other transactions in the ordinary course of business.

3. Notwithstanding Instruction 2, if the registrant or any of its subsidiaries is engaged primarily in the business of making loans and loans to any of the specified persons in excess of $10,000 or one per cent of its total assets, whichever is less, were outstanding at any time during the period specified, such loans shall be disclosed. However,if the lender is a bank, such disclosure may consist of a statement, if such is the case, that the loans to such persons (i) were made in the ordinary course of business, (ii) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (iii) did not involve more than normal risk of collectibility or present other unfavorable features.

4. If to the knowledge of the registrant any indebtedness required to be described arose under Section 16(b) of the Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the registrant or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

(c) Describe briefly any transactions since the beginning of the registrant's last fiscal year or any presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the registrant or any of its parents or subsidiaries, was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the registrant, the nature of his interest in the transaction and, where parcticable,the amount of such interest:

(1) Any director or officer of the registrant;

(2) Any security holder named in answer to Item 10(a);

(3) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any parent or subsidiary of the registrant; or

(4) The registrant or any of its subsidiaries.

Instructions. 1. Instructions 2, 3, 4 and 5 to Item 14(a) shall apply to this Item 14(c).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this item any remuneration received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to paragraph (c) with respect to --

(a) payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

(b) payment of remuneration for services not in excess of 5 per cent of the aggregate remuneration received by the specified person during the registrant's last fiscal year from the registrant and its subsidiaries; or

(c) any interest of the registrant or any of its subsidiaries which arises solely from its general interest in the success of the plan.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

____
(Registrant)

Date ____________________ By ____________________________
(Signature)*

* Print the name and title of the signing officer under his signature.

INSTRUCTIONS AS TO FINANCIAL STATEMENTS

The following instructions specify the balance sheets, profit and loss statements and source and application of funds statements required to be filed as a part of the annual report on this form. Regulation S-X governs the certification, form and content thereof, including the basis of consolidation, and prescribes the statements of surplus and schedules to be filed in support thereof.

If either the profit and loss or earned surplus statements required are included in their entirety in the summary of earnings required by Item 2, the statements so included need not be otherwise included in the annual report.

1. Statements of the Registrant

(a) There shall be filed for the registrant, in comparative columnar form, certified balance sheets as of the close of the last two fiscal years and certified profit and loss and source and application of funds statements for such fiscal years.

(b) Notwithstanding paragraph (a), the individual financial statements of the registrant may be omitted if (1) consolidated statements of the registrant and one or more of its subsidiaries are filed, and (2) the conditions specified in either of the following paragraphs are met:

(i) The registrant is primarily an operating company and all subsidiaries included in the consolidated financial statements filed are totally-held subsidiaries; or

(ii) The registrant's total assets, exclusive of investments in and advances to the consolidated subsidiaries, constitute 85 per cent or more of the total assets shown by the consolidated balance sheet filed and the registrant's total gross revenues for the period for which its profit and loss statement would be filed, exclusive of interest and dividends received from the consolidated subsidiaries, constitute 85 per cent or more of the total gross revenue shown by the consolidated profit and loss statements filed.

2. Consolidated Statements

There shall be filed for the registrant and its subsidiaries, in comparative columnar form, certified consolidated balance sheets as of the close of the last two fiscal years of the registrant and certified consolidated profit and loss and source and application of funds statements for such fiscal years.

3. Statements of Subsidiaries not Consolidated

(a) Subject to Rule 4-03 of Regulation S-X regarding group statements, there shall be filed for each majority-owned subsidiary of the registrant not consolidated the financial statements which would be required if it were a registrant.

(b) If the fiscal year of any unconsolidated subsidiary ends within 90 days before the date of filing the annual report, or after the date of filing, the statements of the subsidiary required by paragraph (a) may be filed as an amendment to the report within 90 days after the end of the subsidiary's fiscal year.

4. Fifty-Per Cent Owned Persons and Other Persons

If the registrant owns directly or indirectly approximately 50 per cent of the voting securities of any person and approximately 50 per cent of the voting securities of such person is owned directly or indirectly by another single interest or if the registrant takes up the equity in undistributed earnings of any other unconsolidated person, there shall be filed for each such person the financial statements which would be required if it were a registrant. The statements filed for each such person shall identify the other single interest or other interests in any person operated jointly.

5. Omission of Statements Required by Instructions 3 and 4

Notwithstanding Instructions 3 and 4, there may be omitted from the annual report all financial statements of any one or more unconsolidated subsidiaries or 50 per cent owned persons or other persons if all such subsidiaries, 50 per cent owned persons and other persons for which statements are so omitted, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

6. Affiliates whose Securities are Pledged as Collateral

(a) For each affiliate of the registrant whose securities constitute a substantial portion of the collateral securing any class of registered securities, there shall be filed the financial statements that would be required if the affiliate were a registrant. However, statements need not be filed pursuant to this instruction for any person whose statements are otherwise filed with the report on an individual, consolidated or combined basis.

(b) For the purposes of this instruction, securities of a person shall be deemed to constitute a substantial portion of the collateral if the aggregate principal amount, par value, or book value as shown by the books of the registrant, or market value, whichever is the greatest, of such securities equals 20 per cent or more of the principal amount of the class secured thereby.

7. Statements of Banks and Insurance Companies

Notwithstanding the requirements of the foregoing instructions, financial statements filed for banks or life insurance companies need not be certified.

8. Registrants Not in the Production Stage

(a) Notwithstanding the foregoing instructions, if the registrant falls within the terms of paragraph (b) or (c) of Rule 5A-01 of Regulation S-X, the following statements, all of which shall be certified except as provided in (b) below, shall be filed for the registrant and each of its significant subsidiaries, if any:

(i) The statements specified in Rules 5A-02, 5A-03, 5A-04, 5A-05 and 5A-07 shall be filed, in comparative columnar form, as of the end of the last two fiscal years; and

(ii) The statement of cash receipts and disbursements specified in Rule 5A-06 shall be filed, in comparative columnar form, for such fiscal years.

(b) The financial statements prescribed in (a) above need not be certified if all of the following conditions are met by the registrant and each of its significant subsidiaries, if any:

(i) Gross receipts from all sources for the fiscal year are not in excess of $5,000;

(ii) The registrant has not purchased or sold any of its own stock, granted options therefor, or levied assessments upon outstanding stock;

(iii) Expenditures for all purposes for the fiscal year are not in excess of $5,000;

(iv) No material change in the business has occurred during the fiscal year, including any bankruptcy, reorganization, readjustment or succession or any material acquisition or disposition of plants, mines, mining equipment, mine rights or leases;

(v) No exchange upon which the shares are listed, or governmental authority having jurisdiction, requires the furnishing to it, or the publication of, certified financial statements.

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9. Filing of Other Statements in Certain Cases

The Commission may, upon the informal written request of the registrant and where consistent with the protection of investors, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Commission may also by informal written notice require the filing of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

INSTRUCTIONS AS TO EXHIBITS

Subject to Rule 12b-32 regarding the incorporation of exhibits by reference, the following exhibits shall be filed as a part of the report:

A. Copies of all amendments or modifications, not previously filed, to all exhibits previously filed (or copies of such exhibits as amended or modified).

B. Copies of all contracts and other documents of a character required to be filed as an exhibit to an original registration statement on Form 10 which were executed or in effect during the fiscal year and not previously filed.

SUPPLEMENTAL INFORMATION TO BE FURNISHED WITH REPORTS FILED PURSUANT TO SECTION 15(d) OF THE ACT BY ISSUERS WHICH HAVE NOT REGISTERED SECURITIES PURSUANT TO SECTION 12 OF THE ACT

(a) Every registrant which files an annual report on this form pursuant to Section 15(d) of the Act shall furnish to the Commission for its information, at the time of filing its report on this form, four copies of the following:

(1) Any annual report to stockholders covering the registrant's last fiscal year; and

(2) Every proxy statement, form of proxy or other proxy soliciting material sent to more than ten of the registrant's stockholders with respect to any annual or other meeting of stockholders.

(b) The foregoing material shall not be deemed to be "filed" with the Commission or otherwise subject to the liabilities of Section 18 of the Act, except to the extent that the registrant specifically incorporates it in its annual report on this form by reference.

(c) If no such annual report or proxy material has been sent to stockholders, a statement to that effect shall be included in the answer to Item 9. If such report or proxy material is to be furnished to stockholders subsequent to the filing of the annual report on this form, the registrant shall so state in answer to Item 9 and shall furnish copies of such material to the Commission when it is sent to stockholders.

3. Article by Wayne E. Green, "SEC Will Propose Sweeping Changes In Rules on Companies' Disclosures—Annual Report Forms Would Include Firms' Current Developments, More Data," the Wall Street Journal, Sept. 2, 1969

[From the Wall Street Journal, Sept. 2, 1969]

SEC WILL PROPOSE SWEEPING CHANGES IN RULES ON COMPANIES' DISCLOSURES

ANNUAL REPORT FORMS WOULD INCLUDE FIRMS' CURRENT DEVELOPMENTS, MORE DATA

WASHINGTON.—The Securities and Exchange Commission is about to take its first major step toward overhauling the regulations that require companies to tell the agency about their operations.

Within a few weeks, perhaps days, the SEC will propose a package of sweeping changes in its reporting and stock registration requirements. The proposals, some of which could be controversial, would be submitted for public comment before the SEC takes final action.

The package includes proposals to beef up the annual form 10K reports companies file with the SEC by requiring disclosure of such items as "specific current developments" in a company's business, plus additional financial data. The SEC also proposed to eliminate some other reports, combining them into a new quarterly statement, and to exempt from SEC registration requirements certain public offerings of stock by individuals.

For the most part, the proposed changes follow recommendations made in an exhaustive research study directed by SEC Commissioner Francis M. Wheat. That project, which took more than a year to complete, was published in April and has been under consideration by the commission since then. The recommendations are generally aimed at trying to coordinate better the SEC's different disclosure requirements.

Other changes loom

While this will be the SEC's first major action on the study's recommendations, it isn't expected to be the last. It's understood the SEC may soon be considering additional recommendations contained in the report, such as those dealing with the so-called "gun-jumping" problem—publicity on a stock offering before a registration statement becomes effective.

Also in line for consideration in the near future are proposals dealing with whether some form of registration requirement should be imposed on those business consolidations currently exempt from registration. Other proposals may come later, SEC sources say, but the details aren't final.

A significant portion of the first package deals with proposals for increasing the amount of information that must be reported to the SEC under the Securities Exchange Act of 1934. The law, one of the two basic securities statutes the agency administers, generally requires companies whose securities are listed on a national securities exchange and most companies traded in the over-the-counter market to register with the SEC and to file periodic reports to keep information about themselves current.

Beefed-Up 10K Report

The SEC proposes to increase considerably the contents of one of these periodic reports, called the 10K. It would, for example, require companies to include a detailed five-year summary of consolidated earnings, instead of the abbreviated yearly profit-and-loss statement that most file now. It would also require for the first time a breakdown of how much sales and income are contributed by separate lines of business, a requirement the agency recently imposed in some of its registration forms.

In addition, the SEC proposes to require companies to include specific corporate developments—such as acquisitions—that have taken place since the previous 10K report was filed. It would also require such items as an annual updating of information relating to a company's properties, changes in the control and a description of the company's business.

The SEC also proposes to eliminate both the semiannual 9K report and the 8K report, which companies generally must file when something significant happens involving them. The information in these two reports, plus some additional data, would be combined into one, called a 10Q, that would be filed quarterly. The SEC also proposes to tighten up on the deadline for filing both the 10K and 10Q reports, hoping to cut down on late filings that often reduce the reports' usefulness to both the SEC and the public.

By proposing to increase the contents and hurry the filing of these 1934-act reports, the SEC hopes to make them more important to its regulatory scheme. Even though these reports deal largely with securities already being traded, the SEC has paid comparatively little attention to them.

Instead, it has devoted most of its time to enforcing disclosures required by the Securities Act of 1933, the other basic securities statute the SEC administers, which deals mostly with the new-issue market. It generally requires companies proposing to offer their securities to the public to file registration statements with the SEC disclosing detailed financial and other information, so that prospective investors will be fully informed.

Problems have developed in this area because the SEC has made few distinctions in the size of the transaction or the type of company in requiring these detailed registration statements. A well-known corporation whose activities are widely reported has to disclose the same kind of information as a small outfit with dubious prospects that's just getting under way. Moreover, a myriad of SEC interpretations have developed for deciding when stock acquired privately must be registered before it can be sold to the public.

Thus, the idea behind some of the proposed rule changes under the 1933 act is to make them more specific and to ease the burden of registration disclosures where the information filed in the beefed-up periodic reports act is deemed adequate.

The SEC proposes, for instance, to continue requiring registration of those secondary offerings—the sale by shareholders of stock that's already outstanding—that involve securities of the few companies that don't file periodic reports.

Unregistered Sales

However, the SEC would in some circumstances allow the resale of securities of reporting companies without registration, where the seller acquired the shares in private transactions. These unregistered sales would be limited to what the SEC calls "ordinary trading," meaning essentially that only a certain number of shares could be sold during any one period, and that the normal minimum stock brokerage commission—and not discounts—must be paid.

The SEC also proposed to require a one-year holding period before such stock could be resold to the public without registration. This is aimed at discouraging companies from trying to evade registration requirements by simply distributing stock privately to people who, acting as mere conduits, would immediately resell the stock to the public. The advantage of such a scheme is that a firm can create a public market in its stock without having to comply with the rigid disclosures of registration.

The SEC also proposes to simplify the registration process for more companies by revising the short registration form, called the S–7, which it allowed some concerns to begin using in November 1967. Unlike other forms, the S–7 doesn't require registering companies to describe its business history or properties, or provide data on its management. The form was adopted on the theory that companies eligible to use it disclosed similar information in the periodic reports.

The SEC currently allows only companies that had sales or gross revenue of $50 million and net income of $2.5 million in their previous fiscal year to use the S–7. Under its proposals, the short form would be made available to all concerns that had net income of at least $500,000 for each of the past five fiscal years. The minimum sales requirement would be eliminated.

Appendix VIII

United States Steel Corporation's Response to Criticism of the American Steel Industry by Willard F. Mueller, Walter Adams, and Joel B. Dirlam in Initial Hearing on "Planning, Regulation, and Competition,"[1] and Related Materials

A. LETTER OF TRANSMITTAL DATED OCTOBER 23, 1967, FROM JOHN S. TENNANT, GENERAL COUNSEL, UNITED STATES STEEL CORP., 71 BROADWAY, NEW YORK, N.Y. 10006, TO SENATOR SMATHERS

United States Steel Corp.,
New York, N.Y., October 23, 1967.

Hon. George Smathers,
U.S. Senator, Chairman, Select Committee on Small Business,
Washington, D.C.

Dear Senator Smathers: We have recently reviewed the June 29, 1967 published hearings before the Senate Subcommittees of the Select Committee on Small Business. Of particular concern to us, of course, are the allegations concerning the steel industry which were made by Professor Walter Adams and Dr. Willard F. Mueller. These allegations are similar to, and appear to be based upon, those made by Professor Adams and Professor Joel B. Dirlam in their article, "Big Steel, Invention, and Innovation", which is published as Appendix C of these hearings.

Two of our employes, Dr. David R. Dilley (Assistant Director—Cost and Statistics) and Dr. David L. McBride (Director—Metallurgical Process Development) have recently published a research study examining in detail the Adams-Dirlam thesis. In developing this study, Dilley and McBride utilized published information almost entirely (including many of the same sources cited by Adams and Dirlam) and proves that Adams and Dirlam overlook a great number of highly significant factors which decisively refute the Adams-Dirlam allegations.

This study was published in the October 1967 issue of the Iron & Steel Engineer under the title "Oxygen Steelmaking: Fact vs. Folklore". We enclose several copies of a brief summary of this article for review by you and other members of your committee. Also enclosed are two copies of the complete article and two copies of an article relating to the same subject by Professor Alan K. McAdams of Cornell University, entitled "Big Steel, Invention, and Innovation, Reconsidered" which appeared in the August 1967 issue of the Quarterly Journal of Economics.

Very truly yours,

John S. Tennant, *General Counsel.*

B. PAPER BY DAVID R. DILLEY AND DAVID L. MCBRIDE, "A BRIEF CRITIQUE OF THE ADAMS-DIRLAM THESIS"

(Note.—The following is a summary by the authors of a research study they published in the October 1967 issue of the Iron & Steel Engineer under the title "Oxygen Steelmaking: Fact vs. Folklore.")

A Brief Critique of the Adams-Dirlam Thesis

(By Dr. David R. Dilley and Dr. David L. McBride)

Adams and Dirlam study of a single innovation in the steel industry—the basic oxygen process (BOP) of steelmaking—and conclude that:

(1) U.S. steelmakers lagged behind the rest of the world in adopting new technology.

(2) Large firms in this country have lagged behind small firms.

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[1] Hearing before subcommittees of the Senate Small Business Committee on the question, "Are planning and regulation replacing competition in the new industrial state?" 90th Congress, first sess. (1967).

(3) The domestic steel industry added 40 million tons of the wrong capacity during the 1950 decade.

(4) The domestic steel industry could and should have begun to adopt BOP as early as 1950 and could easily have achieved a complete substitution by 1961.

(5) Installation of BOP as a substitute for open hearths would have provided substantial savings both in capital investment and in operating costs.

An examination of only one innovation—BOP steelmaking—is no sound basis for formulating broad, sweeping conclusions about the innovativeness and economic justification of large domestic steel firms. Any "sample of one" can obviously be atypical. As will be shown below, the authors' conclusions are not supportable even based on this single innovation.

The early development of BOP steelmaking on a very small scale in Austria reflected the particular conditions existing in that nation in the late 1940's which did not exist in this country: severe war-time damage to steel plants, necessity to build entirely new facilities, necessity to produce only a very limited range of steels, necessity to import substantially all of the scrap needed for steelmaking, and only minor concern about air pollution resulting from the new process. The only BOP vessel which existed in 1950 was about one per cent as large as those currently being installed in the U.S., showed no difference in operating costs in comparison with open hearths, and involved many time-consuming technical and practical problems that had to be solved; this early vessel constituted no basis for beginning the rapid scrapping of this nation's entire capacity of open hearths beginning in 1950, or even for commencing to build new steelmaking capacity in the U.S.

As to whether the U.S. lagged behind the rest of the world in installing BOP capacity, during the period 1955–1962 the U.S. averaged 29.9% of the total world's steel production but averaged 30.6% of the total world's BOP steelmaking capacity. For each of these years, the percentage of steel produced by the BOP process was almost precisely the same in the U.S. as in the rest of the world, but after 1963 the U.S. has taken a substantial lead (for example, 25.3% of U.S. production in 1966 was by the BOP method versus only 14.9% for the rest of the world.) Between 1955 and 1966, BOP steel production in the U.S. increased twice as much as the increase in total steel production, but for the rest of the world increased by only one-fourth as much. Open hearth production in this country *declined* by 20 million tons between 1955–1966, but *increased* by well over 100 million tons abroad. Hence, there is no validity to the claim that the U.S. industry was backward in substituting BOP's for open hearths.

The open hearth capacity additions in the United States during the 1950's came about in large part by modifications and improvements to existing furnaces, with only about one-third of the gross addition being new furnaces. Of the wholly new furnaces, all but a small portion had been installed by 1953—when BOP steelmaking was in its earliest infancy. "Rounding out" and improving existing facilities were correctly evaluated to be economically much more attractive by American steel companies than the building of entirely new facilities at that time.

Although Adams and Dirlam reviewed much of the internature on BOP steelmaking during the 1950's, they give no attention to any of the numerous technological and economical factors which played important roles in the rate at which BOP steelmaking was adopted in this country. During the earliest years following the initial development of BOP steelmaking, widespread installation of BOP's in this country was not technologically possible or attractive because of the following factors:

1. The state of knowledge about BOP steelmaking did not warrant rushing to install such facilities. The literature of the period indicated numerous unanswered technical questions about this new process and, until these questions were answered, it would have been undesirable to install such facilities on a widespread scale. The literature of the period was far from unanimous about the adavntages of BOP steelmaking. None of the literature indicated any advantage to scrapping modern efficient open hearths in favor of BOP steelmaking.

2. The earliest BOP vessel abroad gave little if any attention to the air pollution resulting from the BOP operation. Although the Austrian plants could be operating in spite of such pollution because they belonged to the government, such pollution was a serious draw-back in the United States and it was not until some years later that adequate pollution control devices had been developed.

3. The very early BOP vessels had limited capacities which could not have been efficiently used in large steelmaking plants in the U.S. There was also con-

siderable authoritative doubt regarding whether it would be technologically possible to operate vessels having capacity of anything more than double the initial BOP vessels in Austria. Only after much further research and development by U.S. steelmakers did it become technologically practical and economically attractive for steel producers in this country to install BOP vessels.

4. Oxygen was available in only limited quantities and at relatively high cost in the U.S. during the 1950's. Many-fold expansion of oxygen generation equipment could not have been accomplished economically in a very short period of time. As to the reduction in cost of oxygen, a United Nations report indicated a decline of more than ten-fold in the cost of oxygen and cited another source that the decrease was more than 30-fold.

5. Early BOP vessels had very limited product capabilities. This was not a major factor in the early foreign installations but was a significant factor in American decisions as to what type of facilities to construct because of the wide product-range required of most major American mills.

6. As compared with open hearths, BOP vessels have always had a much more limited range of raw materials suitable for their operation. Specifically, BOP's cannot use as much scrap as can open hearths.

7. During the period discussed by Adams and Dirlam, a number of other new competitive processes also looked promising at the time. Until further experimentation was conducted with these processes, there was no way of knowing what new steelmaking process should be utilized. In this connection, hindsight is always much better than foresight.

Aside from the question of technological feasibility, economic factors also strongly influenced the rate at which BOP steelmaking was introduced in this country. Adams and Dirlam appear to be unaware of many of these factors and to misinterpret others of these. These factors include the following:

1. Economic conditions were not conducive to adoption of BOP steelmaking in this country. During the years after the first BOB vessel in Europe and through 1957, the needs for increased steel production in this country were immediate and could not await the further development of a new technique largely in its infancy. Capacity expansion utilized techniques which were highly certain and which could be speedily installed at low cost. From 1958 through 1962, steel production declined sharply in the United States and there was thus no immediate need to expand steelmaking capacity, nor was there any immediate need to replace obsolete capacity since such capacity was not in use any way. Most American steel companies found it economically more attractive to use their money for other types of needed facilities.

2. Concurrent with the technological development of the BOP process were substantial improvements to existing open hearths. In virtually all cases this increased capacity significantly and improved efficiency at very low investment cost and with little or no disruption in operations. Two primary developments were the widespread use of oxygen lances to speed melting and refining and the evolution of the all-basic furnace. The economic affect of these improvements was substantially to improve the competitive status of existing open hearths. Operating costs per ton were reduced to the point where in most cases it was found to be economically more desirable to continue to operate existing facilities than to install new BOP's.

3. Even after BOP steelmaking became a commercial reality in this country, steel companies still had to decide on the most appropriate timing for their installation. Each was faced with different facts and circumstances so it would only be expected that such facilities would be installed at different times. In fact, an examination of the facts and circumstances underlying the initial installations of BOP facilities in this country indicates the lack of comparable circumstances among those companies which made the earliest installations and other steel companies in this country.

4. Perhaps the greatest single fallacy in the Adams-Dirlam thesis is their claim that ingot cost savings of $5.00 per ton could have been realized by scrapping existing open hearth facilities and installing BOP vessels in this country beginning in 1950. They multiply their figure of $5.00 per ton times the 87 million tons of steel produced in 1960 by open hearths and claim that total savings of $432 million could have been realized by 1960. In the first place, none of the quotations cited by the authors themselves support their claim of $5.00 per ton of savings. Even though the total costs of ingots with the most obsolete

and inefficient open hearths may have been $5.00 per ton more than such costs for new BOP facilities, this would not be the savings to be realized from such replacement. Existing open hearth costs include a certain amount of "sunk" costs which are not properly includable in any comparison of existing facilities with new facilities. In replacement decisions, the proper operating cost comparison is between the monetary outlay required to continue to operate existing facilities versus the outlay required to build and operate the contemplated new facilities. An existing facility can continue to operate without any further capital outlay, so that such continued operation will cost no more depreciation or interest than not continuing to operate it. Finally, Adams and Dirlam fallaciously assume implicitly that the savings realized from replacing obsolete, high-cost facilities would also have been realized if modern, efficient open hearths had been replaced. Not all open hearths have the same ingot costs. Because of this, no one other than Adams and Dirlam has ever advocated for cost reduction purposes the scrapping of efficient existing facilities and their replacement with BOP facilities. The advocacy of BOP's has always been under circumstances where wholly new facilities were necessary to expand capacity or to replace existing obsolete high-cost facilities.

5. In their comparisons of construction costs, Adams and Dirlam only consider hypothetical new BOP facilities versus hypothetical new open hearths. Actually, however, most steel companies have opportunities to expand and improve existing facilities for substantially less money than by building completely new facilities. In addition, any comparison of construction costs must necessarily recognize the capital required for the total integrated facilities required to produce steel by the alternative methods—not just the capital required for one segment of the operation. The Adams and Dirlam approach substantially understates the investment required for BOP steelmaking because it gives no recognition to the additional investment required for blast furnace, coke oven, mining and related facilities which are not required for open hearths because of their ability to use a greater proportion of scrap in their charge.

In conclusion, it can be seen that an intensive review of the Adams and Dirlam positions indicates the logical fallacy of formulating broad, generalized conclusions from a single example; that a great many of the source materials which they cited as well as many other materials available to them do not support their contentions; and that their conclusions were drawn without any attempt at qualitative analysis. Large American steel companies reacted to the development of BOP steelmaking in a rational, intelligent and enterprising manner, based on the knowledge and resources at hand and on the particular operating and economic circumstances which existed at the time decisions were made. In condemning American steel companies because they reacted to BOP steelmaking in diverse ways, Adams and Dirlam are in reality condemning conditions which could not be otherwise.

C. LETTER DATED NOV. 3, 1967, FROM SENATOR SMATHERS TO JOHN S. TENNANT

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C., November 3, 1967.

JOHN S. TENNANT, *Esquire,*
General Counsel, United States Steel Corp.,
New York, N.Y.

DEAR MR. TENNANT: Thank you for your letter of October 23 and its enclosures. We appreciated your providing the materials you did in answer to points made by Professor Walter Adams and Dr. Willard F. Mueller at the hearing before two subcommittees of the Senate Small Business Committee on June 29, 1967.

I am sending copies of your letter and of the enclosed "Brief Critique of the Adams-Dirlam Thesis" to each of the Senators that was involved or participated in the June 29 hearing, to Professor Adams and to Dr. Mueller. The professional staff of the Senate Small Business Committee is currently studying the mate-

rials you submitted, and everything you sent will be made a part of the permanent records of the Committee, available for use of all of its members.

Sincerely,

GEORGE A. SMATHERS, *Chairman.*

cc: The Honorable Russell B. Long
The Honorable Wayne Morse
The Honorable Gaylord Nelson
The Honorable Howard H. Baker, Jr.
Professor Walter Adams
Dr. Willard F. Mueller

D. LETTER DATED AUGUST 27, 1969, FROM SENATOR NELSON TO JOHN S. TENNANT

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
August 27, 1969.

JOHN S. TENNANT, Esquire,
General Counsel, United States Steel Corp.,
New York, N.Y.

DEAR MR. TENNANT: The Subcommittee on Monopoly of the Select Committee on Small Business, U.S. Senate, is presently preparing for the printer the record of hearings held July 9-11, 1969, on "The Role of Giant Corporations in the American and World Economies: Automobile Industry—1969." Those hearings were, to some extent at least, a continuation of hearings in the 90th Congress (1967 and 1968) on "Planning, Regulation, and Competition."

We are including in the printed record of last month's hearings a wide range of materials on the subject of "giant corporations," not confined entirely to the automobile industry. We should like, and we plan, to include in the record, as Appendix VIII, the following: (1) your letter of October 23, 1967, to Senator Smathers, who was then Chairman of the Senate Small Business Committee; (2) the paper by David R. Dilley and David L. McBride entitled "A Brief Critique of the Adams-Dirlam Thesis," which, in turn, is a summary of their research study published in Iron & Steel Engineer, October 1967, under the title "Oxygen Steelmaking: Fact vs. Folklore;" (3) Senator Smathers' letter to you of November 3, 1967; and (4) this letter. The other materials that accompanied your letter to Senator Smathers—the complete Dilley-McBride article and the article by Alan K. McAdams entitled "Big Steel, Invention, and Innovation, Reconsidered"—will continue to be retained in the Committee's files. If and when our hearings on "giant corporations" change their principal focus from the automobile industry to the steel industry, it would no doubt be appropriate to publish the full texts of those articles in any hearing record then made; however, there is at this time no date set, nor even any definite plan, for such a change of focus to occur.

If you have any objection to or comment on our plans for publication, in part, of materials submitted by you in 1967, please let me know promptly.

Sincerely,

GAYLORD NELSON,
Chairman, Subcommittee on Monopoly.

Appendix IX

Selected Materials on Corporate Giantism and Public Policy

Note.—The staff editors of the Senate Small Business Subcommittee on Monopoly, under the direction of Subcommittee Chairman Nelson, have selected the following materials as representative of a wide range of views on "the role of giant corporations in the American and world economies," and on the public policy questions raised by the related phenomena of economic concentration and corporate giantism. The choice of materials for this appendix does not and should not be construed to suggest approval or disapproval by the subcommittee, or any of its members or staff, of any of the views reflected in these writings. Because of the vast amount of literature on the subject, it was necessary to omit many additional materials that could, with as much interest and importance, have been included. No offense is intended to the authors of valuable writings not published here.

A. Address by Hon. John N. Mitchell, Attorney General of the United States, "The Conglomerate Merger Movements"

(The following address was delivered by Attorney General Mitchell before the Georgia Bar Association on June 6, 1969.)

The Conglomerate Merger Movement

Introduction

I would like to thank Mr. Jones and the members of the Georgia State Bar Association for your kind invitation to attend your annual meeting here in Savannah.

The topic to which I will address myself this morning is the present and future application of the federal antitrust laws; particularly this Administration's policy toward current corporate merger trends.

It is now almost 80 years since the passage of the Sherman Act. It was our federal government's first major legislative program designed to combat the undue concentration of industrial and financial power.

The Sherman antirust act reflects a fundamental national commitment that the freedom and viability of an open market place is the most efficient and most reliable guarantor of economic prosperity.

Its simple prohibition of "any contract combination or conspiracy in restraint of trade" remains our guide.

Under our federal antitrust policies in the last 80 years, our gross national product has increased to $800 billion. Our national income, in terms of current prices, has grown 12 times. Our economy is vigorous. Our businessmen are showing record profits. Our average family yearly income has increased from $3031 to over $7500 in the last two decades.

Thus, the evidence strongly supports our belief that the antitrust laws have served us well, perhaps more successfully than the 1890 Congress could have envisioned.

We have constructed a complex economic structure which successfully reflects adherence to the political and social principles of our free society.

We have not succumbed to the cartel theories of Europe. Neither have we found it necessary to impose government regulation on more than one-eighth of our economy.

But I believe that the future vitality of our free economy may be in danger because of the increasing threat of economic concentration by corporate mergers.

CONCENTRATION TRENDS

While the dimensions of the current merger movement have received widespread publicity, permit me to refresh your memory.

The number of corporate mergers has more than doubled in the last two years, reaching a total of over 4,000 in 1968. More importantly, these mergers have involved an increasing number of large firms.

Acquisitions of firms with total assets of over $10 million rose from 100 in 1966 to nearly 200 in 1968. The value of the assets of these acquired firms rose from $4 billion in 1966 to over $12 billion in 1968. Based on first quarter prediction for 1969, the value of acquired assets may reach $18 billion this year.

Many of the first being acquired are of substantial size. At the beginning of 1968, there were about 1300 firms with assets of over $25 million. Had it not been for acquisitions during the past decade, these firms would now number well over 1900.

From 1948 to 1966, only five firms with assets of over $250 million were acquired. In 1967 alone, six such firms disappeared via acquisitions; and in 1968, the number rose to 12.

The nation's largest firms are playing an increasingly prominent role as acquiring, as well as acquired, corporations. Thus, in 1968, 74 of the 192 acquisitions of companies with assets over $10 million were made by companies among the nation's 200 largest firms.

In 1948, the nation's 200 largest industrial corporations controlled 48 percent of the manufacturing assets. Today, these firms control 58 percent, while the top 500 firms control 75 percent of these assets.

The danger that this super-concentration poses to our economic, political and social structure cannot be over-estimated. Concentration of this magnitude is likely to eliminate existing and political competition. It increases the possibility for reciprocity and other forms of unfair buyer-seller leverage. It creates nationwide marketing, managerial and financing structures whose enormous physical and psychological resources pose substantial barriers to smaller firms wishing to participate in a competitive market.

And, finally, super-concentration creates a "community of interest" which discourages competition among large firms and establishes a tone in the marketplace for more and more mergers.

This leaves us with the unacceptable probability that the nation's manufacturing and financial assets will continue to be concentrated in the hands of fewer and fewer people—the very evil that the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Celler-Kefauver Amendment were designed to combat.

OTHER DANGERS OF CONCENTRATION

You may ask why I, as Attorney General, offer a statement of the Administration's position on mergers here, in Savannah. One might suggest that this speech should be delivered to bankers and corporate managers in New York or Chicago or Los Angeles.

I am speaking here precisely because most of you represent economic interests —distant from the centers of financial and managerial power—which may be injured by the current merger trend.

This Administration believes that one of the great benefits of an open marketplace is the active participation and control by as many of our citizens as possible in their own economic well-being—not just a small segment of our population in certain cities.

An urban area should have a substantial influence over its local economy. Its businessmen should have an opportunity to be suppliers. Its lawyers should have the opportunity to act as counsel. Its unions should have the opportunity of negotiating in their own community, for their workers. And its consumers should have the opportunity to exercise local economic options in their choice of competing goods and services.

After all, the ultimate beneficiary of the antitrust laws is the average consumer. In smaller communities, where sources of supply tend to be limited, the consumer may soon find many of his purchasing alternatives diminished.

We do not want our middle-sized and smaller cities to be merely "branch store" communities; nor do we want our average consumers to be "second class" economic citizens.

THE HISTORY OF MERGERS

The history of the merger movement after World War II mainly involved horizontal mergers—mergers between direct competitors—and vertical mergers—those between firms which are in a direct line from raw materials to sales.

From 1948 to 1951, horizontal and vertical mergers amounted to 62 percent of all merger activity.

The Department of Justice increased its enforcement of Section 7 of the Clayton Act and the Celler-Kefauver Amendment. This amendment prohibits any acquisition whose "effect . . . may be substantially to lessen competition." Then they slowly declined: horizontal and vertical mergers represented 48 percent of all mergers from 1952 to 1959; 39 percent of all mergers from 1960 to 1963, 22 percent from 1964 to 1967 and only 9 percent in 1968.

Conversely, conglomerate mergers—including product extension mergers—sharply increased from 38.1 percent of all mergers from 1948 to 1951; to 91 percent of all mergers last year.

Furthermore, it is increasingly clear that the acquiring companies—in an effort to diversify—are often the leaders in one or more highly concentrated markets.

About one-third of all manufacturing is carried on in industries where four companies account for over 50 percent of production. In 14 percent of all manufacturing, 4 firms account for more than 75 percent of production.

These facts require us to move aggressively to counter-act this trend.

But, before I go into greater detail as to the dangers posed by the merger movement, let me point out what mergers do *not* do.

They do not necessarily increase efficiency and profits. Studies show that, in general, the relative profits of medium size businesses are as large as those of giant firms.

Corporate bigness does *not* necessarily stimulate the most imaginative scientific research. Recent studies show that the medium size firm tends to be more productive in its scientific research precisely because it is not in a dominant position.

It has also been argued that the large firm, because of its concentration of talent and other resources, is better able to market goods and services that the public wants. But this, too, is not proven by the facts.

For example, leading firms in two of our most highly concentrated industries—automobiles and razor blades—only offered the American consumer important new products in response to aggressive foreign competition.

Thus, our experience has been, that the American consumer is not always benefited by the very large corporation. Indeed the evidence indicates that bigness may frequently favor the status quo.

Of couse, we know that, in some industries, the large corporation is a recognized necessity for effective competition due to the requirements of large capital investment and complex distribution mechanism.

THE SPECIFIC DANGERS OF CONGLOMERATE MERGERS

(1) One of the most easily understandable dangers posed by the conglomerate merger is reciprocity—when a diversified corporation favors with purchases firms which purchase from it.

We know reciprocity is widely practiced.

For example, a poll of 300 purchasing agents by Purchasing Magazine in 1961 revealed that reciprocity was a significant factor in the buyer-seller relations of 51 percent of the companies surveyed and of 78 percent of those companies with a sales volume of more than $50 million.

Reciprocal arrangements may take a number of forms. A diversified corporation may keep records of which firms purchase from it and in what amounts and then apportion its purchases among them.

In addition, there may be overt favoritism where a small corporation, hoping to receive favorable treatment from one of the conglomerate's subsidiaries, channels its purchases to the conglomerate corporation.

(2) A more complex but equally troublesome danger in the conglomerate merger movement is the elimination of potential competition.

It has always been assumed that in our free market a businessman should be

encouraged to enter an industry where profits and other conditions make his competition attractive. This should be particularly encouraged in a highly concentrated industry because such industries average substantially higher profits than unconcentrated industries.

But super-concentration, coupled with conglomerate corporate structures and large financial capabilities, discourages the prudent businessman from entering such an industry.

This elimination of potential competition tends to maintain the inflated price structure in a concentrated industry.

For example, we have evidence that the only significant seller of natural gas in a regional market reduced its rates by about 25 percent when it became clear a new competitor was ready to enter that market.

The elimination of potential competition has other aspects. The large conglomerate, with its broad financial base, should have the capability to become a new and effective competitor in a spectrum of industries. And yet, instead of starting a new, or purchasing a small firm and converting it into a significant competitor, the tendency has been for the large conglomerate to purchase a leading corporation; and thus to add its weight to an already entrenched market situation.

(3) Large conglomerate mergers also pose substantial dangers to free competition by the expansion of nationwide marketing structures, capital resources and advertising budgets. Such a structure may offer a diversified firm a physical advantage over its competitors in terms of volume discounts on transportation and advertising.

For example, as the Supreme Court pointed out in the *Proctor & Gamble* case, large advertisers receive substantial discounts from communications media. As a multi-product producer, the conglomerates may enjoy substantial advantages in both advertising and sales promotion. It may also purchase network programs on behalf of several products, enabling it to give each product network exposure at a fraction of the cost per product that a firm with only one product would incure.

Thus, the conglomerate corporation, if it acquires a dominant firm in another industry, must by necessity capitalize on its own success and imagination in detriment to the smaller, single line, firms in the industry.

(4) Another danger posed by the current merger trend is what is known as a "community of interest." But it is not a formal agreement but merely the recognition of common goals by large diversified corporations.

This situation derives as much from common sense as from economics. It posits that large diversified corporations may have little interest in competing with each other in concentrated markets. For, if the food subsidiary of corporation A aggressively competes with the food subsidiary of corporation B, then the electrical subsidiary of corporation B may start a price war with the electrical subsidiary of corporation A. Thus, it may be in both A's and B's interest to maintain the status quo and not to engage in the type of aggressive competition which we expect in a free marketplace.

The danger—the danger of a community of interest—becomes even more substantial when one realizes that the 200 largest manufacturing corporations are diversifying so quickly, that at the present rate, a significant number will soon be facing each other in several markets. And if, as we believe to be the case, they may control even more of the nation's manufacturing resources than the 58 percent last reported, we may soon be in a position where demands for more government regulation could be called for.

CONCLUSION

The matters I have outlined to you this morning form the basis for our serious concern over the present large corporation merger movement. Certainly, some of the issues are open to argument. If we all agreed on our premises and our facts there would be no disputes.

But, taken together, I think that the Celler-Kefauver amendment and its legislative history, the case law and current economic facts clearly support the Department of Justice's enforcement program.

As you know, we do not have to make an iron clad factual case. The Supreme Court has told us that: "The core question is whether a merger may substantially lessen competition, and (this) necessarily requires a prediction of the merger's impact on competition, present and future . . . (Section 7 of Clayton Act) can

deal only with probabilities, not with certainties . . . and there is certainly no requirement that the anti-competitive power manifest itself in anti-competitive action before Section 7 can be called into play. If the enforcement of Section 7 turned on the existence of actual anti-competitive practices, the congressional policy of thwarting such practices in their incipiency would be frustrated."

Therefore, let me give you some of the probabilities:

> The Department of Justice may very well oppose any merger among the top 200 manufacturing firms or firms of comparable size in other industries.
>
> The Department of Justice will probably oppose any merger by one of the top 200 manufacturing firms of any leading producer in any concentrated industry.
>
> And, of course, the Department will continue to challenge mergers which may substantially lessen potential competition or develop a substantial potential for reciprocity.

Some may regard these three probabilities as something of an expansion of the published antimerger Guidelines of the Department.

But we believe that, under today's circumstances, these probabilities are clearly authorized by present antitrust law.

The results of this policy, I hope, will be to achieve the type of voluntary compliance we now have in most of the antitrust field. We only oppose about 20 out of every thousand mergers because the vast majority are not anti-competitive. Most lawyers understand our principles and persuade their clients to abide by them.

The benefits of this policy should be readily apparent. By halting the trend toward concentration, we remove what we believe is an inadvisable alternative of outright government regulation as is now applied to public utilities, communications and other highly concentrated industries. We will stimulate our most reliable economic regulator—free competition.

We will insure that consumers and businessmen everywhere will continue to participate fully in our prosperity. We will, despite expected criticism, be carrying out the mandate of this Administration to reflect the hopes and aspirations of all Americans for a free society.

B. REPORT OF PRESIDENT JOHNSON'S TASK FORCE ON ANTITRUST POLICY ("THE NEAL REPORT"), FILED JULY 5, 1968, RELEASED MAY 21, 1969

1. Membership of the Task Force

WHITE HOUSE TASK FORCE ON ANTITRUST POLICY

Phil C. Neal, Chairman
William F. Baxter
Robert H. Bork
Carl H. Fulda
William K. Jones
Dennis G. Lyons
Paul W. MacAvoy
James W. McKie
Lee E. Preston
James A. Rahl
George D. Reycraft
Richard E. Sherwood
S. Paul Posner, Staff Director

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2. Letter of Transmittal Dated July 5, 1968, from Phil C. Neal, Chairman, Task Force Force on Antitrust Policy, to President Johnson

THE UNIVERSITY OF CHICAGO
The Law School
1111 East 60th Street
Chicago, Illinois 60637

Office of the Dean

July 5, 1968

The President
The White House
Washington, D. C.

Dear Mr. President:

On behalf of the Task Force on Antitrust Policy, I have the honor to submit our Report, together with additional statements representing the separate views of several members on portions of the Report.

The Task Force was appointed in December, 1967, and was asked to report by approximately June 30th of this year. In accordance with the broad terms of reference given us, we have undertaken to identify the most important areas in which antitrust policy might be strengthened by new legislative or administrative measures.

We have made a number of recommendations that we believe would, if adopted, improve the effectiveness of the antitrust laws. In the time and with the resources available to us it has not been possible to examine all antitrust problems that merit attention or to conduct any significant new research. Our recommendations are based upon available studies, a substantial body of informed economic opinion, and our own background of study or experience in the antitrust field.

Our principal recommendations deal with concentrated industries, conglomerate mergers, the Robinson-Patman Act, certain aspects of patent licensing, and the improvement of economic data relevant to antitrust matters. We have not dealt specially with the drug industry, an item mentioned in the letter of appointment of the Task Force, but we believe that the changes recommended by us in the patent field would have significant beneficial effects in that industry.

Although we were not asked to propose specific legislation, we concluded that our recommendations would be most useful if subjected to the discipline of framing concrete legal principles and if submitted in that form. Accordingly our report is accompanied by a number of drafts of proposed statutory provisions giving effect to our recommendations.

I should like to take this opportunity to express my personal appreciation for the privilege of taking part in the deliberations of this group. The Task Force consisted of three practising lawyers, three economists, and five professors of law, in addition to the chairman. Each member contributed substantially to the form and substance of our recommendations and the resulting Report is very much a joint product of the Task Force. Special commendation is due our Staff Director, Mr. S. Paul Posner, whose exceptionally able help contributed greatly to the work of the Task Force.

We hope the recommendations made in this Report will be useful to you and that our proposals for new laws may find their way into legislative proposals under this or a succeeding Administration.

Respectfully yours,

Phil C. Neal

PCN:mc

3. Outline of Contents, Text of Report, Appendixes and Separate Views

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Summary

1. We recommend specific legislation on the subject of oligopolies, or highly concentrated industries.

The purpose of such legislation would be to give enforcement authorities and courts a clear mandate to use established techniques of divestiture to reduce concentration in industries where monopoly power is shared by a few very large firms. Up to now such measures have been employed only in the rare instances where the monopolistic structure of an industry takes the form of a single firm with an overwhelming share of the market. Specific legislation dealing with entrenched oligopolies would rectify the most important deficiency in the present antitrust laws.

Effective antitrust laws must bring about both competitive behavior and competitive industry structure. In the long run, competitive structure is the more important since it creates conditions conducive to competitive behavior. Competitive structure and behavior are both essential to the basic concern of the antitrust laws -- preservation of the self-regulating mechanism of the market, free from the restraints of private monopoly power on the one hand and government intervention or regulation on the other. In one important respect, the antitrust laws recognize the necessity for competitive market structures: the 1950 amendment to section 7 of the Clayton Act has effectively prevented many kinds of mergers which would bring about less competitive market structures. Our proposed remedy, which would deal with existing noncompetitive market structures, is a necessary complement to section 7.

Highly concentrated industries represent a significant segment of the American economy. Industries in which four or fewer firms account for more than 70% of output produce nearly 10% of the total value of manufactured products; industries in which four or fewer firms account for more than 50% of output produce nearly 24%. An impressive body of economic opinion and analysis supports the judgment that this degree of concentration precludes effective market competition and interferes with the optimum use of economic resources. Past experience strongly suggests that, in the absence of direct action, concentration is not likely to decline significantly.

While new legal approaches might be developed to reduce concentration under existing law -- a result which should be encouraged -- the history of antitrust enforcement and judicial interpretation do not justify primary reliance on this possibility. For this reason, we recommend a specific legislative remedy directed to the reduction of concentration. Our proposed Concentrated Industries Act, which appears in Appendix A to the Report, establishes criteria and procedures for the effective reduction of industrial concentration.

2. We recommend additional legislation prohibiting mergers in which a very large firm acquires one of the leading firms in a concentrated industry.

This legislation would supplement section 7 of the Clayton Act, which prohibits mergers which may tend substantially to lessen competition. The primary impact of the new legislation would be on diversification or "conglomerate" mergers. Under section 7 of the Clayton Act, such mergers may be prevented if adverse effects on competition can be anticipated. But the detection of such effects frequently depends on factual and theoretical judgments that are highly speculative. As a result, some mergers with potentially adverse effects on competition may escape attack and mergers which will not harm competition will be prohibited because the effects cannot readily be predicted. Because of the inherent limitations of the competitive standard of section 7, the recently published Merger Guidelines do little to resolve these difficulties.

Our proposed legislation would prevent some possibly anticompetitive mergers which might have gone unchallenged because of the difficulty of applying section 7 standards, and thus would act as an effective supplement to existing policy. In addition, the proposed legislation would have affirmative aspects in channeling merger activity into directions likely to increase competition. If large firms are prevented from acquiring leading firms in concentrated industries, they will seek other outlets for expansion which may be more likely to increase competition and decrease concentration.

This policy of deflecting conglomerate mergers into desirable channels is preferable to any rule that would limit mergers without regard to consideration of market structure. Although the number of conglomerate mergers has increased sharply in recent years, there is only a moderate tendency toward increase in the overall concentration of manufacturing assets in American industry. Nor does the present merger movement threaten to reduce the aggregate number and proportion of smaller firms. Remedial measures based on size alone would constitute a radical innovation in our antitrust policy and no rationale is available for determining the appropriate upper limit on the size to which a single firm may grow.

We therefore believe that restrictions on mergers should continue to be based on considerations related to competitive market structure. The policy we recommend would permit the continued growth of firms by diversification as well as by internal expansion but would, we believe, promote the development of more competitive market structures.

A draft of the Merger Act, implementing our recommendation, appears in Appendix B to the Report.

3. We recommend a thorough revision of the Robinson-Patman Act to remove features that unduly restrict the free play of competitive forces.

It has long been recognized that many aspects of the Robinson-Patman Act in its present form have serious anticompetitive effects. The course of enforcement and interpretation of the Act have in many instances aggravated those effects. In addition, the ambiguities and complexities of the statute as written have posed unusual difficulties of compliance. Experience with the Act and the extensive criticism to which it has been subjected provide the basis for a general revision that will make it consistent with the major aims of antitrust policy. In our view such a revision is long overdue.

The central purpose of the Robinson-Patman Act is to eliminate price discrimination that unduly favors national over local sellers or confers unjustified advantages on large purchasers merely because of their size. But not all price differentials represent discrimination and not all discrimination is undesirable. Some price discrimination does have anticompetitive effects. But in other cases price discrimination improves the functioning of the competitive system. A statute designed to restrict price discrimination should therefore be narrowly drawn, so that the important benefits of competition as evidenced in price differentials will not be lost in an excessive effort to curb limited instances of harm. Our proposed revision is intended to leave room for price behavior which is related to the improved functioning of the competitive system.

The Robinson-Patman Act contains several prohibitions supplementing the price-discrimination prohibition. These prohibitions should be repealed. They accomplish little that could not be accomplished by a properly drawn price-discrimination prohibition. In their present form, they often impair competition; they discourage legitimate transactions; and they promote irrational distinctions.

A proposed revision of the price-discrimination provisions of the Robinson-Patman Act appears in Appendix C to the Report.

4. We recommend legislation to establish the principle that a patent which has been licensed to one person shall be made available to all other qualified applicants on equivalent terms.

Patents are one of the principal sources of monopoly power, since they confer upon the patentee the right to exclude others from the field covered by the patent. An important goal of antitrust policy is to prevent the use of a patent by the patentee in collaboration with others to create a monopoly broader than the patent itself. That goal will be served by denying the patentee the right to confine use of the patent to a preferred group and requiring that if the patent is licensed it shall be open to competition in its application. Such a principle does not prevent the owner of a valid patent from fully exploiting the monopoly conferred by the patent. Our proposal does not fix or limit the royalty to be charged by the patentee, nor does it involve compulsory licensing. It merely requires that if the patentee chooses to license others rather than exploiting the patent himself he shall make such licenses available on nondiscriminatory terms to as many competitors as may desire it.

Supplementary provisions in our proposal would require the public filing of all patent license agreements and would bar enforcement of a patent against particular infringers if the patent owner has not taken reasonable steps to enforce the patent against others.

We believe that each of these measures has some independent value in deterring misuse of patents and that they could be adopted independently of the requirement of nonexclusive licensing.

5. <u>We recommend that steps be taken to improve the quality and availability of economic and financial data relevant to the formulation of antitrust policy, the enforcement of the antitrust laws, and the operation of competitive markets</u>.

Specifically, we recommend formation of a standing committee of representatives of the Census Bureau and other Government agencies which gather or use economic information to consider (1) improving the gathering and presentation of economic information within the statutory limits on disclosure of information on individual firms; (2) new interpretations of existing law or, eventually, new legislation to minimize restrictions on disclosure of types of information which are not highly sensitive from the point of view of individual firms but are of great value in the formulation of policy and the application of law; and (3) machinery for developing information on the competitive structure of relevant economic markets, because such markets do not necessarily coincide with Census industry and product classifications. These recommendations could be implemented immediately, without new legislation or appropriations.

In addition, the role of financial information in the operation of competitive markets should be reflected in the formulation of financial reporting requirements by the Securities and Exchange Commission. These requirements are now imposed pursuant to the Securities Exchange Act of 1934, which is oriented to investor protection. We recommend that the Act be amended to recognize the role of financial information in the operation of a competitive economy, and to require that the SEC consult with antitrust enforcement agencies in formulating reporting requirements.

Pending adoption of this recommendation, the antitrust enforcement agencies should be requested to consider submitting recommendations to the SEC in connection with the current divisional reporting inquiry.

6. <u>We have a number of additional recommendations for further action or further study</u>.

These include advance notification of mergers and a reasonable statute of limitations on lawsuits attacking mergers; a limit on the duration of antitrust decrees; an examination of the effects of the income tax laws on merger activity and market concentration; a review of the extent to which competition may be substituted for regulation in the regulated industries; and the abolition of resale price maintenance.

1. <u>Introduction</u>

The antitrust laws reflect our Nation's strong commitment to economic freedom and the material benefits that flow from this freedom. The antitrust laws are based on the recognition that optimum use of economic resources and maximum choice and utility for consumers can best be obtained under competition. Moreover, they assume that the preservation of a large number and variety of decision-making units in the economy is important to ensure innovation, experimentation and continuous adaptation to new conditions. While consumer welfare is thus in the forefront of antitrust policy, important corollary values support the policy. Not only consumers, but those who control the factors of production -- labor, capital and entrepreneurial ability -- benefit when resources are permitted to move into the fields of greatest economic return; competition induces such movement and monopoly inhibits it. Antitrust policy also reflects a preference for private decision-making; a major value of competition is that it minimizes the necessity for direct Government intervention in the operation of business, whether by comprehensive regulation of the public utility type or by informal and sporadic interference such as price guidelines and other ad hoc measures.

The function of the antitrust laws in the pursuit of these goals is twofold: they are concerned both with preventing anticompetitive behavior and with preserving and promoting competitive market structures. Our Task Force has understood its assignment to be to examine the antitrust laws in broad perspective and consider ways in which they might be made more effective in this dual role.

In relation to the principal kinds of anticompetitive behavior, such as price-fixing, market division and other forms of collusive action among independent firms, we believe the present laws are generally adequate. Their effectiveness depends principally upon vigilance to provide sufficient enforcement resources and the vigorous use of enforcement power. We have identified three areas, however, in which modification of present laws would assist the effort to maximize competitive behavior. <u>First</u>, it is important to ensure that laws aimed at preserving competition do not themselves unduly restrict the free play of market forces. The Robinson-Patman Act in its present form has such effects and we recommend its revision to eliminate its anticompetitive tendencies. <u>Second</u>, patents are susceptible of being used to facilitate collusive arrangements in ways difficult to disentangle from legitimate exploitation of the patent monopoly. We recommend certain restrictions on patent licensing that are designed to discourage such use. <u>Third</u>, we share the view that the provisions of law permitting resale price maintenance encourage anticompetitive practices and we favor the repeal of these provisions.

Our consideration of the present state of the antitrust laws focuses to a considerable extent on problems of market structure. The principal laws presently concerned with competitive market structure are section 7 of the Clayton Act, dealing with mergers, and section 2 of the Sherman Act, which is addressed to cases of monopoly. We believe these laws can be made more effective by certain additional legislation on mergers and on oligopoly industries.

Market structure is an important concern of antitrust laws for two reasons. <u>First</u>, the more competitive a market structure (the larger the number of competitors and the smaller their market shares) the greater the difficulty of maintaining collusive behavior and the more easily such behavior can be detected. <u>Second</u>, in markets with a very few firms effects equivalent to those of collusion may occur even in the absence of collusion. In a market with numerous firms, each having a small share, no single firm by its action alone can exert a significant influence over price and thus output will be carried to the point where each seller's marginal cost equals the market price. This level of output is optimal from the point of view of the economy as a whole.

Under conditions of monopoly -- with only a single seller in a market -- the monopolist can increase his profits by restricting output and thus raising his price; accordingly, prices will tend to be above, and output correspondingly below, the optimum point. In an oligopoly market -- one in which there is a smaller number of dominant sellers, each with a large market share -- each must consider the effect of his output on the total market and the probable reactions of other sellers to his decisions; the results of their combined decisions may approximate the profit-maximizing decisions of a monopolist. Not only does the small number of sellers facilitate agreement, but agreement in the ordinary sense may be unnecessary. Thus, phrases such as "price leadership" or "administered pricing" often do no more than describe behavior which is the inevitable result of structure. Under such conditions, it does not suffice for antitrust law to attempt to reach anticompetitive behavior; it cannot order the several firms to ignore each other's existence. The alternatives, other than accepting the undesirable economic consequences, are either regulation of price (and other decisions) or improving the competitive structure of the market.

We believe that the goals of antitrust policy require a choice wherever possible in favor of attempting to perfect the self-regulating mechanism of the market before turning to public control. It is for this reason that we favor steps that will increase the effectiveness of the antitrust laws in promoting competitive market structure. Such steps are desirable, not only because the problem of concentrated industries is significant in economic terms, but because the existence of such concentration is a continuing (and perhaps increasing) temptation for political intervention. In a special sense, therefore, our recommendations have preventive as well as corrective purposes.

In devising antitrust measures for such purposes, alternative techniques or approaches may be considered. Under one approach, general standards expressed in terms of broad policy goals require the trier of fact to make ad hoc judgments as to the relevant scope of inquiry in any case. The general effect of such an approach is to require consideration of a wide range of complex and difficult issues, some of them of marginal significance. Such issues may include economic issues which are beyond our present capacity to gather and evaluate economic information; they may include issues such as motive and intent, which are both elusive and of marginal relevance to the central issue of market structure; and they may include an indirect measurement of competitive behavior or structure through an evaluation of performance, an approach requiring judgments more appropriate to regulation than to antitrust policy. Such an approach generally expands the scope and complexity of lawsuits and makes decisions less useful as precedents.

The other approach uses rules which are based on easily ascertainable criteria and avoids individualized consideration of complex factors which would be unlikely to affect the outcome. This approach simplifies litigation. More importantly, it provides businessmen and law enforcement officials with a better idea of what will be lawful and what will be unlawful.

The judgment of members of the Task Force is that it is virtually impossible to gather all the data relevant to any particular case, and even the best of judges could not properly take account of all such data. Therefore, we believe that carefully drawn rules yield results superior to highly general admonitions to weigh all relevant factors. Accordingly, our proposals generally rely on fairly closely articulated rules. They are drafted to reflect general economic experience and theory, and they make allowance for factors which may be significant in individual cases. But they do not call for proof of an exactness beyond the present limits of economic knowledge. Of necessity, they are predicated, not on rigorously proven theorems, but on a consensus of informed economic judgment which admittedly fragmentary economic knowledge tends to confirm.

II. Oligopoly, or Concentration in Particular Markets

The evils of monopoly are well known and the antitrust policy of the United States has sought from its beginning to provide safeguards against them. But those evils are not confined to situations conforming to the literal meaning of monopoly, i.e., an industry with but a single firm. In the years since the Sherman Act was adopted there has been growing recognition that monopoly is a matter of degree. A firm with less than 100% of the output of an industry may nevertheless have significant control over supply, and thus be in a position to impose on the economy the losses associated with monopoly: lower output, higher prices, artificial restraints on the movement of resources in the economy, and reduced pressure toward cost reduction and innovation. Likewise, a small number of firms dominating an industry may take a similar toll, either because the small number makes it easier to arrive at and police an agreement or because, without agreement, each will adopt patterns of behavior recognizing the common interest.

In general it may be said that the smaller the number of firms in an industry -- at least where that number is very small or where a very small number is responsible for the overwhelming share of the industry's output -- the greater the likelihood that the behavior of the industry will depart from the competitive norm.

These propositions have found general acceptance in economic literature in the past 25 or 30 years. They have also found recognition in the policy of the antitrust laws: a major aim of section 7 of the Clayton Act, as amended in 1950 and as interpreted by judicial decisions and the new Merger Guidelines, is not merely to prevent monopolies but also to prevent all combinations of business firms that significantly increase market concentration or reduce the number of firms in an industry.

Interpretation of the Sherman Act itself, however, has lagged behind these developments. Early cases involving giant firms emphasized the purposes and methods by which a firm was created as the basis of illegality, and looked for evidence of predatory or abusive exercise of power rather than the power of a firm or group of firms to control prices and output. Decisions affecting market concentration were confined to instances, such as the old Standard Oil and American Tobacco cases, where a single firm commanding nearly the entire market had been assembled by mergers of many previous competitors. Even such major combinations as United States Steel Corporation, United Shoe Machinery Company, and the International Harvester Company escaped condemnation by the Supreme Court. An important advance was registered when Judge Learned Hand announced in the Alcoa case that a single firm, not resulting from merger, might be guilty of "monopolizing" merely by acquiring a sufficiently large market share and retaining its market share over a substantial period of time, if that market share was not the inevitable result of economic forces. That holding adopted and extended Judge Hand's early insight, in the Corn Products case of 1916, that "it is the mere possession of an economic power, acquired by some form of combination, and capable, by its own variation in production, of changing and controlling price, that is illegal." The United Shoe Machinery decision of 1953 applied and reinforced the new doctrine represented by the Alcoa case. In both of those cases, however, the monopoly section of the Sherman Act was invoked against a single firm with a predominant share of the market. While Judge Hand had intimated that a share as low as 65% might suffice, no subsequent case has tested that proposition or explored the limits of the Alcoa doctrine. Nor has any case yet provided a basis for treating as illegal the shared monopoly power of several firms that together possess a predominant share of the market, absent proof of conspiracy among them.

Thus a gap in the law remains. */ While section 7 of the Clayton Act provides strong protection against the growth of new concentrations of market power in most instances, existing law is inadequate to cope with old ones.

This gap is of major significance. Highly concentrated industries account for a large share of manufacturing activity in the United States. The table which appears on page II-6 shows the percentage of manufacturing shipments and of value added by manufacturing accounted for by four-digit industry groups and five-digit product classes in which the aggregate market share of the four firms with the largest market shares (the "four-firm concentration ratio") equalled or exceeded selected levels. These figures are based on 1963 Census figures, and on Census industry and product classifications. Census classifications do not necessarily reflect relevant markets; in general, the four-digit classifications are probably broader and the five-digit classifications are probably narrower than relevant products markets, so that, if only national markets are considered, figures for concentration with which we are concerned probably fall somewhere in between the two sets of figures shown in the table. If regional instead of national markets were considered, concentration figures would probably be considerably higher in many industries.

The highly concentrated industries reflected in this table include such major and basic industries as motor vehicles, flat glass, synthetic fibres, aircraft, organic chemicals, soap and detergents, and many others, as well as a host of smaller but nevertheless significant industries.

Percent of Manufacturing Shipments and Value Added by Manufacturing in 1963

Four-firm Concentration Ratio Equal to or Greater Than	Four-digit Industries		Five-digit Product Classes
	Percent of Total Manufacturing Shipments	Percent of Total Value Added by Manufacturing	Percent of Total Manufacturing Shipments
90%	1.56	2.33	5.69
80%	2.95	3.59	10.53
70%	9.35	14.53	15.85
60%	13.47	19.98	22.55
50%	23.88	33.41	31.37

Source: Computed from Concentration Ratios in Manufacturing Industry, 1963, Tables 2, 3 and 4.

If competitive pressures could be relied on to erode concentration in the reasonably foreseeable future, the direct reduction of concentration would be less urgent. But concentration does not appear to erode over time; rather, the evidence indicates that it is remarkably stable. In those industries with value of shipments greater than $100 million and four-firm concentration ratios by value of shipments greater than 65% in 1963, average concentration ratios were stable or declined insignificantly--by less than half a percentage point. Even though section 7 of the Clayton Act has generally been effective in forestalling increases in concentration through mergers and by other means, the antitrust laws and economic forces have not brought about significant erosion of existing concentration. The problem is not one which will disappear with time.

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*/ This gap has been recognized by noted authorities. See, e.g., Kaysen & Turner, Antitrust Policy: An Economic and Legal Analysis, at 44 (1959); Stigler, The Case Against Big Business, Fortune (May 1952), reprinted in Mansfield, ed., Monopoly Power and Economic Performance, at 3 (1964); cf. Galbraith, The New Industrial State (1967).

The adverse effects of persistent concentration on output and price find some confirmation in various studies that have been made of return on capital in major industries. These studies have found a close association between high levels of concentration and persistently high rates of return on capital, particularly in those industries in which the largest four firms account for more than 60% of sales. High profit rates in individual firms or even in particular industries are of course consistent with competition. They may reflect innovation, exceptional efficiency, or growth in demand outrunning the expansion of supply. Above-average profits in a particular industry signal the need and provide the incentive for additional resources and expanded output in the industry, which in due time should return profits to a normal level. It is the persistence of high profits over extended time periods and over whole industries rather than in individual firms that suggest artificial restraints on output and the absence of fully effective competition. The correlation of evidence of this kind with the existence of very high levels of concentration appears to be significant.

We recognize the need for further refinement of economic evidence of this type and for additional knowledge, theoretical and empirical, about the behavior of oligopolistic industries. It would be less than candid to pretend that economic science has provided a complete or wholly satisfactory basis for public policy in this field. But public policy must often be made on the basis of imperfect knowledge, and the failure to adopt remedial measures is in itself the acceptance of a policy. The judgment of most of the members of the Task Force is that enough is known about the probable consequences of high concentration to warrant affirmative government action in the extreme instances of concentration. Moreover, as we have noted, such action does not require acceptance of a new premise for public policy. A conviction that concentration is undesirable underlies the present stringent policy toward horizontal mergers. The same premise supports a policy of attempting, within conservative limits, to improve the competitive structure of industries in which concentration is already high and apparently entrenched.

Endorsement of such a policy implies a judgment that the potential gains from reducing market shares and increasing the number of competitors in an industry will not be offset by losses in efficiency. We think there is little basis for believing that significant efficiencies of production are dependent on generally maintaining existing high levels of concentration.

There is little evidence that economies of scale require firms the size of the dominant firms in most industries that are highly concentrated. Evidence to the contrary is the fact that in most such industries very much smaller firms have survived in competition with the large firms. On the basis of studies covering a large number of industries Professor Stigler concluded that "In the manufacturing sector there are few industries in which the minimum efficient size of firm is as much as 5 percent of the industry's output and concentration must be explained on other grounds." Stigler, The Theory of Price, p. 223 (3rd edition, 1966). Similarly, there is no evidence of any correlation between size or market concentration and research and development activities.

The success of very large firms may, of course, be explained on the basis of efficiencies other than economies of scale, such as superior management talent or other unique resources. To the extent that such efficiencies exist, however, they may ordinarily be transferred and thus would not necessarily be lost by reorganization of the industry into a larger number of smaller units. The same is true of advantages that inhere in legal monopolies, such as an accumulation of patents.

It must also be borne in mind that efficiencies belonging to or achieved by a firm with some degree of monopoly power may be reflected only in higher profits rather than lower prices. Reduction of concentration would increase the chance that such efficiences would be passed on to consumers through competition; indeed, a net gain from the consumer standpoint might result even though some efficiencies were lost in the process of reducing concentration.

The statute we propose would, however, take account of possible adverse effects on efficiency resulting from divestiture by forbidding relief that a firm establishes would result in substantial loss of economies of scale. It would be expected that a court would consider, among other factors relevant on this issue, the minimum size that experience has indicated is necessary for survival in the industry.

For the foregoing reasons we conclude that remedies to reduce concentration should be made available as part of a comprehensive antitrust policy. To assist in translating that conclusion into workable legislation we have drafted in some detail a proposed statute embodying our views. */ That statute, entitled the Concentrated Industries Act, is attached to this report as Appendix A. While we believe, as hereafter noted, that some relief against concentration might be obtained through new interpretations of the Sherman Act, we also think that a statute such as the one we propose has several distinct advantages over reliance on existing law: (1) it would provide a clear determination of legislative policy and establish clear criteria for the application of that policy; (2) it would establish appropriate special procedures; and (3) it would limit the policy to remedial ends.

The Act establishes clear criteria for its application. It applies only to those industries in which four or fewer firms have accounted for 70% or more of industry sales, and it provides for steps to reduce the market shares of firms with 15% market shares in such industries. The Act contains other provisions to limit its application to industries which are of importance in the economy as a whole and in which concentration has been high and stable over considerable periods of time. The criteria laid down in the Act are designed to minimize the likelihood that output levels over a short period of time will affect the applicability of the Act. Moreover, even if the Act does apply, there are no penalties but only prospective relief. Thus, the possibility is minimized that corporations will resort to output-restricting strategies in order to avoid application of the Act.

The Act also lays the basis for defining relevant markets in terms that are more closely related to economic realities than are the definitions developed under existing antitrust laws. By and large, the Act limits the scope of inquiry to facts which are of relevance to its primary concern, the reduction of concentration, and which may be determined with reasonable precision. For these reasons, litigation under the Act should be relatively simple.

The Act establishes special procedures appropriate to the reduction of concentration. Under existing law, complex antitrust actions may be conducted by judges who have had little opportunity to become familiar with the kinds of questions involved, and who must rely on expert testimony offered by the parties. Expanding on the recently enacted provisions of 28 U.S.C. section 1407, the Act would establish a special panel of district judges and circuit judges to conduct deconcentration proceedings. In addition, it would enable the court to draw on the specialized knowledge and experience of its own economic experts. This feature of the Act should be of importance in arriving at appropriate market definitions. In addition, court appointed experts would assist in evaluating the probable effect of proposed decrees.

Finally, the Act is limited to prospective relief designed to reduce concentration. Unlike existing law, it makes no provision for criminal penalties or for private actions seeking treble damages. The absence of these collateral effects makes the Act a more appropriate tool for reducing concentration.

Those who support the proposed Concentrated Industries Act believe, in varying degrees, that more can be done about concentration than has been done under existing law. We recommend that the Attorney General be encouraged to develop appropriate approaches under existing law and to bring carefully selected cases to test those theories.

Under existing law, three statutory provisions might be brought to bear. Section 2 of the Sherman Act prohibits monopolization or attempts to monopolize any part of interstate or foreign commerce. Section 1 of the Sherman Act prohibits any contract, combination, or conspiracy in restraint of interstate or foreign commerce. Section 7 of the Clayton Act prohibits acquisitions which may tend substantially to lessen competition. While existing precedents and the history of antitrust enforcement do not justify widespread use of these statutes against concentrated industries, we believe that appropriate precedents might be developed which would be useful in some cases.

Courts may be reluctant to expand the scope of these statutes, because their application would expose defendants to criminal penalties and treble damage liability. Moreover, existing law does not readily lend itself to the establishment of sufficiently clear and workable criteria. While expanded enforcement efforts might make some inroads in reducing concentration, they would not preclude the need for new legislation.

III. Conglomerates, or Large Diversified Firms

The initial mandate establishing the Task Force reflected concern with the current rate of merger activity, particularly diversification or "conglomerate" mergers. Current data confirm that the number and scale of mergers, and particularly of conglomerate mergers, have been accelerating rapidly and continue to accelerate. Individual firms have achieved spectacular growth in this way. There is no comparable trend toward reduction in corporate size through spinoffs of assets. The current rate and pattern of mergers is causing significant and apparently permanent changes in the structure of the economy, and the long-run impact of these changes cannot be readily foreseen.

A variety of legal and economic factors have contributed to the conglomerate merger movement. Relatively clear legal prohibitions on horizontal and vertical mergers, set forth in section 7 of the Clayton Act and recently articulated in the Antitrust Division's Merger Guidelines, have channeled merger activity away from these more traditional forms while leaving conglomerate mergers relatively free from antitrust restraints. Although the Merger Guidelines identify some types of conglomerate mergers as likely candidates for antitrust attack and some conglomerate mergers have been successfully attacked on antitrust grounds, the antitrust laws leave relatively wide latitude for conglomerate mergers. This latitude reflects the fact that existing knowledge provides little basis for forecasting adverse effects on competition that support application of the merger prohibition of section 7.

The economic forces encouraging conglomerate mergers are numerous and complex, and are not easy to identify in particular cases.

*/ The idea of such legislation is not new, and our proposal was influenced by Kaysen & Turner, Antitrust Policy. An Economic and Legal Analysis, at 266-272 (1959). However, it differs from the Kaysen-Turner proposal in important respects.

These appear to include desire of owners of smaller firms to convert their holdings into more readily marketable securities; the desire of management of large firms for growth for its own sake, apart from or in addition to growth in profits; the opportunity to bring more efficient management personnel or techniques to smaller or less successful firms; the possibility of reducing costs or increasing sales by meshing product lines or processes or methods of distribution; the desire to diversify business activities and reduce risks; the possibility of using one firm's cash flows or credit in another firm with limited access to capital; the tax advantages of direct reinvestment of earnings by corporporations instead of distribution to stockholders for reinvestment through the general capital market; and the opportunity for speculative gains through mergers that immediately increase the per-share earnings of the surviving firm.

Whatever the causes, it is clear that many conglomerate mergers are not explainable in terms of obvious efficiencies in integrating the production or marketing facilities of the firms involved. The merger movement has contributed to and is furthered by a specialized "merger market" in business firms as such; merger candidates and independent experts actively seek out favorable opportunities to acquire or dispose of businesses through conglomerate mergers. The existence of such a market is not a sinister symptom; it merely emphasizes the volume and complexity of merger activity and its underlying causes. Indeed, an active merger market suggests a healthy fluidity in the movement of resources and management in the economy toward their more effective utilization. The existence of such a market may serve as a significant incentive for the establishment of smaller firms. It may partially overcome imperfections in the capital market which are not readily susceptible to other effective remedies. In many cases, merger activity may replace proxy fights as an effective means for changes in corporate control.

There are two types of possible antitrust objections to the current increase in merger activity: (1) mergers may have adverse effects on competitive structure and behavior in particular markets; (2) the volume and scope of merger activity may result in concentration of overall economic activity in a few large organizations and may substantially reduce the number of significant decision-making units within the economy.

As to the second point, the possibility that economic activity might become unduly concentrated in a few large firms would raise difficult and far-reaching questions of social policy. Fortunately, such a development is not now imminent. In spite of the high and increasing rate of merger activity, concentration of aggregate economic activity (which should not be confused with concentration in particular markets, referred to in part II of this Report) has changed only slowly over time. Preliminary FTC data show that the share of total corporate manufacturing assets held by the 100 largest manufacturing firms has grown from 45.8% in 1957 to 47.7% in 1967; the share of the 200 largest has increased from 55.0% to 58.7% in the same period. Mergers have contributed somewhat to this trend; indeed, if no mergers had occurred, the shares of the largest firms would have declined somewhat during parts of the period. Nevertheless, it is clear that mergers are not solely responsible for the continued growth of the largest units in the economy, and have accounted for only a minor portion of such growth. Indeed, among the largest firms, the net effect of mergers has been to expand the size of smaller large firms relative to the top few. Further, the merger movement does not seem likely to cause the disappearance of smaller firms. The numbers of manufacturing firms with assets of $5 million to $10 million, $10 million to $25 million, and $25 million to $50 million have remained steady or increased somewhat during the period of greatest merger activity. Indeed, the numbers of nonmanufacturing firms have increased significantly.

In any event, the level of economy-wide concentration and numbers of firms that would be incompatible with the maintenance of a competitive market system is not known. Even very large firms may continue to grow as a result of desirable response to changing economic circumstances, and mergers -- including conglomerate mergers -- may result in important economic benefits. We are therefore not persuaded of the need to establish specific limits to the growth of large firms, either by merger or otherwise. Thus, we do not endorse the suggestion put forward at one time by Donald F. Turner, former Assistant Attorney General in charge of the Antitrust Division, that further expansion of larger firms by merger be prohibited.

Conglomerate mergers may affect competition in particular markets. Three possible types of anticompetitive effects of conglomerate mergers have been identified and are reflected in the new Merger Guidelines: (1) elimination of "potential competition" by a firm which, but for its acquisition of another firm, might have entered the latter firm's market in a way that would have increased competition in that market; (2) the creation of opportunities for "reciprocal dealing" relationships between the merged firm and other firms that may foreclose competitors of the conglomerate firm; and (3) the addition of large resources to a firm already dominant in a market, possibly insulating its position from erosion through competition.

The detection of these effects rests, in general, on factual and theoretical judgments that are more speculative than the findings usually relied upon in section 7 cases; but to the extent that specific effects can be clearly identified in individual merger cases, present law and enforcement policies appear adequate. There are, however, two dangers in basing conglomerate merger policy entirely on the case-by-case substantiation of specific anticompetitive effects:

1. These or similar objections to conglomerate mergers may be pressed beyond the point where they are well founded, perhaps because of quite different objections, such as fear of the growth of individual large firms or of concentration of assets in very large firms, which are not explicitly recognized in the merger prohibition. The existence of these different objections may also lead to other distortions; for example, market definitions may be distorted to treat a conglomerate merger as horizontal and therefore subject to a more easily established prohibition. Such distortions would result in uncertainties in enforcement and unfairness to those affected.

2. Potentially anticompetitive mergers may be allowed to proceed because economic theory and analytical foresight are inadequate to predict anticompetitive effects in specific cases, even though there may be good reason for believing that some classes of mergers, considered in the aggregate, are harmful to competition.

Because of these difficulties, and because the incentives that have produced the current conglomerate merger movement can and should be directed to increase competition, we propose a statutory prohibition to supplement the merger prohibition of section 7 of the Clayton Act. Such a prohibition should be clear and not rely on conjectural judgments of likely competitive effect in particular cases; it should prohibit or discourage mergers most likely to have anticompetitive consequences, and in doing so lessen reliance on extended and contrived interpretations of section 7; and it should seek to direct the force of conglomerate merger activity into channels that will improve competitive structure to the maximum extent possible.

We propose that this be accomplished by forbidding mergers between very large firms and other firms that are already leading firms in concentrated markets significant in the national economy. A draft of a proposed statute embodying this recommendation, together with explanatory notes, is attached to this Report as Appendix B.

Such a rule satisfies our criteria for a supplementary prohibition. Unlike the Merger Guidelines applicable to conglomerate mergers, which rely on the difficult and conjectural questions referred to above, the proposed rule would provide clear criteria based solely on data as to market shares and sales or assets. It would apply to a large number of conglomerate mergers which might be attacked under existing law or under the law which might be developed in suits brought in accordance with the Guidelines. */ The existence of this simpler prohibition will lessen the pressure on enforcement agencies and courts to engage in the distorted extensions to which section 7 lends itself. At the same time, the simpler prohibition will make enforcement simpler, and will present some mergers which would have gone unchallenged under section 7 even though careful analysis or subsequent developments might have indicated a violation of section 7.

In addition to these negative aspects of discouraging anticompetitive mergers, the proposed rule would have affirmative aspects in that it would channel merger activity into directions likely to improve competition. The proposed rule rests on the assumption that if large firms are prevented from acquiring leading firms in concentrated industries, they will seek other outlets for expansion. If the rule is adopted, a large firm wishing to expand into a particular concentrated industry may acquire a small firm with a view to enlarging its capacity and market share, or it may construct wholly new facilities in the industry. Either of these alternative courses of action is more likely to increase competition and to decrease concentration in a concentrated industry than if the large firm simply acquired a leading firm in the industry and settled for maintaining or modestly increasing the market share of that firm.

As large firms become more diversified and more interested in further diversification, they become "potential entrants" into more and more industries. Although the probability that any one firm will enter any particular industry is extremely small, the probability that a substantial number of large diversified firms will enter a substantial number of concentrated industries is undoubtedly higher. The Guidelines and present enforcement based on the potential competition doctrine focus on the first probablility alone, and must, therefore, be ineffectual or dependent on fictitious premises contrary to fact in many instances. If the potential competition doctrine under section 7 is expanded to the extent indicated by the Guidelines and current enforcement policy, such firms may well be disqualified from expanding by merger into many markets, including some in which they might make contributions of general benefit to the economy. These contributions might take the form of new technology and competitive innovation, reduced costs, or simply the introduction of new and forceful competitive pressures. Our proposal focuses on the second probability, that a substantial number of large diversified firms will enter a substantial number of concentrated industries, and is intended to channel the potential competition of large firms along lines that are conducive to reducing levels of concentration in the American economy.

Thus, the rule has both negative and affirmative aspects that tend to strengthen competition. Members of the Task Force who support this proposal assess somewhat differently the relative values of the negative and affirmative effects of the rule, depending on their differing judgments about the likelihood that mere size and superior financial resources will confer unwarranted advantages on an acquired firm. They are agreed, however, as to the net beneficial effect of such a rule. Since the rule would leave even a very large firm free to enter a new market by acquiring a going concern in the new market, it would preserve wide opportunity for diversification and for exploitation of efficiencies that may be inherent in conglomerate mergers.

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*/ In the interests of certainty, the proposed rule would apply whether or not a merger could be characterized as purely conglomerate. We have not given detailed consideration to vertical or horizontal mergers or to the Guidelines as applied to such mergers. However, our proposed rule appears unlikely to add significantly to existing prohibitions on horizontal mergers or vertical mergers, except in the case of a vertical merger involving a leading firm in an industry which is concentrated but which has not been extensively vertically integrated. We conclude that the benefits of certainty override any conjectural losses in efficiency.

IV. The Robinson-Patman Act

The Robinson-Patman Act has been the subject of extensive and well-earned criticism. Enacted in 1936 to tighten and supplement the price-discrimination prohibition in section 2 of the Clayton Act, the Robinson-Patman Act was intended to curb price discrimination that unduly favors national over local sellers and to protect independent merchants from unfair competition from large buyers obtaining the benefits of price discrimination.

Over the years, the Robinson-Patman Act has come to have unintended anticompetitive effects. The price-discrimination prohibition has discouraged types of price differentials which might have improved competition by lessening the rigidity of oligopoly pricing or by encouraging new entry:

1. In highly concentrated markets, prices may be rigid and a seller may hesitate to announce price reductions which would be met immediately by competitors, thus minimizing the seller's increase in sales. But he may be prepared to make concessions to make sales to particular buyers. Where such price reductions are sporadic and not part of a systematic pattern favoring large purchasers, they may be the first step toward more general price reductions.

2. A new or potential entrant to a market may find it necessary to reduce prices below those of his competitors in particular cases in order to overcome the inertia of established trade relationships. But the prospective seller may be reluctant to do so if he must make corresponding reductions to all other purchasers, and he may decide not to enter.

The Robinson-Patman Act has impaired competition and the development of new methods of distribution in numerous other respects: By discouraging sellers from passing on cost savings to buyers, it has impaired experimentation with possibly more efficient methods of distribution integrating wholesale and retail functions; by requiring proportionally equal treatment in certain promotional practices, it has discouraged experimentation with price-cutting methods which are equivalent to desirable types of price differentials; by prohibiting sellers from paying brokerage to customers or their agents, it has erected an artificial protective barrier around independent brokers and inhibited integration of brokerage functions.

We conclude that the Robinson-Patman Act requires a major overhaul to make it consistent with the purposes of the antitrust laws. A suggested revision of the price discrimination provisions is set forth, together with explanatory comments, in Appendix C to this Report. We recommend that the other provisions of the Robinson-Patman Act be repealed.

In its present form, the Robinson-Patman Act contains three major prohibitions. Sections 2(a), (b) and (f) impose broad prohibitions on price discrimination in the sale of commodities. Sections 2(c), (d) and (e) establish prohibitions dealing with the payment of brokerage, payment to customers for services rendered by them, and the furnishing of services to customers. Section 3 imposes criminal prohibitions which partly overlap the civil prohibitions of section 2.

Many of the reasons for price discrimination are related to the improved functioning of the competitive system. Price discrimination has an adverse effect on competition only in exceptional cases. Therefore, a statute restricting price discrimination should be narrowly drawn, to avoid losing the important benefits of price discrimination in an excessive effort to curb limited harm.

Our proposed revision of the Act would make numerous changes in substance and in detail, and would eliminate many features of the present Act which forfeit the benefits of price discrimination in a competitive system. Two major changes are as follows:

1. Section 2(a) of the present law makes unlawful a discrimination which may "injure, destroy, or prevent competition with any person . . .," as well as a discrimination the effect of which "may be substantially to lessen competition or tend to create a monopoly . . . ." The reference to injury to competition with specific persons has focused the attention of courts and enforcement authorities on the plight of individual competitors, and enforcement designed to preserve competitors is generally at odds with the working of a competitive system. The proper focus is the effect on competition in the market as a whole. Our proposed revision specifies in some detail the kinds of competitive effects which make a discrimination unlawful; in doing so, it narrows and clarifies the law and avoids misconceived protection of competitors as distinguished from competition. Among other changes, the proposed language requires in general that a discrimination be substantial in amount and persistent in duration. The language of the proposed Act is carefully tailored to avoid prohibiting those differentials which are manifestations of more effective competition.

2. Under present law, a price differential is not unlawful if it makes only due allowance for cost differences. Enforcement authorities and courts have required these cost differences to be shown with extreme exactitude. The proposed revision permits price differentials approximating actual cost differences or based on reasonable estimates of cost differences or based on a reasonable system of classification.

The proposed Act contains numerous other changes which are explained in detail in the comments to the Act.

The prohibitions of section 2(c), (d) and (e), unlike the basic price discrimination prohibition, do not depend on any showing of injury to competition and are not subject to the defense of cost-justification. We recommend that these sections be repealed, and that only such practices continue to be unlawful as are unlawful under the revised price discrimination provisions of section 2(a).

Section 2(a) has been interpreted to prohibit any payment of brokerage by a seller to a customer or to any agent of the customer, even though the customer has performed the services of a broker. Thus, the performance of brokerage services by customers has been penalized, even though it may be more efficient than the use of independent brokers. Section 2(c) has also been held to prohibit an independent broker from reducing the commission to be paid to him by the seller in order to enable the seller to offer a lower price to the buyer, thereby directly interfering with price competition at both the seller and the broker level.

Section 2(d) makes it unlawful for a seller to pay a customer for services or facilities furnished by the customer in connection with the processing or sale of any product manufactured or sold by the seller unless the payment is available on proportionally equal terms to all customers competing in the distribution of such product. Section 2(e) makes it unlawful for any seller to discriminate in favor of one customer against another customer by furnishing any services or facilities in connection with the processing or sale of commodity on terms not accorded to all customers on proportionally equal terms. These sections have been interpreted to require that some form of service or allowance be made available to every customer, even in cases where customers can be separated into distinct groups which are only marginally in competition with each other, and even if factors peculiar to a particular market make it difficult to furnish equivalent services to all customers.

The prohibitions in section 2(c), (d) and (e) were designed to prevent conduct which, in its more blatant forms, might be viewed as equivalent to price discrimination. Under our proposal, such conduct could still be challenged as price discrimination, subject to the same defenses as any other price discrimination. Because violations of these subsections are relatively easy to establish, they have attracted a disproportionate amount of enforcement activity and have had substantial anticompetitive effects, suppressing many legitimate transactions.

Section 3 of the Robinson-Patman Act establishes criminal penalties, but no private right of action, for three distinct offenses:

1. Knowingly entering into a sale transaction which discriminates against competitors of the purchaser;

2. Selling or contracting to sell goods in any part of the United States at prices lower than those exacted elsewhere in the United States, for the purpose of destroying competition or eliminating a competitor.

3. Selling or contracting to sell goods at unreasonably low prices for the purposes of destroying competition or eliminating a competitor.

The first prohibition very largely overlaps the basic price discrimination prohibition in sections 2(a) and (f) of the Robinson-Patman Act, but it differs in several important respects. Section 3 applies only to like quantities, has no requirement of competitive injury and is not subject to a cost justification defense. Even if a criminal penalty is justified for violation of the price discrimination prohibition, there is no justification for a criminal prohibition broader than the civil prohibition. We recommend that the criminal prohibition be dropped altogether.

The other two prohibitions of section 3 are designed to reach particular instances of predatory price cutting with adverse effects on competition in the seller's market. We have taken account of the purposes of these prohibitions, to the extent they are justified, and have reflected them in the basic price discrimination prohibition in the body of section 2 of the Robinson-Patman Act. We recommend that they be dropped from section 3, since there is no justification for a criminal prohibition inconsistent with or broader or less specific than the civil prohibition of section 2.*

V. The Patent Laws

We recommend new legislation to curtail certain practices which, under color of the patent laws, undermine the purposes of the antitrust laws. Such legislation would not prevent the owner of a valid patent from fully exploiting the monopoly conferred by his patent, and it would not involve any changes in the structure of the patent law. A draft of such legislation and of comments is attached to this Report as Appendix D.

We recommend that, in general, a patent owner who has granted a license with respect to his patent must license all qualified applicants on equivalent terms. This proposal does not involve compulsory patent licensing. A patentee may decline to issue any licenses at all, or he may issue licenses in some fields of use and reserve to himself the practice of the patent in other fields.

Ordinarily, it is unnecessary for a patent owner to grant an exclusive license to obtain the full reward for his patent.

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* Dennis G. Lyons and George D. Reycraft believe that the latter two prohibitions of section 3 should not be repealed.

A rational patent owner can exact the full monopoly reward of the invention by setting appropriate royalties, and that reward will be greatest if the patented invention is exploited under competitive conditions. The grant of an exclusive license to a single licensee or a small group of licensees generally puts the licensee or licensees in a position to exact a monopoly profit. In effect, the patent owner is sharing his monopoly profit with the licensees. This will generally be to the patent owner's advantage only if the patent is vulnerable or if the arrangement creates a monopoly broader than the patent. */ That is, a patent licensing arrangement with limited membership may be nothing more than a device by which prices are fixed or markets shared.

These effects can be avoided by a requirement that, if a license has been granted, a license on the same terms must be made available to all qualified applicants. Then, a licensee will be unable to obtain more than a reasonable profit for his role in exploiting the patent. Our proposed remedy will not require that courts or administrative agencies determine what are reasonable royalties; royalties would continue to be bargained between patent owners and initial licensees. To the extent this proposal increases the number of licensees during the life of a patent, it may also result in more effective competition in the practice of the patent after expiration.

We also recommend that copies of license agreements be filed with the Commissioner of Patents and be freely available to all, including antitrust enforcement officials. This provision is essential to effective operation of the nondiscriminatory licensing requirement, and it is similar to the requirement of existing law that interference settlements be filed. Even if the nondiscriminatory licensing requirement is not enacted, we recommend enactment of the filing requirement. Such a requirement would materially aid the enforcement of the antitrust laws to the extent they now apply to license agreements or might be interpreted to apply to license agreements in the future. No legitimate interest would be sacrificed by exposing such agreements to the light of day.

Finally, we recommend that a patent be unenforceable if the patent owner has not consistently taken reasonable steps to enforce his patent. This provision is necessary to avoid tacit or covert agreements not to enforce patents; such agreements would undermine the purposes of the nondiscriminatory licensing requirement and the filing requirement The provision also has independent value, since it would recognize the obsolescence of patents which are of little commercial value or questionable validity and are not worth litigation, but which nevertheless serve to discourage entry into the field covered by the patent. **/

VI. Problems of Information

In the course of preparing this Report, we have been struck by the need for improved collection, organization and availability of financial and economic data. Such information plays several roles in antitrust law. First, it is essential in the formulation of antitrust policy. Second, it may be essential in the application of the antitrust laws, in facilitating observance of the law by businessmen and enforcement of the law by the government. Third, it may have an effect on the operation of competitive markets and thus have direct antitrust implications.

The formulation of economic policy requires a variety of financial and economic information. Such information may, for example, cast light on the competitive structure of industries, on the relation between prices and costs, on industry performance, on merger activity and plant construction, and on numerous other facts of obvious relevance in the formulation of economic and antitrust policy. Much of this information is already in the files of the Census Bureau. The Census Bureau operates under a statutory mandate not to disclose information with respect to individual firms, even if such information is not particularly sensitive or has already been made public in another form. The only way an individual researcher can have access to this information is by being sworn in as a Census employee and accepting the Census Bureau restrictions on disclosure of information; even government agencies attempting to obtain such information, such as the Federal Trade Commission, are subject to similar restrictions.

Current Census Bureau practice also requires that computer programming be done by Census Bureau personnel and that Census Bureau computers be used. Yet in contrast with its practice on population information, the Census Bureau has not established efficient procedures for furnishing specialized economic information to other government agencies. The result is that researchers and government agencies very often choose to forgo the benefits of Census Bureau information and to gather less detailed information by dissemination of questionnaires or to use public sources.

We recommend establishment of an interagency group consisting of representatives of the Census Bureau, Securities and Exchange Commission, Internal Revenue Service and other agencies which gather information; the Council of Economic Advisers, Federal Trade Commission, Justice Department and other agencies which use information; and the Office of Statistical Standards in the Bureau of the Budget. This group could also include experts from outside the government. The group would consider how, within the framework of existing restrictions on disclosure, information for policy-making and research may be made more readily accessible to policymakers and researchers. In addition, the group would assist the Census Bureau and other information-gathering agencies in setting up procedures and facilities, along the lines of those presently set up for population census information, for responding to requests for economic information.

The group would also consider the extent to which new interpretations of existing legislation and, eventually, new legislation are feasible and desirable to modify the effect of restrictions on disclosure. We recognize that the Census Bureau depends in large part on voluntary compliance with its reporting requirements, and that the assurance of confidentiality is an important ingredient in obtaining that compliance. Therefore, any modification of disclosure restrictions would be limited to those types of information which are highly significant for antitrust policy and either are not highly sensitive or are similar to other information which has been publicly disclosed.

The application of our legislative proposals, as well as existing antitrust law, requires economic information such as market shares and sales in specific markets. Information prepared by the Census Bureau is based on industry and product classifications which do not necessarily coincide with relevant national and regional markets. We recommend that the interagency group recommended above establish procedures for developing and publishing information of antitrust significance, such as studies of important markets, including those in which deconcentration proceedings might be appropriate and those in which merger activity has been high.

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*/ In some few cases, the grant of an exclusive license may be a necessary inducement to the licensee to undertake the commercial risk of exploiting an innovation to an extent beyond the patent owner's financial capabilities. This possibility is reflected in the statute. See page D-13. Many members doubt that such cases will arise.

**/ We have not given detailed consideration to the desirability of permitting license restrictions on pricing, field of use or territories. Members of the Task Force have expressed varying views on different types of restrictions.

In many cases such information could be made available without disclosing information on industrial firms. The group also could coordinate and evaluate requests for information to the Census Bureau and other information-gathering agencies.

We recommend that the provisions of the Securities Exchange Act of 1934 authorizing the SEC to specify the details of financial reports "for the protection of investors and to ensure fair dealing" in the securities markets be expanded to recognize the impact of profit and loss information on the operation of competitive markets, and to require that the SEC issue regulations implementing these provisions after consulting with the Justice Department and the Federal Trade Commission. Pending adoption of this recommendation, the Justice Department and the Federal Trade Commission should be requested to consider submitting recommendations to the SEC, within the existing statutory framework, for regulations providing for disclosure of profit and loss information desirable from an antitrust viewpoint. Such recommendations should be submitted as soon as possible, since the SEC is currently considering divisional reporting requirements.

Information as the profitability of operations in particular economic markets should be widely available to facilitate the operation of a competitive economy. Above-normal profits in an industry should attract investment by new entrants or additional investment by existing suppliers. Thus, in the long run, output will be brought up to the level optimum from the point of view of the economy as a whole. In addition, new entry into a market in response to profit opportunities may reduce concentration in that market. The availability to stockholders of information as to the profitability of particular operations of transactions might encourage closer scrutiny of the advisability of such operations and transactions. The availability of profit information may lessen any temptation for large or diversified firms to use their superior financial resources and staying power to drive smaller rivals out of business.

VII. Additional Recommendations

1. Premerger Notification and Related Matters.

The Department of Justice and the Federal Trade Commission must presently rely primarily upon public sources of information in the enforcement of statutory prohibitions on mergers. We endorse proposals for mandatory premerger notification and have set forth a proposed statute in Appendix E. Under the proposed statute, the Attorney General would be empowered to make regulations, subject to certain restrictions designed to keep reporting from becoming too onerous. At the same time, we recommend a reasonable statute of limitations, such as ten years, on government actions against mergers. We oppose a requirement that actions be brought prior to consummation of mergers, since this might prove too much of a strain on enforcement resources. Such a requirement might also hamper legitimate mergers by encouraging enforcement authorities to bring actions which, upon more complete investigation, might not have been brought.

Our proposal, coupled with the clear standards of our proposed legislation to deal with mergers, would make it possible to resolve many merger actions prior to consummation of mergers. Under those standards, it would be possible to obtain preliminary injunctions in cases where mergers appeared to be unlawful.

2. Duration of Decrees.

Many decrees under the antitrust laws, including consent decrees, are of long or indefinite duration. The effects of these decrees may change with the passage of time. Such decrees may turn out to be ineffective or anticompetitive. We recommend a general provision limiting the duration of antitrust decrees, including consent decrees, to a relatively short period, such as ten years, but permitting the court to extend decrees in original or modified form for additional ten-year periods. Provisions along these lines are built into our proposed legislation to deal with concentrated markets and our proposed revision of the Robinson-Patman Act. A draft of suggested language is set forth in Appendix E to this Report.

3. Income Tax Laws.

Some features of the income tax laws may have effects on market concentration or merger activity. We recommend that the income tax laws be reexamined to see whether these effects exist and whether they can be neutralized without significant harm to the purposes of the income tax laws.

The reorganization provisions of the Internal Revenue Code provide that, in certain kinds of acquisitions, the selling stockholders recognize no gain. The reorganization provisions, alone or in conjunction with other provisions of the tax laws, may provide significant incentives to stockholders to make their companies available for acquisition. On the other hand, there are offsetting disadvantages to the acquiring corporation, and the reorganization provisions may affect primarily the form rather than the number of acquisitions. The justification for and effect of these provisions deserve reconsideration in preparing a tax reform program.

Corporations and their stockholders are generally taxed separately, and stockholders, are not taxed on earnings which are retained rather than distributed as dividends. The effect of this provision may be to channel investment funds through existing corporations rather than independent or new enterprises. Thus, corporations may grow larger than they otherwise would, and some of this expansion may serve to maintain or increase their market shares in industries in which they already have large market shares. In addition, this aspect of the law may encourage acquisitions for cash or acquisitions of corporations which will require the investment of additional capital.

We recommend that the competitive effects of this feature of the tax laws be examined in preparing a tax reform program.

4. Antitrust Laws and Regulated Industries.

In the regulated sector of the economy, the bias of policy and its enforcement is overwhelmingly against competition. This bias manifests itself in more permissive policies toward mergers and exemption of mergers from antitrust standards; in restrictions on entry; and in regulation of minimum rates for the protection of competitors and competing industries, in addition to more traditional regulation of maximum rates for the protection of consumers. We believe that this bias is contrary to the public interest in many cases. We recommend further study of regulated industries to determine the extent to which competition and the competitive standards of the antitrust laws can be substituted for at least some aspects of regulation.

5. Resale Price Maintenance.

The Miller-Tydings Act and the McGuire amendment to section 5(a) of the Federal Trade Commission exempt certain resale price maintenance arrangements from the antitrust laws where States have enacted so-called "fair trade" laws. The case against resale price maintenance has been made so often and persuasively that we think no further elaboration is necessary. We recommend repeal of antitrust exemptions for resale price maintenance.

APPENDIX

Appendix A. Concentrated Industries Act

Section 1. Reduction of Industrial Concentration.

(a) It shall be the duty of the Attorney General and the Federal Trade Commission to investigate the structure of markets which appear to be oligopoly industries.

(b) When, as a result of such investigation, the Attorney General determines that a market appears to be an oligopoly industry and that effective relief is likely to be available under this Act, he shall institute a proceeding in equity for the reduction of concentration, to which all firms which appear to be oligopoly firms in such oligopoly industry shall be made parties.

(c) The court shall enter a judgment determining whether one or more markets are oligopoly industries and, if so, which of the parties are oligopoly firms in such oligopoly industries. Any party to the proceeding may appeal such judgment directly to the Supreme Court.

(d) In order to provide an opportunity for voluntary steps looking toward reduction of concentration, no affirmative relief shall be ordered against such oligopoly firms for a period of one year following entry or affirmance of such judgment.

(e) After such one-year period, further proceedings shall be conducted and a decree entered providing such further relief as may be appropriate, in light of steps taken or initiated during the one-year period, to achieve, within a reasonable period of time not in excess of four years, a reduction of concentration such that the market share of each oligopoly firm in such oligopoly industry does not exceed 12%. Such decree may include provisions requiring a party (i) to modify its contractual relationships and/or methods of distribution; (ii) to grant licenses (which may, in the discretion of the court, provide for payment of royalties) under and/or dispose of any patents, technical information, copyrights and/or trademarks; and (iii) to divest itself of assets, whether or not such assets are used in an oligopoly industry, including tangible assets, cash, stock or securities (including securities in existing firms or firms to be informed), accounts receivable and such other obligations as are appropriate for the conduct of business. The decree may also make such other provisions and require such other actions, not inconsistent with the purposes of this Act and the antitrust laws, as the court shall deem appropriate, including any provisions which would be appropriate in a decree pursuant to the antitrust laws. Such decree shall not require that a firm take any steps which such firm establishes would result in substantial loss of economies of scale.

(f) Any decree entered pursuant to subsection (e) may be appealed directly to the Supreme Court.

(g) Between four and five years after entry or affirmance of a decree pursuant to subsection (e) or a further decree pursuant to this subsection (g), proceedings shall be conducted to determine whether the decree has achieved the reduction of concentration referred to in subsection (e). If the court determines that it has not attained such end, it shall enter a further decree ordering additional steps to be taken. Such decree may be appealed directly to the Supreme Court.

(h) Any decree entered pursuant to this section 1 shall be subject to modification on the motion of any party according to the usual principles governing decrees in equity.

Section 2. Regulated Industries.

No action may be brought pursuant to section 1 of this Act with respect to any market which is subject to regulation under [specify federal regulatory statutes], unless, prior to the commencement of such action, a copy of the proposed complaint in such action shall have been furnished to the agency, commission, board or body vested with regulatory power pursuant to any of the Acts enumerated, and such agency, commission, board or body shall not have disapproved the commencement of such action within 90 days after receipt of such proposed complaint or shall have waived disapproval. No decree in any action pursuant to section 1 of this Act may require divestiture of any assets used in any such regulated market, unless such agency, commission, board or body shall have been served with a copy of the proposed decree and shall not have objected thereto within 90 days after such service or shall have waived objection. No such disapproval or objection or the withholding or walver thereof shall be considered to be either an adjudication or a rule-making proceeding for purposes of the Administrative Procedure Act or any Act of Congress establishing procedural requirements for determinations by any agency, commission, board or body.

(b) No action may be brought pursuant to section 1 of this Act with respect to a market (i) in which maximum prices or rates are subject to direct public utility regulation by any state, municipal, District of Columbia or territorial agency, commission, board or other body, and (ii) which consists of the furnishing of electricity, gas, water or telephone services, without the consent of each such agency, commission, board or body.

Section 3. Procedure.

(a) All proceedings under this Act shall be conducted by the Special Antitrust Court established pursuant to subsection (b) of this section 3. Such proceedings shall be conducted in a judicial district or districts determined by the court or pursuant to rules established by the court.

(b) The Chief Justice shall designate not more than ____ circuit judges and district judges to serve on the Special Antitrust Court for purposes of a specified proceeding or proceedings or for such period or periods of time as may be specified by the Chief Justice. The Chief Justice shall designate one such judge as Chief Judge of the Special Antitrust Court. Proceedings under this Act shall be conducted by panels consisting of one or more judges of the Special Antitrust Court designated by the Chief Judge of the Special Antitrust Court or by a judge or judges designated by the Chief Justice for the purpose. Such proceedings shall be conducted pursuant to the Federal Rules of Civil Procedure in effect at the time, subject to such additional rules (which may supersede or supplement the Federal Rules of Civil Procedure) as shall be adopted by the Special Antitrust Court for the purposes of proceedings under this Act.

(c) In any proceeding under this Act, the Special Antitrust Court may designate one or more economists or other persons to serve as expert witnesses to be called by the court. Such witness or witnesses

(i) shall be furnished with all evidence introduced by any party;

(ii) may offer additional evidence subject to objection by any party;

(iii) shall offer analyses of the issues, with particular reference to relevant markets;

(iv) shall recommend appropriate provisions for decrees;

(v) shall be subject to cross-examination and rebuttal.

Section 4. Definitions.

As used in this Act

(a) The term "oligopoly industry" shall mean a market in which

(i) any four or fewer firms had an aggregate market share of 70% or more during at least seven of the ten and four of the most recent five base years; and

(ii) the average aggregate market share during the five most recent base years of the four firms with the largest average market shares during those base years amounted to at least 80% of the average aggregate market share of those same four firms during the five preceding base years,

but shall not include any market in which the average aggregate sales of all firms during the five most recent base years declined by 20% or more from such average sales during the preceding five base years.

(b) The term "oligopoly firm" shall mean a firm engaged in commerce whose market share in an oligopoly industry during at least two of the three most recent base years exceeded 15%.

(c) The term "firm" shall include corporations and associations existing under or authorized by the laws of the United States, any of the Territories, any State, or any foreign country, and shall include any firm controlling, controlled by, or under common control with a firm.

(d) The term "market" shall mean a relevant economic market, appropriately defined with reference to geographic area (which may be the United States or another geographic area) and product or service, including sales within such market by firms located outside the geographic area, provided that aggregate sales in the market amounted to more than $500 million during each of at least four out of the five most recent base years.

(e) The term "market share" shall mean the proportion of a firm's sales in a relevant market to all sales in such market.

(f) The term "sales" shall mean annual gross sales, gross income, gross receipts, or, if no such amount is applicable, the corresponding amount, whichever is largest, as set forth in reports filed by a firm with the Securities and Exchange Commission pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934, or the largest such amount which would have been reported if section 13 or section 15(d) of the Securities Exchange Act of 1934 were applicable to require reporting by such firm for a base year of its gross sales, gross income, gross receipts, or a corresponding amount, in a market, and sales in a market shall include amounts which would have been reported but for the fact that goods or services were both produced and consumed by the same firm.

(g) The term "base year" shall mean one of the ten calendar years, the most recent of which ended more than six months and not more than eighteen months prior to the date on which any proceeding is instituted pursuant to subsection (b) of section 1 of this Act.

(h) The term "antitrust laws" shall mean the Act entitled "An Act To protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, as amended, and section 7 of the Act entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended.

(i) The term "commerce" shall mean trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States.

Comments to Accompany Concentrated Industries Act

Section 1. Reduction of Industrial Concentration.

(a) The Attorney General and the Federal Trade Commission are under a duty to investigate market structures of lines of commerce which appear to be oligopoly industries. Since the Attorney General and the FTC do not have unlimited resources at their disposal, they would necessarily have discretion in establishing priorities. In exercising this discretion, it is assumed that they would first investigate those industries which are of most fundamental importance in the economy and in which concentrated market structure, not dictated by economies of scale, has had the most pronounced effect in producing market behavior at variance with competitive norms.

(b) Enforcement authority is vested solely in the Attorney General, but he would often proceed on the basis of an FTC investigation. This would require improved cooperation between the FTC and the Department of Justice.

(c) The first step in a proceeding under the Act is a determination of oligopoly firms and oligopoly industries. The sole questions for determination would be relevant markets and market shares.

(d) There is a mandatory one-year waiting period after a determination that an industry is an oligopoly industry and parties are oligopoly firms. The purpose of this waiting period is to permit an oligopoly firm to take or initiate steps to reduce its market share in a manner most advantageous to its stockholders. The Act imposes no penalties and, until entry of a decree pursuant to subsection (e), provides for no relief against oligopoly firms. Therefore, it is not expected to influence firms to reduce their market shares by simply restricting their output without disposing of assets. Artificial restriction of output would be undesirable from an economic point of view.

(e) After the waiting period, the court is to determine what steps are to be taken to reduce the four-firm concentration ratio below 50% and the market shares of individual firms below 12%. The statutory language recognizes that this objective will not always be feasible. In entering its decree, the court is to take account of steps taken or initiated during the waiting period. The decree may use a variety of techniques short of divestiture if they promise to bring about the desired reduction in market share. These steps would include the removal of such barriers to entry as contractual arrangements and patents. The Act does not specificially authorize the court simply to restrict output or advertising expenditures, since restrictions of this nature would come very close to direct regulation of business and would seldom produce desirable economic results. Such restrictions might, however, be used in unusual situations and would be justified by the general reference to provisions appropriate in an antitrust decree.

A decree cannot require a firm to take steps which would result in substantial loss of economies of scale. This provision would, for example, preclude divestiture reducing a firm below minimum efficient size or creating new entities below minimum efficient size. The burden of proof is on the firm, and the possible loss of economies is not a defense to the issuance of a judgment under subsection (c). Division of a single plant would ordinarily result in substantial loss of economies of scale, and the Act permits a firm to establish that a decree would result in a net loss of economies of scale beyond the plant level. Net loss of economies of scale beyond the plant level might be established directly or by considering the minimum size of viable competitors in an industry. Thus, the court would not ordinarily divide an oligopoly firm into firms smaller than that indicated by experience to be necessary to survival in the industry. We are not unaware of efficiencies other than economies of scale; other efficiencies will generally reflect scarce resources such as unique management talent. These resources may be transferred pursuant to a deconcentration decree without significant loss.

(f) This subsection provides for immediate Supreme Court review of a decree.

(g) This subsection provides for a mandatory "second look" every four to five years after the entry or affirmance of the original decree until concentration is reduced to the extent described in subsection (e). If relief granted in a decree has not had the desired effect, more drastic relief would generally be in order. This procedure is not unlike the procedure in a monopolization case under section 2 of the Sherman Act. See United States v. United Shoe Machinery Corp., Supreme Court, May 20, 1968.

(h) A decree is subject to modification pursuant to usual equity principles. Thus, the "second look" provision of subsection (g) does not exclude additional modification of a decree.

Tariffs and import quotas often serve as an important barrier to entry and may serve to restrict the relevant market. If such barriers were dropped, competition would, in many cases, immediately improve. The Act contains no provisions for reducing or eliminating such barriers in oligopoly industries. Such a procedure might harm small firms as much as or more than oligopoly firms. The participation of courts in an area so closely linked to foreign affairs might be regarded as an inappropriate incursion on the powers of the executive and might upset delicate and sensitive trade and treaty relationships. But in establishing and negotiating tariffs and import quotas, it would clearly be appropriate for the President and Congress to take account of concentration in domestic industries.

Section 2. Regulated Industries.

In general, this section provides that an action may not be brought with respect to markets regulated under specified federal statutes. The decision as to which statutes to specify would reflect the fact that remedies under the Act are not limited to divestiture and might interfere with statutory regulatory patterns. The Act also excludes divestiture of part of the assets used by a public utility whose maximum rates are regulated by a state commission. A State could not exempt its industries from the Act by unusual expansion of the scope of public utility regulation. Our recommendation of this provision does not mean that we approve existing statutory provisions for exemption, but simply that we do not believe that the Act should be at cross-purposes with other statutes.

Section 3. Procedure.

Proceedings under the Act will require judges with special expertise, and this expertise is not likely to be acquired unless all litigation is directed to a small number of judges with special qualifications. There is ample precedent in 28 U.S.C. section 1407 for the use of specially selected judges to handle litigation no matter where it arises. The Act should be supplemented by amendments to title 28 to provide nationwide service of process and to ensure that venue in the Special Antitrust Court will be proper.

Subsection (c) allows the use of court-appointed economic experts. In many cases, the Attorney General and the defendants may confine their arguments to those best supporting their position in particular cases. Impartial economic experts could present additional arguments, as well as helping the court to sift and evaluate arguments made by the parties.

Section 4. Definitions.

(a) The definition of "oligopoly industry" is limited to markets in which the four-firm concentration ratio has been both high and stable. The first clause of the definition requires that the concentration ratio have been at least 70% during four out of the five most recent base years and seven out of the ten base years. In the judgment of the members, this is a conservative figure, at the upper end of the range in which direct action to reduce concentration would be justified. The second clause excludes industries in which there have been substantial changes in the identity of the four largest firms. If the situation stabilizes, a proceeding may be brought at a later date. The language after the second clause excludes industries with declining sales. This reflects our views of the appropriate limits on the use of the remedies of the Act and of appropriate priorities in the use of enforcement resources. An industry which is presently not an oligopoly industry because of a sales decline may become an oligopoly industry later on if the decline in sales is arrested.

(b) An "oligopoly firm" is a firm with a market share in excess of 15% during at least two of the three most recent base years. Unless the top four firms have exactly 70% and there are only two other firms with exactly 15% each, there will not be more than five oligopoly firms in an oligopoly industry, and there will generally be four or fewer, depending on how market shares are distributed among the largest firms.

(c) The definition of "firm" is very similar to the definition of "person" in the Clayton Act. Unlike the Clayton Act term, it does not include individuals. It includes firms controlling, controlled by, or under common control with a firm. Thus, in determining whether a firm is an oligopoly firm, the market shares of its subsidiaries would be considered.

(d) The term "market" has been substituted for Clayton Act term "line of commerce" in order to permit the court to make sound determinations free of the distortions which have arisen in some Clayton Act cases. In order to exclude extremely narrow market definitions and to restrict the operation of the Act to industries of substantial importance in the economy as a whole, the Act is limited to markets with annual sales of at least $500 million.

(e) A firm's "market share" is defined as its proportion of sales in a market.

(f) "Sales" are defined by reference to amounts which would be reported pursuant to the Securities Exchange Act of 1934. Some elaboration is necessary, since the Securities Exchange Act does not, and even with additional divisional reporting requirements would not, require reporting of sales in every conceivable market. Language is added at the end to indicate that the definition of sales is not limited to goods or services sold outside an enterprise. Thus, differences in the degree of vertical integration would not affect sales or market shares.

(g) There are ten "base years," determined by reference to the date a proceeding is instituted. The most recent base year will have ended at least six months prior to the date as of which figures must be known for the base year. This takes account of necessary delays in gathering and reporting figures.

(h) The term "antitrust laws" is used only in section 1(e), which permits the court to include in its decree any provisions which would be appropriate in a decree pursuant to the antitrust laws. For this purpose, the antitrust laws include the Sherman Act and section 7 of the Clayton Act, but do not include section 2 of the Robinson-Patman Act and various miscellaneous antitrust laws referred to in the Clayton Act definition of the same term.

(i) "Commerce" is defined substantially in the same terms as in the Clayton Act, and is designed to exhaust congressional power under the Commerce Clause.

Appendix B. Merger Act

Section 1. Prohibited Acquisitions

(a) No large firm shall directly or indirectly merge with, combine with, or acquire any equity security in any leading firm or directly or indirectly acquire all or substantially all the assets used by a leading firm in any market in which it is a leading firm.

(b) No leading firm shall directly or indirectly merge with, combine with, or acquire any equity security in any large firm or directly or indirectly acquire all the assets of a large firm or a part thereof sufficient to constitute a large firm.

(c) This section shall not apply to firms acquiring any equity security solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, control of firms in which any equity security is acquired. Nor shall anything contained in this section prevent firms from causing the formation of subsidiary firms for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary firms.

(d) If any acquisition is approved by any federal agency, commission, board or other body, such approval shall result in total or qualified exemption of such acquisition from this Act to the same extent such approval results in exemption from section 7 of the Act entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended.

Section 2. Definitions.

As used in this Act

(a) The term "large firm" shall mean a firm engaged in commerce which, giving effect to any acquisition or other transaction referred to in section 1 of this Act and all acquisitions or other such transactions completed at or prior to the effective date of such acquisition or other transaction,

(i) had or would have had sales which exceeded $500 million during the most recent base year, or

(ii) had or would have had assets which exceeded $250 million at the end of the most recent base year.

(b) The term "loading firm" shall mean a firm engaged in any market in which its market share was more than 10% during at least two base years, and in which the aggregate market share of any four or fewer firms during the same two base years was more than 50%, provided that the term "leading firm" shall not include a firm whose market share during the same two base years was not among the four largest in such market.

(c) The term "firm" shall include corporations and associations existing under or authorized by the laws of the United States, any of the Territories, any State, or any foreign country, and shall include any firm controlling, controlled by, or under common control with a firm.

(d) The term "market" shall mean a relevant economic market, appropriately defined with reference to geographical area (which may be the United States or another geographic area) and product or service, including sales within such market by firms located outside the geographic area, provided that aggregate sales in the market amounted to more than $100 million during each of at least two base years.

(e) The term "market share" shall mean the proportion of a firm's sales in a relevant market to all sales in such market.

(f) The term "sales" shall mean annual gross sales, gross income, gross receipts, or, if no such amount is applicable, the corresponding amount, whichever is largest, as set forth in reports filed by a firm with the Securities and Exchange Commission pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934, or the largest such amount which would have been reported if section 13 or section 15 (d) of the Securities Exchange Act were applicable to require reporting by such firm for a base year of its gross sales, gross income, gross receipts, or a corresponding amount in a market, and sales in a market shall include amounts which would have been so reported but for the fact that goods or services were both produced and consumed by the same firm.

(g) The term "assets" shall mean assets or a corresponding amount as set forth in reports filed by a firm with the Securities and Exchange Commission pursuant to section 13 or section 15 (d) of the Securities Exchange Act of 1934, or assets or a corresponding amount which would have been reported if section 13 or section 15 (d) of the Securities Exchange Act were applicable to require reporting by such firm.

(h) The term "base year" shall mean one of the three calendar years, the most recent of which ended more than six months and not more than eighteen months prior to the date of an acquisition or other transaction referred to in section 1 of this Act.

(i) The term "commerce" shall mean trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States.

Section 3. Injunctive Relief in Private Actions.

Any person or firm shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a threatened violation of section 1 of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings; and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

Section 4. Enforcement.

Authority to enforce compliance with section 1 of this Act is vested in the Attorney General.

Comments to Accompany Merger Act

Section 1. Prohibited Acquisitions.

(a) The first prohibition applies to acquisitions by large firms, as defined in section 2 (a), of leading firms, as defined in section 2 (b). An acquisition by a large firm of any equity security in a leading firm is prohibited unless it comes within the investment exception in section 1 (c). Equity securities include, for example, common stock and convertible securities. An acquisition by a large firm of assets of a leading firm is prohibited only if it involves all or substantially all the assets used by the leading firm in any market in which it is a leading firm. An acquisition of a lesser amount of assets used by a leading firm in such a market would reduce the leading firm's market share. Since the purpose of the Act is to prevent increases in concentration or to reduce concentration in the markets in which leading firms operate, such acquisitions are not prohibited.

(b) The second prohibition applies to acquisitions by leading firms of large firms. The asset acquisition prohibition differs from the corresponding language in subsection (a) to reflect the fact that acquisition of assets by a leading firm will not reduce its market share. However, the Act does not prohibit a leading from from acquiring a part of the assets of a large firm not sufficient to constitute a large firm. This kind of acquisition would be substantially equivalent, in economic terms, to a merger of a leading firm with a subsidiary, not itself a large firm, spun off from a large firm. Such a merger does not fall within the purposes of the Act.

The Act supplements and does not replace section 7 of the Clayton Act and sections 1 and 2 of the Sherman Act as applied to mergers. Although the Act is intended to apply primarily to conglomerate mergers, as distinguished from horizontal or vertical mergers, it is not limited to conglomerate mergers. The Act would add very little to existing law governing horizontal mergers, since section 7 has been interpreted to prohibit any horizontal mergers which would significantly increase the market share of a firm which already has a significant market share. The rules governing vertical acquisitions under section 7 are not clearly defined.

Their import is probably that a merger is unlawful if one firm involved in the acquisition has a significant market share in a relatively concentrated market and the acquisition together with other vertical integration in the same industry, would result in substantial foreclosure of competing firms from a market supplying or purchasing from the concentrated industry. In many cases, vertical acquisitions which might be attacked under section 7 would in any case be unlawful under section 1(a) or 1 (b) of this Act, so that the need for particularly contrived applications of vertical acquisition doctrines would be minimized. As noted in the Report, the Act may in some cases present vertical acquisitions which are not unlawful under section 7. See page III-11.

The Act would apply primarily to conglomerate mergers. Under existing law, a conglomerate merger may be attacked if the effect may be substantially to lessen competition. As more fully discussed in the text of the Report, such attacks have been predicated primarily on the likelihood of reciprocal dealing and on the loss of potential competition. While the members of the Task Force differ in their appraisal of these doctrines, they agree that, in their more extended applications, they introduce many elements of uncertainty and unpredictability into the law. The result is that many lawful mergers with potentially beneficial effects on competition may be discouraged, and that many unlawful mergers with adverse effects on competition may be consummated without attack because the lack of clear and precise standards places an excessive strain on enforcement resources and discourages voluntary compliance. It is believed that the clear prohibitions of section 1(a) and 1(b) would cover most cases which are the subject of legitimate attack under section 7 of the Clayton Act and sections 1 and 2 of the Sherman Act, and that most acquisitions not subject to attack under the proposed Act would have neutral or beneficial effects on competitive market structure. In those cases where acquisitions not subject to the proposed Act have anticompetitive effects, they will still be subject to attack under Section 7 of the Clayton Act.

(c) This provision carries forward the substances of a provision, now in section 7 of the Clayton Act, which permits acquisitions of securities for the purpose of investment as distinguished from control. Since the Act does not require any showing of effect on competition, the section 7 references to competition have been omitted. The term "equity security" has been substituted for "stock" in section 7 to conform to the usage of sections 1(a) and 1(b). The term "equity security" is a familiar one, and is used in section 16(a) of the Securities Exchange Act of 1934. Some consideration was given to imposing a percentage limit on equity securities acquired for investment; since the language of section 7 has not given rise to any difficulty, it was felt undesirable to have substantially different standards under the two statutes.

(d) Regulatory approval of a merger results in immunity under the Act to the same extent as under section 7 of the Clayton Act. Although the standards for and effect of regulatory approval under some statutes may be subject to criticism, there is no reason why the effect of approval should differ under the Merger Act and under section 7 of the Clayton Act.

Section 2. Definitions.

(a) A "large Firm" is a firm with annual sales in excess of $500 million or assets in excess of $250 million, in either case on a pro forma basis giving effect to acquisitions. In 1967, acquiring companies with assets of $250 million or more accounted for 59% of the assets of acquired manufacturing and mining companies with assets of $10 million or more. As the economy grows and the size of firms increases it is anticipated that more and more firms will meet the definition of "large firm." In some cases, one or both firms in an acquisition may qualify both as a leading firm and a large firm.

(b) A "leading firm" is a firm with a 10% market share in a market in which the four largest firms have a 50% market share, but it does not include any firm which is not among the four firms with the largest market shares in such a market. As more fully described in the text of the Report, the Act is intended to apply to acquisitions by large firms of firms with significant market shares in relatively concentrated industries. Since the Act prevents future acquisitions, unlike the Concentration Act, which undoes existing concentration, a four-firm concentration ratio was picked which was at the lower end of the spectrum in which concentration leads to market performance departing from the competitive norm. It is not believed that the Act would have any significant adverse impact on investment opportunities, since it would permit a wide variety of forms of investment, including entry by internal expansion and entry by acquisition of a relatively small firm, followed by internal expansion.

(c) The definition of "firm" is similar to the definition of "person" in the Clayton Act. Unlike the Clayton Act term, it does not include individuals. It includes any person controlling, controlled by, or under common control with a firm. Thus, in determining whether a firm is a large firm or a leading firm, the assets or sales of its subsidiaries would be considered.

(d) The term "market" has been substituted for the Clayton Act term "line of commerce" in order to permit the court to make sound determinations free of the distortions which have arisen in some Clayton Act cases. In order to exclude extremely narrow market definitions the Act is limited to markets with annual sales of at leat $100 million. As the economy grows, the minimum size limit will become of less and less importance.

(e) A firm's "market share" is defined as its proportion of sales in a market. The test is based on shipments rather than the more accurate but less readily available measure of value added. However, the definition of sales in the next subsection is designed to avoid serious distortions from use of this measure.

(f) "Sales" are defined by reference to amounts which would be reported pursuant to the Securities Exchange Act of 1934. Some elaboration is necessary since the Securities Exchange Act does not, and even with additional divisional reporting requirements would not, require reporting of sales in every conceivable market. Language is added at the end to indicate that, for purposes of determining sales in a particular market, the definition of sales is not limited to goods or services sold outside an enterprise. Thus, differences in the degree of vertical integration would not affect market shares.

(g) Like sales, "assets" are defined by reference to the Securities and Exchange Act of 1934.

(h) There are three "base years." The most recent base year will have ended at least six months prior to the date of an acquisition. This takes account of necessary delays in gathering and reporting figures.

(i) "Commerce" is defined substantially in the same terms as in the Clayton Act, and is designed to exhaust congressional power under the Commerce Clause.

Section 3. Injunctive Relief in Private Actions.

This provision is modeled on section 16 of the Clayton Act, but private parties may seek relief only prior to and not after completion of an acquisition. The Act is not one of the "antitrust laws" for which treble damage relief is available under the Clayton Act.

Section 4. Enforcement

The Attorney General is authorized to enforce the Act. Title 28 of the United States Code should also be amended to cover venue, jurisdiction, and other details of procedure.

Appendix C. Revision of Sections 2(a), (b) and (f) of the Robinson-Patman Act

The attached revision of sections 2(a), (b) and (f) of the Robinson-Patman Act is based on the following premises:

(1) There are many reasons for price discrimination and most of them are related to the improved functioning of the competitive system.

(2) It is possible for price discrimination to adversely affect competition, but such instances are exceptional.

(3) A statute designed to restrict price discrimination must therefore be narrowly drawn, so that the important benefits of price discrimination will not be lost in an excessive effort to curb limited instances of harm.

(4) Revision of the Robinson-Patman Act is preferable to its repeal, since repeal would not preclude the wholesale transfer of Robinson-Patman doctrine to sections 1 and 2 of the Sherman Act and section 5 of the Federal Trade Commission Act.

The proposed revision is divided into a number of subsections which are discussed seriatim.

Subsection (a) defines the jurisdictional scope of the law and, among other things, expands the scope of the statute to reach "the sale, lease, transfer or provision of any commodity or service," provided the latter are of "like grade and quality."

Subsection (b) defines the circumstances in which a discrimination may be found to have an adverse effect upon competition in the "primary" or "secondary" line, narrowing the scope of liability appreciably.

Subsection (c) carries forward the "meeting competition" defense of the present Act with a special provision to govern the situation where the price being met is an unlawful price.

Subsection (d) covers the "cost justification" defense of the present Act with some modifications. Among other things, the defense is liberalized by making allowance for approximations, estimates and reasonable classifications.

Subsection (e) includes the "changing conditions" defense of the present Act and makes explicit the present implied defense of "availability" -- i.e., a person cannot complain of discrimination if the lower price was equally available to him on reasonable terms.

Subsection (f) continues the Act's exemption for refusals to deal (with one minor qualification).

Subsection (g) carries forward, in substantially the same terms, the existing provision for buyer liability.

Subsection (h) deprives the Federal Trade Commission of authority to challenge discriminatory practices under section 5 of the Federal Trade Commission Act.

Subsection (i) imposes a time limitation on antidiscrimination orders.

(a) That it shall be unlawful for any person in the course of commerce to discriminate, either directly or indirectly, in the exaction of consideration for the sale, lease, transfer or provision of any commodity or service where (i) the two or more transactions involved in the discrimination involve commodities or services of like grade and quality, (ii) such commodities or services are sold, leased, transferred or provided for use, consumption, or resale within the United States or any place under the jurisdiction of the United States, and (iii) the effect of the discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce.

Comment: Subsection (a) is the "jurisdictional" portion of the proposed revision. It removes a number of irrational limitations upon the scope of the present anti-discrimination law.

The Robinson-Patman Act is presently limited to sales of commodities. The revision covers the leasing or other transfer of commodities, as well as the provision of services.

The Robinson-Patman Act requires that the person granting the discrimination be "engaged in commerce"; that the discrimination occur "in the course of such commerce"; and that "either or any of the purchases involved in such discrimination [be] in commerce." Obviously, if the last requirement is met, the first two also would be satisfied, so the section as it stands contains redundant requirements. In the proposed revision, the second requirement is retained and the other two are omitted. This gives the section a scope compatible with the Constitution and consistent with most other provisions of the antitrust laws.

The requirement of "like grade and quality" in the present Act is retained. This limitation sometimes produces irrational results, but it appears to be administratively necessary, particularly if the scope of the section is extended beyond commodities to services. For further discussion of the "like grade and quality" restriction, see the comment under subsection 2(e) of the proposed revision.

The proposed revision retains the "directly or indirectly" language of the Robinson-Patman Act and substitutes "exaction of consideration" for "price." This broad terminology is compatible with the extension of the scope of the provision to transactions in addition to sales of commodities; it also embraces the transactions formerly covered by sections 2(c), 2(d) and 2(e) of the Robinson-Patman Act, which are omitted in the proposed revision.

Like the present Act, the proposed revision applies only to discrimination among transactions in goods or services to be used within the United States. Discriminations between domestic and international transactions are governed by international treaties, such as the General Agreement on Tariffs and Trade, and by the Anti-Dumping Act.

The final qualifying clause, pertaining to anticompetitive effects, has been modified in the proposed revision. The scope of the modification is developed more fully in connection with subsection (b) of the proposed revision

(b) A discrimination shall be held to have the effect described in subsection (a) only where:

(i) The recipient of the benefit of the discrimination is in competition with others not granted the same treatment, the discrimination is substantial in amount, and the discrimination is part of a pattern which systematically favors larger competitors over their smaller rivals; or

(ii) The recipient of the benefit of the discrimination is in competition with others not granted the same treatment, the discrimination is substantial in amount, and the discrimination imminently threatens to eliminate from a line of commerce one or more competitors whose survival is significant to the maintenance of competition in that line of commerce; or

(iii) The person granting the discrimination is in competition with others serving significantly more limited areas (territories or classes of customers which are relevant lines of commerce), the discrimination is restricted to one or more such limited areas (representing a small part of the total area served by the person granting the discrimination), the consideration exacted in such limited areas is less than the reasonably anticipated long-run average cost of serving those areas (including capital costs), and the discrimination imminently threatens to eliminate from such a limited area one or more competitors whose survival is significant to the maintenance of competition in that area.

Provided, however, that the survival of a competitor is not significant to the maintenance of competition where, in the line of commerce or area affected, the number of competitors remaining, or the ease with which new competitors may enter, indicates that effective competition will not be suppressed for an appreciable period of time.

Comment: The Robinson-Patman Act provides that a discrimination is unlawful where the effect "may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them." The proposed revision of subsection (a) retains the first part of the proviso -- up to and including "line of commerce" -- and deletes the remainder The deleted language had two unfortunate consequences:

First, it tended to focus the attention of courts and enforcement agencies upon the plight of individual competitors rather than the state of competition in the line of commerce affected. Efforts to preserve individual competitors sometimes seriously restricted the forces of competition.

Second, the deleted language applied, inter alia, to the preservation of competition with "customers" of "any person who ... knowingly receives the benefit of [the] discrimination" -- the so-called "tertiary line." This basis of liability suggested that a producer, granting a functional discount, might be obliged to police the resale prices of its distributors in order to assure that they did not undercut the producer in its sales to competitors of the distributors' customers. The proposed revision eliminates this perversion of antitrust policy.

These changes were achieved in subsection (a) of the proposed revision. The purpose of subsection (b) is to provide further assurance that the anti-discrimination law will not be employed to protect individual competitors at the expense of competition. It proceeds on the premise that price flexibility is an important aspect of competition, that discrimination is an important aspect of price flexibility, and that the benefits of price flexibility and discrimination should not be needlessly sacrificed.

Subsection (b)(i) codifies the holding in FTC v. Morton Salt Co., 334 U.S. 37 (1948), applicable to situations where favored and disfavored buyers compete with one another -- the so-called "secondary line" cases. But that holding is restricted to its particular facts -- a systematic pattern of price discrimination favoring large buyers over small. Where such a pattern exists, the discrimination -- if substantial in amount -- is likely to have harmful effects at the buyer level, in the long run if not the short. If the discrimination cannot be justified under one of the available defenses, it is unlikely that these harmful effects will be offset by any important beneficial consequences. And since the prohibition applies only to systematic patterns of price discrimination, this provision should produce no serious inroads on day-to-day price competition among sellers. There are a few Court of Appeals decisions which tend in the direction proposed. See American Oil Co. v. FTC, 325 F.2d 101 (7th Cir. 1963), cert. denied, 377 U.S. 954 (1964); Foremost Dairies, Inc. v. FTC, 348 F.2d 674 (5th Cir. 1965).

Subsection (b)(ii) covers other instances of "secondary line" injury. Where the discrimination represents an ad hoc response to a particular competitive situation rather than a systematic pattern, a more stringent standard is made applicable. In order to foster and preserve flexibility in pricing, such discriminations are made unlawful only if (1) they imminently threaten to destroy one or more competitors, (2) the demise of such competitor(s) will significantly impair competition at the buyer level by leaving less than an adequate number of competitors at that level, and (3) entry of new competitors at the buyer level is not relatively easy. The emphasis here is on the state of competition at the buyer level rather than the preservation of individual buyers. This marks a radical departure from existing practice, which at times has based "secondary line" violations upon nothing more than substantial price differentials.

Subsection (b)(iii) deals with instances of "primary line" injury in similarly stringent fashion. Where the claim is that the discrimination is adversely affecting a competitor of the discriminator, there is the distinct possibility that the competitor is really seeking relief from competition. Accordingly, it is desirable that the scope of liability be narrowly circumscribed. This is accomplished by requiring that there be a significant disparity between the areas served by the discriminator and the smaller competitors; that the discrimination be limited to a small part of the discriminator's area of operation; that the lower price be less than reasonably anticipated long-run average costs; and that the discrimination threaten the imminent adverse effects upon competition described in connection with subsection (b)(ii). Among other things, this revision would clearly reverse the result in Utah Pie Co. v. Continental Baking Co., 87 S.Ct. 1326 (1967).

In the case of the cost standard, consideration was given to suggesting that some variation of marginal costs be employed as the measure. This approach was rejected, despite its considerable appeal, because of the controversy it would assuredly arouse and the great confusion that would attend its definition and application. Instead, average costs (including capital costs) were employed in conjunction with two qualifications: (1) relevant costs are those reasonably to be anticipated, permitting some degree of experimentation; and (2) relevant costs are long-run costs, so that price reductions designed to build volume may be justified if the volume would bring costs down to price. A price which meets this standard is consistent with the goal of long-term efficiency and should not be held to be unlawful. Hopefully the other limitations on liability will obviate the need to examine costs in a great many instances.

No reference is made to "predatory intent," and none of the standards specified calls for a finding on the issue of "predatory intent." Interpretations of intent are particularly perilous in this area and, as illustrated by the Utah Pie case, the concept may be manipulated to support improper results.

> (c) It shall be a defense to a charge of discrimination that the lesser exaction of consideration was made in good faith to meet an equally low exaction of a competitor. The defense shall be allowed even though the equally low exaction of the competitor is unlawful, except in a suit seeking prospective relief against all or substantially all of the competitors practicing the discrimination; in the latter event, a discrimination otherwise unlawful may not be justified as meeting an equally low exaction of a competitor if the latter's exaction is unlawful.

Comment: The "meeting competition" defense is patterned after section 2(b) of the Robinson-Patman Act. The changes of language in the first sentence are for the sole purpose of conforming this subsection to the jurisdictional scope of subsection (a).

The remainder of subsection (c) is intended to deal with the difficult problems presented where a discrimination is sought to be justified by reliance on a competitive offer which is, or may be, unlawful. The existing law on this point is not wholly consistent. There is some suggestion that the competitive prices being met must be lawful, FTC v. Staley Mfg. Co., 324 U.S. 746 (1945); or at least that the seller must not have knowledge of their illegality, Standard Oil Co. v. Brown, 238 F.2d 54 (5th Cir. 1956). But Callaway Mills Co. v. FTC, 362 F.2d 435 (5th Cir. 1966), allowed the meeting competition defense without regard to the apparent illegality of the competitive prices being met (evidently because the FTC had not passed on the issue). None of these solutions is entirely satisfactory.

If sellers are permitted to meet unlawful prices, without limitation, it may be impossible to remedy an industry-wide pattern of discrimination.

The enforcement agencies would be compelled to identify the initiator of the pattern and this could well be an impossible task. Moreover, from the vantage point of obtaining prospective relief, the identity of the initiator is irrelevant.

On the other hand, if a seller is not permitted to meet unlawful prices, he is placed in an unenviable position. If the illegality of the competitive price is clear, the seller is precluded from competing effectively at a time when he is exposed to the worst kind of competitive assault; and presumably the unlawful competitive price will impair competition whether or not it is met by the seller. If the illegality of the competitive price is unclear, the seller must make a judgment as to its legality -- which may be extremely difficult given the information available to the seller and the standard of legality applicable to the discrimination. Nor does it suffice to say that all doubts will be resolved in favor of the seller. For that merely raises the other horn of the dilemma, and poses a major obstacle to remedying widespread patterns of discrimination.

The proposed solution is to distinguish in terms of the relief sought. Where the only issue is prospective relief, all doubts will be resolved in favor of the prompt termination of the discriminatory pattern. By contrast, where damages are sought, the plaintiff will be obliged to track down the culprit whose initial unlawful discrimination is the ultimate cause of the plaintiff's difficulties.

The proposed revision also requires that the enforcement agency proceed against all or substantially all of the competitors practicing the discrimination if it wishes to avoid the "meeting competition" defense.

The proposed revision does not attempt to deal with other aspects of the "meeting competition" defense, in the hope and expectation that the Courts of Appeals will follow existing trends in removing encumbrances attached to the defense by a hostile Federal Trade Commission. See, for example:

Sunshine Biscuits, Inc. v. FTC, 306 F. 2d 48 (7th Cir. 1962) (rejecting FTC view that defense was available only for retaining old customers and was not applicable to obtaining new customers).

Forster Mfg. Co. v. FTC, 335 F. 2d 47 (1st Cir. 1964), cert. denied, 380 U.S. 906 (1965) (rejecting FTC position that seller must have "proof positive . . . of the amount of the competitive offers and the names of the bidders who made them").

Callaway Mills Co. v. FTC, 362 F. 2d 435 (5th Cir. 1966) (rejecting FTC position that seller could not meet competitor's "system" of price discrimination; several other limiting qualifications also were invalidated).

(d) It shall be a defense to a charge of discrimination that the lesser exaction of consideration makes an appropriate allowance for differences in the cost of manufacture, distribution, sale, or delivery resulting from the differing methods or quantities involved in the transactions in question. An allowance is appropriate where the difference in consideration does not substantially exceed the difference in cost; where the difference in consideration does not exceed a reasonable estimate of the difference in cost; or where the difference in consideration is the result of a reasonable system of classifying transactions which is based on characteristics affecting cost of manufacture, distribution, sale or delivery, under which differences in consideration between classes approximate differences in cost. If a system of classification is held to be unlawful, the court or agency so ruling should indicate either (i) that the seller's customers are so similar in pertinent characteristics that no system of classification would be valid, or (ii) that a system of classification described by the court or agency may properly be employed in lieu of the one held to be unlawful.

Comment: The proposed revision makes a number of changes in the cost justification defense.

First, it includes differences in the cost of distribution among those which may justify a difference in the consideration exacted.

Second, it eliminates the power of the Federal Trade Commission to impose quantity limits upon price differentials justified by cost.

Third, it permits differences in consideration which make "appropriate" allowances for differences in cost. Appropriate allowances include those which (1) approximate the difference in consideration exacted; (2) are based on reasonable estimates; or (3) are based on a reasonable system of classification.

It is important that discriminations which reflect differences in cost be permitted. But if excessive exactitude is required in the proof of cost differences, sellers will be reluctant to charge different prices even though they reasonably believe that such price differences are justified by differences in cost. Moreover, it is vital that price differences be permitted as between different classes of transactions, for this is often the only practical means by which differences in costs may be translated into differences in prices. When a court or agency invalidates price differences based on classifications, it should be prepared to say either: (a) that all of the seller's customers are so similar to one another that no system of classification is permissible; or (b) that some defined system of classification may be used in place of the one held to be defective. See FTC v. Standard Motor Products, Inc., 371 F. 2d 613 (2d Cir. 1967); cf. United States v. Borden Co., 370 U.S. 460 (1962).

(e) It shall be a defense to a charge of discrimination that the lesser exaction of consideration was in response to changing conditions affecting the market for or the marketability of the commodities or services involved, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned. A charge of discrimination also may be rebutted by proof that the lesser exaction of consideration was available, on reasonably practicable conditions, to the person or persons allegedly discriminated against.

Comment: The first sentence of subsection (e) carries forward the "changing conditions" defense from section 2(a) of the Robinson-Patman Act.

The second sentence of this subsection makes explicit a defense which is probably implicit in the present Act. See Tri-Valley Packing Ass'n. v. FTC, 329 F. 2d 694, 703-704 (9th Cir. 1964). If an alleged discrimination is available to both favored and disfavored buyers on reasonable grounds, and the latter choose not to take steps to obtain the benefit of the discrimination, the seller should not be held responsible. Thus, discounts for prompt payment are widely granted and have not been challenged as unlawful discriminations.

The defense of availability is important in another context. The jurisdictional scope of the proposed revision is limited to commodities or services of "like grade and quality". This is a vague concept and susceptible to broad or narrow interpretation by the courts and enforcement agencies. When in doubt, the seller can protect himself against an overly broad interpretation by offering the allegedly distinctive items to all customers on comparable terms. Under the proposed revision, such an offer would protect the seller against any charge based on "secondary line" injury and might prove to be of value in a "primary line" case as well. See Borden Co. v. FTC, 381 F. 2d 175 (5th Cir. 1967), on remand from 383 U.S. 637 (1966).

(f) Nothing herein contained shall prevent any person from refusing to deal with any other person. Provided, however, that the offer to deal on discriminatory terms shall be treated as a completed transaction for the purpose of according relief under this section.

Comment: The first sentence of proposed subsection (f) is derived from section 2(b) of the Robinson-Patman Act: "nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade." The language is substantially modified to take account of the broadened jurisdictional scope of subsection (a). The reference to "restraint of trade" is omitted, since the Sherman Act provides a more appropriate frame of reference for such conduct.

The second sentence, which is a proviso to the first, is intended to remedy a possible jurisdictional defect in the present Act. Some courts have held that two completed transactions are required to constitute a violation, and it is possible that a buyer quoted a discriminatory high price may have to complete the transaction in order to have a right to relief. This requirement has no merit and is here expressly negatived. The seller's right to refuse to deal is maintained, since the proviso comes into play only where the seller chooses to quote terms to a prospective customer.

(g) That it shall be unlawful for any person knowingly to induce or receive a discrimination which is prohibited by this section.

Comment: Subsection (g) of the proposed revision is based on section 2(f) of the Robinson-Patman Act. The language pertaining to commerce has been omitted as unnecessary. The discrimination induced or received must be "prohibited by this section", which means that the jurisdictional requirements of subsection (a), including the commerce requirement, must be met. This should suffice.

The "knowingly" requirement has been retained with the view that the buyer, in order to be charged with a violation, should have actual or constructive knowledge that he is the recipient of an illegal discrimination. See Automatic Canteen Co. v. FTC, 346 U.S. 61 (1953).

Even though the provision for buyer's liability has been retained in substantially its present form, the practical scope of the provision has been narrowed considerably. First, a violation by the buyer depends upon a showing that there has been a violation by the seller; and various revisions in the earlier subsections make it less likely that sellers will violate the section. Second, and more importantly, the revisions relative to seller liability make it more difficult to predict when a seller will be found to be in violation of the section and thus make it less likely that the buyer will have actual or constructive knowledge of those seller violations that actually occur. In effect, the buyer is liable only when he becomes a knowing accomplice to a clear violation by the seller.

Whether this constriction of buyer liability is desirable or not depends upon the view one takes of hard bargaining between seller and buyer. The proposed revision is based on the premise that such bargaining is generally desirable, and that the undesirable instances, where a buyer's bargaining power is pushed to extreme lengths, are the exceptions. The limited scope of buyer liability reflects this judgment, as well as the fact that most of the relevant information for distinguishing proper from improper justifications is more accessible to the seller than to the buyer.

(h) Section 5 of the Federal Trade Commission Act shall not be held to prohibit any discrimination in the exaction of consideration for the sale, lease, transfer or provision of commodities or services, or the receipt of any such discrimination.

Comment: At various points in drafting the preceding provisions, limitations have been imposed on the scope of liability under the anti-discrimination law. These limitations reflected a variety of factors and a balancing of considerations pro and con. If, however, the Federal Trade Commission remains free to challenge discriminatory practices under section 5 of the Federal Trade Commission Act, it can overturn any judgment against liability in a particular case by the simple expedient of bringing suit under section 5. See FTC v. Brown Shoe Co., 384 U.S. 316 (1966). Proposed subsection (h) eliminates this option.

(i) Any order issued to enforce this section shall remain in effect for a limited time, stipulated at the time of entry and reasonably related to the nature of the violation. In no case shall an order remain in effect more than five years after the date of issue.

Comment: Cease and desist orders issued by the FTC, and injunctions issued by the courts, apparently can remain in effect in perpetuity, or at least until the party subject to their terms can secure their modification. In the case of pricing practices, this is an undesirable state of affairs. Violations of either kind of decree can subject the seller to severe penalties, and the decrees therefore inhibit flexibility in pricing. Presumably such inhibition was warranted at the time the order was entered, but there is no reason to believe that the order must remain in effect forever.

Proposed subsection (i) provides for the imposition of time limits, and sets five years as the maximum period of effectiveness for an antidiscrimination order.

Appendix D. Proposed Patent Legislation

Section 1. Filing of License Agreements.

(a) Every person who has granted a license with respect to any patent shall, within ___ days, file with the Commissioner of Patents a copy of such license and the name and address of the person granting such license, unless a license substantially identical in all respects except the name of the licensee has been previously filed by such person with the Commissioner of Patents. The Commissioner of Patents shall promptly publish a list of such licenses and addresses, and shall make available copies of such licenses (deleting the names of licensees).

(b) If any license required by subsection (a) to be filed with respect to any patent is not timely filed, then (i) the owner of such patent may not, prior to filing such license, bring or maintain any action for infringement of such patent; (ii) the owner of such patent may not obtain any damages or injunctive or other relief with respect to any act of infringement of such patent occurring prior to the filing of such license; (iii) the owner of such patent may not collect any royalties or other consideration under any license with respect to such patent for the use or practice of such patent, and any person who has paid such royalties or other consideration may maintain an action in any court of competent jurisdiction for the recovery of such royalties or considerations or their value, together with the costs of maintaining such action (including reasonable counsel fees.)

Section 2. Failure to Enforce Patents.

In any action for infringement of a patent in which the defendant establishes that the owner of the patent knew of activities of a third person which the owner of the patent had reason to believe constituted an infringement of such patent in the same field and area of use as the defendant's alleged infringement, and that the owner of such patent has not taken diligent action reasonable in light of the commercial importance of the infringement and other circumstances to enforce the patent against such third person, no relief shall be allowed.

Section 3. Nondiscriminatory Grant of Licenses.

(a) Except as provided in subsection (d) of this section 3, every person who has granted any license with respect to any patent shall, within 30 days of the receipt of a demand therefor from any person, grant to such person a license with respect to such patent, which license shall be neither more restrictive nor less favorable in any respect than any license previously issued by such person with respect to such patent; provided, however, that the obligations required to be performed by such person shall not include or reflect (i) the grant to the owner of the patent, by a person previously granted a license with respect to such patent, of a license with respect to any industrial property right; (ii) any performance or undertaking to the owner of the patent by a person previously granted a license with respect to such patent of any other obligation or undertaking that is uniquely within the capability of such person; (iii) any restriction which has the effect of making the prior license exclusive; or (iv) any obligation, performance, grant or undertaking in lieu of any of the foregoing; provided, further, that nothing herein shall affect the validity of any license or group of licenses requiring any of the foregoing obligations to be performed.

(b) Notwithstanding any provision to the contrary in any law or agreement, the enforceability or invalidity of a license with respect to any industrial property right or of any obligations therein which the owner of a patent could require to be performed by a qualified applicant shall not affect or be affected by the unenforceability or invalidity of any other such license.

(c) Notwithstanding any provision to the contrary in any license or agreement and notwithstanding any other provision of law, no license or agreement shall preclude the grant of subsequent licenses required by subsection (b) of this section 3 to be granted.

(d) A patent owner need not grant a license pursuant to subsection (a) of this section 3

(i) to a person who, the patent owner establishes in an action pursuant to section 4, is not a qualified applicant because he may prove financially unable, or because of business reputation may prove unlikely, to comply with the terms of the license demanded; provided, however, that the court may order the license to be issued subject to such conditions as the court may find adequate to protect the financial interest of the patent owner;

(ii) with respect to any patent if the patent owner establishes, in a proceeding before the Federal Trade Commission, prior to the grant of any license with respect to such patent in the field of use and area which is the subject of such license, that the grant of an exclusive license or licenses in a field or fields of use and an area or areas is necessary in order to obtain commercial exploitation of the patent and will not tend substantially to lessen competition.

Section 4. Action to Obtain License.

Any person who has demanded a license in accordance with the terms of section 3 and who has not received such a license within 30 days after serving such demand on the patent owner may enforce the rights created by this Act by suit in any court of competent jurisdiction. Pending the outcome of such suit, the patent owner may not obtain injunctive relief against such person with respect to any alleged infringement which would not be an infringement if such person had received the license demanded.

Section 5. Definitions.

As used in this Act

(a) the term "license" shall mean every license, assignment or agreement of any kind, express or implied, including a covenant not to sue or a settlement of litigation or interference proceedings, entered into or extended after the effective date of this Act or expiring after _____, 19 , by which a patentee, the original owner of any industrial property right, or anyone acquiring a patent or industrial property right in a transaction of the kind referred to in the second proviso to this subsection (a) directly or indirectly authorizes or permits another to make, use, sell or otherwise practice such patent or industrial property right or any invention embodied therein; provided, however, that the term "license" shall not include an implied license obtained by a person who purchases or leases or otherwise acquires a patented product from, or who manufactures a patented product for, a patent owner; and provided, further, that the term "license" shall not include any license, assignment, or agreement pursuant to which a patentee, original owner of an industrial property right or any transferee from either of them in a transaction of the kind referred to in this proviso transfers to another the entirety of such patentee's or owner's right, title and interest in any patent or industrial property right, including a transfer the consideration for which is measured in whole or in part by use of the patent.

(b) The term "industrial property right" shall mean any right with respect to any invention and the use thereof within the United States, whether or not such invention is subject to a patent.

(c) The term "patent" shall mean any United States patent, whether issued before or after the effective date of this Act.

(d) The term "person" or "persons" shall include corporations and associations existing under or authorized by the laws of the United States, any of the Territories, any State, or any foreign country, and shall include any person controlling, controlled by, or under common control with a person.

Comments to Accompany Proposed Patent Legislation

Section 1. Filing of License Agreements.

(a) This provision implements our recommendation that patent licenses be filed, to expose possible antitrust violations to the light of day. There is legislative precedent for such a requirement in existing law, which requires that interference settlements be filed. Information filed should be adequate to permit antitrust enforcement authorities to determine whether additional information is needed. If so, it may be obtained pursuant to the Antitrust Civil Process Act.

If the patent law is revised along the lines of pending bills which provide for a pre-grant infringement remedy, references to patents should be expanded in section 1 and elsewhere in the Act to include patent applications with respect to which a pre-grant infringement remedy is available.

This provision should be enacted even if the other sections of the proposed patent legislation are not. In addition, it is a necessary adjunct to the nondiscriminatory licensing requirement of section 3.

(b) This subsection is designed to add effective sanctions to the filing requirement. The disabilities are intended to create sufficient financial risk so that patent owners will file on time. Criminal penalties are probably inappropriate in view of the somewhat openended definition of "license" and the possibility of differences in interpretation of the filing requirement.

Section 2. Failure to Enforce Patents.

This provision is designed to avoid concealed discrimination and circumvention of the filing requirement by failure to enforce patents against others. It does not require that an infringement action have been instituted against the third party, since it might be reasonable for the owner of the patent to settle without litigation. The introduction of a standard of reasonableness avoids requiring the patent owner to vindicate his patent by bringing action against infringements which are de minimis.

In general, action to enforce a patent will be reasonable if the owner of the patent pursues one or more representative test cases in good faith and makes reasonable arguments to notify other known infringers and to ensure that other alleged infringements will abide the result of such test cases.

This provision should be enacted even if the other sections of the proposed patent legislation are not. In addition, it is a necessary adjunct of the non-discriminatory licensing requirement of section 3 and a desirable adjunct of the filing requirement of section 1.

Section 3. Nondiscriminatory Grant of Licenses.

(a) The requirement of nondiscriminatory licensing is intended to minimize the possibility that license agreements can confer a share of patent monopoly profits on licensees. In general, such an arrangement suggests that the patent is either legally vulnerable or not economically valuable. In such cases, patent licenses can serve to neutralize those who are most likely to launch a successful attack on the patent, and they may serve as a pretext for cartelization.

The applicant is entitled to a license "neither more restrictive nor less favorable in any respect than any license previously issued." This language would entitle the applicant to a license identical to any license previously issued. It would not entitle him to pick a favorable royalty provision from one license, a favorable field of use provision from another license, and so on.

Although a license may still be made in consideration of a cross-license, the first proviso establishes a strong incentive for granting separate licenses, each with a cash royalty. If a subsequent licensee were required to comply with provisions in the original license which, by their terms or otherwise, could be complied with only by the original licensee or a small group of licensees, the purpose of the Act in promoting open licensing (except as provided in the second exception in subsection (d)) might be frustrated. The three phrases in this proviso are intended to exclude this possibility and to give the courts ample power to deal with unforeseeable types of provisions which have the effect of making licenses exclusive.

(b) The foregoing provisions might induce patent owners who would otherwise enter into cross-license agreements to license each other for cash royalties which are higher than they would ordinarily be but which are intended to be offsetting. The effect would be to exclude third parties entitled to licenses unless they were willing to pay inflated royalties. This provisionis designed to increase the risks in establishing high but offsetting royalties. Since each license agreement may be enforced without regard to the enforceability of the other, a patent owner will hesitate to agree to royalties which are above the fair value of a patent but are intended to be offsetting.

(c) This provision is necessary to avoid exclusion of the operation of the Act by contract. It does not prevent a patentee from excluding his own practice of the patent.

(d) The first exception protects the patent owner from financially and otherwise irresponsible licensees. The second is analogous to the judicially created exception to section 3 of the Clayton Act for exclusive dealerships necessary to obtain dealers. For the patentee's own protection, as well as to avoid litigation, the question of such necessity must be determined before any license is granted in a particular field or area of use. Such necessity would arise only in cases where exploitation could not be obtained through conveyance of the patentee's entire interest for a consideration based on future use.

Section 4. Action to Obtain License.

This section suspends the patent owner's injunctive remedy for infringement pending the resolution of an action to obtain a license. Thus, prolonged litigation will not frustrate the purpose of the Act.

Section 5. Definitions.

(a) This definition of "license" is designed to be sufficiently broad to reach any agreement with respect to any patent or industrial property right, other than an agreement transferring the owner's entire interest. In that case, the statute would apply to any license granted by the transferee. Under this definition, a sublicense of a patent would not be a patent license, because the licensee granting sublicenses would be neither a patentee nor a transferee of the entire right, title and interest in a patent. Thus, a licensee could himself discriminate among sublicensees; their appropriate response would be to apply for direct licenses.

The definition is limited to licenses granted after the effective date of the Act. Therefore, the terms of licenses granted prior to the effective date of the Act need not be made freely available to all. If the Act had been in effect, a patent owner might not have granted a license, or might have granted a license on other terms.

The first proviso is designed to avoid interference with transactions which are not primarily licensing arrangements. The "including" phrase in the second proviso is designed to permit a patent owner to dispose of his patent to another in a better position to exploit it. An acquisition falling within the proviso might, however, be an asset acquisition within the meaning of section 7 of the Clayton Act or might be in violation of section 1 or section 2 of the Sherman Act.

(b) "Industrial property right" is a term broad enough to encompass patents, but is not limited to patents.

(c) Patents are restricted to United States patents. Unlike the license definition, which refers only to licenses granted after the effective date of the Act, the patent definition is not so restricted. There is no real problem of retroactivity, since it is not likely that knowledge that the Act would be passed would have influenced decisions to apply for or acquire a patent.

(d) The definition is similar to the definition of "firm" in the other proposed statutes. Since the Act rests on the patent power and not on the commerce power, it is not limited to persons engaged in interstate and foreign commerce.

Appendix E. Additional Legislation

1. Amendment to Antitrust Civil Process Act to Require Premerger Notification

Section 3 of the Antitrust Civil Process Act is amended by adding thereto a new subsection (g) which shall read as follows:

> (g) The Attorney General may by regulation require that any person or persons acquiring, or planning, proposing or agreeing to acquire, any other person or persons, or any person or persons being acquired by, or planning, proposing or agreeing to be acquired by, any other person or persons, and any officer, director or partner of any such person, file with the Attorney General, at such time or times, not earlier than 30 days prior to the effective date of an acquisition, as shall be specified in such regulation, such documentary material and other information as shall be specified in such regulation; provided, however, that such regulation shall not impose any requirement which, by reason of subsection (c) of this section 3, could not be contained in a civil investigative demand.

Comment: This provision authorizes the Attorney General to adopt regulations establishing advance reporting requirements for mergers, and imposing responsibility for compliance on specified officers of firms involved in such mergers.

Such reporting requirements will permit more efficient enforcement of the merger prohibitions in the antitrust laws and in merger legislation proposed in the Report. In many cases, particularly under legislation proposed in the Report, it should be possible to resolve merger sctions before consummation of mergers, rather than unscrambling mergers after consummation. In order to prevent unduly burdensome requirements, the statute limits the timing of required reports to 30 days in advance of a merger, and it prevents the Attorney General from requiring any information privileged under the Antitrust Civil Process Act.

The regulations would probably not be as broad as the statute. For example, the formation of a subsidiary other than a joint venture would generally not be of antitrust significance. In addition, acquisitions involving a small acquiring or acquired firm should probably be excluded, as should most portfolio investments and some kinds of partial asset acquisitions.

II. Criminal Provisions Relating to Premerger Notification

Add the following section to title 18 of the United States Code:

(a) Any person, or any officer, director or partner of any person, who wilfully fails to file any report required to be filed by such person or officer, director or partner pursuant to regulation under authority of section 3(g) of the Antitrust Civil Process Act shall be fined not more than $_____, or imprisoned not more than _______ or both. Such failure with respect to each day of failure to file shall constitute a separate offense.

(b) Any person, or any officer, director or partner of any person, who wilfully files or causes to be filed any report required to be filed by such person or officer, director or partner pursuant to regulation under authority of section 3(g) of the Antitrust Civil Process Act, which report is false or incomplete in any substantial respect, shall be fined not more than $_____ or imprisoned not more than __________, or both. Such failure with respect to each report shall constitute a separate offense.

Comment: This section implements the premerger notification requirement by imposing criminal penalties. Subsection (a) penalizes failure to file, and makes each day of failure to file a separate offense. Subsection (b) penalizes wilfully filing false or incomplete reports. Under both subsections, officers, directors or partners made responsible for filing under the regulations would be criminally liable.

III. Amendments to Antitrust Civil Process Act To Cover Legislation Proposed by Task Force

Section 2 of the Antitrust Civil Process Act hereby amended to read as follows:

(a) The term "antitrust law" includes:

. . .

(3) The Merger Act;

(4) The Concentrated Industries Act;

(5) Any statute hereafter enacted by the Congress which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to (a) any restraint upon or monopolization of interstate or foreign trade or commerce, or (b) any unfair trade practice in or affecting such commerce;

. . .

(d) The term "antitrust violation" means any act or omission in violation of any antitrust law or any antitrust order, or any state of facts which would justify an investigation under section 1(s) or a judgment under section 1(c) of the Concentrated Industries Act;

. . . .

Comment: Paragraphs (3) and (4) are added to subsection (a) and subsection (d) is added to cover other legislation proposed in the Report. Paragraph (5) is identical to former paragraph (3).

IV. Addition of Section 4C to the Clayton Act

A new section 4C is added to the Clayton Act, to read as follows:

Any action to enforce any cause of action arising by reason of violation of section 7 of an Act entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended, or section 1 of the Merger Act or by reason of an acquisition in violation of section 1 or section 2 of an Act entitled "An Act To protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, as amended, shall be forever barred unless commenced within ten years after the latest of the following dates: the date of such acquisition, the date of filing any report required to be filed with respect to such acquisition pursuant to regulation adopted under subsection (g) of section 3 of the Antitrust Civil Process Act or the effective date of this Act. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

Comment: This provision imposes a ten-year statute of limitations for proceedings under section 7 of the Clayton Act, the proposed Merger Act, or acquisitions in violation of section 1 or 2 of the Sherman Act. It does not prevent consideration, in a monopolization action under section 2, of a time-barred merger not itself alleged to be unlawful but part of a pattern of monopolization. The provision does not require the Government to proceed prior to consummation of a merger. It provides a ten-year grace period for proceedings against mergers occurring prior to its effective date. The statutory period is tolled if a required premerger notification is late.

V. Duration of Antitrust Decrees

Any order, decree, or injunction issued by the Federal Trade Commission or any court, by consent or otherwise, to enforce any of the antitrust laws (as defined in section 1 of the act entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 as amended) or the Federal Trade Commission Act, shall remain in effect for a limited time reasonably related to the nature of the violation or threatened violation, and in no case shall an order, decree or injunction remain in effect more than ten years after the date of issue (or, in the case of an order, decree or injunction issued prior to the effective date of this Act, more than ten years after the effective date of this Act); provided, however, that upon appropriate motion made prior to the expiration of such limited time or ten-year period, the Federal Trade Commission or court which issued the order, decree or injunction (including any extension thereof pursuant to this proviso) may extend the same in its original form or as modified for a further period of not more than ten years.

Comment: This provision is designed to minimize the possibility that changing conditions will render a decree obsolete, either because it is ineffective or because it is anticompetitive in effect. Since the proviso permits any number of ten-year extensions, the Federal Trade Commission or court will retain ample power to deal with situations which require an order of longer duration than ten years. Our proposed revision of the Robinson-Patman Act would limit decrees and orders under that Act to five years, with no provision for renewal.

Appendix F. Glossary

Acquisition: We use this term interchangeably with merger. It includes all forms of mergers and acquisitions, including statutory mergers and acquisitions of stock or assets, whether for cash or securities or both.

Clayton Act: Enacted in 1914. Section 7, amended in 1950 by the Celler-Kefauver Act, prohibits mergers or acquisitions of stock or assets where the effect may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country. Other provisions include a prohibition on price discrimination (which, as amended, is referred to as the Robinson-Patman Act), prohibitions on exclusive dealing and tying arrangements, and various procedural provisions (including a provision for private actions for violations of the antitrust laws).

Concentration ratio: The aggregate market share of the number of firms with respect to which the concentration ratio is computed, e.g., four-firm concentration ratio.

Conglomerate: Refers to an acquisition which is neither vertical nor horizontal. Includes product extension and market extension mergers.

Digits: See SIC.

Four-digit product or industry: See SIC.

Horizontal: Refers to an acquisition involving competitors in the same market.

Market: A collection of buyers and sellers whose transactions determine the price of a commodity or service. The buyers or sellers, or both, may and do trade in various parts of the market, which may be accessible areas within which traders or commodities or services move, or accessible products whose prices exert a decisive influence upon the price of the commodity or service in question.

Market extension: Refers to a conglomerate merger involving two firms which produce goods which are identical or substitutable but are sold in different geographical markets.

Merger: We use this term interchangeably with acquisition. It includes all forms of mergers and acquisitions, including statutory mergers and acquisitions of stock or assets, whether for cash or securities or both.

Product extension: Refers to a conglomerate merger involving two firms which produce goods which are not identical or substitutable but may be related in methods of production or distribution.

Robinson-Patman Act: The price-discrimination law; originally section 2 of the Clayton Act.

Sherman Act: The first major antitrust law, enacted in 1890. Section 1 prohibits contracts, combinations and conspiracies in restraint of trade. Section 2 prohibits monopolization or attempts to monopolize.

SIC: The Standard Industrial Classification developed by the Bureau of the Budget for statistical purposes, and usually considered as including the Census product classification. Products or industries are classified by number. The number of digits in the classification is an indication of the detail of the classification. An example of a two-digit major industry group is Group 28, Chemicals and Allied Products. An example of a four-digit industry is 2841, Soap and other detergents, except specialty cleaners. An example of a five-digit product class is 28412, Soaps, except specialty cleaners, bulk. An example of a seven-digit product is 28412 41, Scouring cleansers, with or without abrasives. These categories do not necessarily reflect relevant markets.

Vertical: Refers to an acquisition involving two firms in a supplier-customer relationship.

Separate Statement of Robert H. Bork

The Task Force's major recommendations seem to me to rest on erroneous analysis and inadequate empirical investigations. Their net effect seems more likely to injure consumers than to aid them.

The Concentrated Industries Act

This statute proposes to break up the leading firms in "concentrated" industries on the theory that such industry structures cause noncompetitive pricing behavior. The evidence for this was certain studies which purported to show a correlation between industry concentration and profitability.

My objection to the proposed statute is that the studies relied upon are shaky and open to question and that the correlation, if it were shown to exist, would prove nothing. The latter point is by far the more important and I will discuss it alone.

In judging whether it is worthwhile to break up a concentrated industry structure it is necessary to estimate whether more will be gained through the predicted end to noncompetitive pricing or lost through the destruction of industrial efficiency. When the structure has been created by recent merger or by predatory business practices, neither of which necessarily demonstrates efficiency, a policy of dissolution is intelligible. But those cases are taken care of, respectively, by amended section 7 of the Clayton Act and section 2 of the Sherman Act. The proposed statute, therefore, would have its impact almost entirely upon industries in which concentration had evolved through the growth of the leading firms or through mergers that occurred years ago. Amended section 7 of the Clayton Act now enables the government to reach any merger within the past 18 years, and as time goes on the proposed statute will apply almost entirely to firms that reached large size through internal growth.

The dissolution of such firms would be a disservice to consumers and to national strength. When firms grow to sizes that create concentration or when such a structure is created by merger and persists for many years, there is a very strong prima facie case that the firms' sizes are related to efficiency. By efficiency I mean "competitive effectiveness" within the bounds of the law, and competitive effectiveness means service to consumers. If the leading firms in a concentrated industry are restricting their output in order to obtain prices above the competitive level, their efficiencies must be sufficiently superior to that of all actual and potential rivals to offset that behavior. Were this not so, rivals would be enabled to expand their market shares because of the abnormally high prices and would thus deconcentrate the industry. Market rivalry thus automatically weighs the respective influences of efficiency and output restriction and arrives at the firm sizes and industry structures that serve consumers best. There is, therefore, no need for the proposed Concentrated Industries Act, and, in fact, its results would be detrimental.

The Merger Act

The rationale of the Merger Act is that conglomerate acquisitions should be diverted from the leading firms in the industry in which the acquired firm operates to the smaller firms. This diversion of the efficiencies created by conglomerate mergers will, it is contended, benefit consumers by deconcentrating the industries involved.

This statute may easily be shown to be a prescription for decreasing the consumer benefits that conglomerate acquisitions are capable of creating. A conglomerate acquisition is not a way of creating monopoly power. It adds nothing to the market share of the acquired firm and any monopoly position that firm may already have will be paid for in the purchase price. The investment will provide only a competitive return unless the acquiring firm can bring efficiencies to the acquired firm. If this is so, the acquiring firm's choice of one firm in the industry rather than another as a merger partner must be dictated by considerations of efficiency potential.

Thus, the statute will either shift the acquisition to a less preferred firm, causing a decrease in the efficiencies realized, or cause the abandonment of any plan to acquire a unit in that industry, causing a complete loss of expected efficiencies.

It is no answer to say the frustrated acquiring firm could achieve the same efficiencies by entering the market through growth. The same analysis as that above shows that the forced shift from acquisition to growth would impose a higher cost, which is a cost to society as well as to the firm. If the higher cost is prohibitive, all efficiencies expected from merger will be lost.

The preferences of firms contemplating conglomerate acquisitions can only be explained on grounds of differential efficiency. By frustrating this preference, the Merger Act, like the Concentrated Industries Act, operates on the principle that industrial fragmentation is to be preferred for its own sake to industrial efficiency. If we agree that antitrust is about consumer welfare, I cannot accept such a principle; indeed, I cannot even understand it.

The Patent Licensing Act

We have given too little attention to the patent field for me to be able to agree to the changes proposed. In particular, the proposal that a patentee who licenses one applicant must license all upon equal terms seems ill-advised. It assumes, without any theoretical or empirical support, that such a practice (even when there is no price, territory, or output restriction in the license) is a method of cartelization. It assumes further, contrary to what we know of analogous business contexts, that there are no valuable efficiencies in an exclusive dealing policy. Though we have not studied the matter sufficiently to permit a confident estimate either way, our present information suggests that this requirement is a mistake.

The Revision of the Robinson-Patman Act

I sympathize with the attempt to make the Robinson-Patman Act a more rational statute, but three factors prevent me from agreeing whole-heartedly to this revision. First, the coverage of the Act ought not to be extended to services. Second, I doubt that the sections defining injury to competition will have the effect of substantially confining the enforcement agencies and the courts. Third, a number of us probably think that the entire Act should be repealed and I think we should say so.

The Repeal of the Miller-Tydings and McGuire Acts

Contrary to the Task Force Report's wholly unsupported assertion, the case against resale price maintenance is not at all persuasive. From the consumer point of view, there is a case against resale price maintenance when it is no more than a cover for a dealer cartel, but there is a strong case for the practice when a manufacturer desires to use it to improve his dealers' performance. I would recommend federal legislation approving the latter form of resale price maintenance, whether or not a State Fair Trade law has been complied with, as entirely consistent with the purposes and the spirit of antitrust.

Other Matters

I agree with the recommendations that a 10-year limit be set upon attempts to undo old mergers, that antitrust decrees be limited to 10 years duration (though I think the court should not have the power to renew the decrees for additional periods), and that the regulated industries should be studied with a view to substituting antitrust and market controls for regulation where possible. As to the other matters discussed, we have too little information to make recommendations. I know at least that I do.

Separate Statement of Paul W. MacAvoy

I would like to offer some comparative reflections on the two major recommendations -- the Concentrated Industries Act and the Merger Act.

The reason for drafting these Acts is that they move us toward establishing and preserving competitive conditions throughout the economy. There is necessarily some hesitancy in pursuit of such an aspiration, because there are costs imposed by radical new legislation in disrupting continuing institutions or dislocating resources. There may also be costs in the long run from operating at competitive but less than efficient scale. But these costs are overweighed by the benefits of reduced price-cost margins, increased efficiency and growth, that mark highly competitive industries. As I understand the argument, the general good overweighs particular losses.

The report on the Concentrated Industries Act makes this argument quite strongly. Economic evidence, from a large number of research articles and monographs on the relation of concentration to industry performance, provides a sound basis for predicting general effects from reducing industry concentration. The lack of evidence indicating general loss of efficiencies from deconcentration furnishes further strong support for this policy. There is substantial basis on which to conclude that "remedies to reduce concentration should be made available as part of a comprehensive antitrust policy." More work remains to be done to establish that oligopolies of four or five firms can be expected to restrict output and raise price under most or all market conditions, but the evidence presently available is strong enough to provide rationale for this legislation.

There does not seem to be a similar factual basis for the Merger Act. There is no set of research materials showing a relationship between concentration of general economic activity in conglomerates and anticompetitive behavior. This evidence is necessary if "the case" for new legislation is to be as comprehensive as that for the Concentrated Industries Act -- if there is to be a general expectation of increased competition from changing the present patterns of conglomerate growth.

The lack of such evidence is not oversight. A thorough review of existing literature produces no such finding; some preliminary, extremely new material from Charles Berry at Princeton University may well establish the opposite case, or that the recent growth patterns of conglomerates -- including patterns precluded by the proposed Act -- have added to the competitiveness of industry structure. Another round of research may bring findings that substantiate the opposite; but those require a much higher level of economic research activity than now exists.

In place of factual support for the Merger Act, we have some very delicately worded assertions: "Potentially anticompetitive mergers may be allowed to proceed because economic theory and analytical foresight are inadequate to predict anticompetitive effects in specific cases...." This is a problem of concern in all aspects of behavior of firms in private markets. I would propose, if it were to be taken seriously, that we move from a market economy to one of state regulation to minimize this risk. More serious is the fear that, without new legislation, the courts will extend existing law because of objections based on considerations other than effects on competition, leading to "distortions which would result in uncertainties in enforcement and unfairness to those affected." The means for preventing such distortions is to pass a law not quite as bad as "free form" court interpretations; on this ground, the Merger Act surely qualifies, but it still may be second best to alternative legislation which better defines the problem and contrives means for solving it. That is to say that I do not think this Merger Act, while sufficient for preventing the court from acting unfairly, is necessarily the best means for doing so.

I would propose that a moratorium be put on both court decisions and legislation on conglomerates by the establishment of a Presidential Commission to inquire into the purpose and effects of conglomerate mergers. This commission would be made up of eminent lawyers and economists with the full time staff assistance necessary to carry out full-scale research into conglomerate activity.

The form and content of the work done would have to be similar to recent investigations by government into the securities markets. They would analyze statistics and case studies that would provide authoritative bases for recommendations to Congress of new legislation. The process of preparing their Report would raise the level of inquiry and the volume of evidence by its mere existence; the findings would be subject to the cross-examination of the experts in both economic and legal professions. They should be of the quality and range of those we had available to us on the behavior of oligopolies.

In retrospect, I have the feeling that the Task Force did well with problems on which documentation was available in some profusion. At least I am proud of my collegues for their proposals in the Concentrated Industries Act, the revision of the Robinson-Patman Act, and the now patent legislation. But the device of the secret task force does not work well when there is no evidence. Personal impressions where no evidence exists are not enough to produce legislation that meets the needs of the economy.

Separate Statement of Richard E. Sherwood

Procrustean is the most polite adjective I can find for the bulk of the Task Force report and recommendation. Mechanistic tests may be easy for enforcement agencies and courts to apply, but that is a feeble reason for abandoning the requirement of proof of actual or probable adverse competitive effects in concrete market situations as a predicate to remedies as drastic as dissolution, divestiture or compulsory patent licensing.

The Task Force has done no case studies on corporate concentration, conglomerate mergers or patent licensing, yet the report speaks as if there were a solid body of evidence in support of each of its recommendations. In my view, bigness is neither presumptively bad nor good; oligopoly is neither presumptively bad nor good; conglomerate mergers between large firms and leading firms are neither presumptively bad nor good; and single patent licenses are neither presumptively bad nor good. Each may, in actual market contexts, be appropriate for attack by the Justice Department or the Federal Trade Commission. But in the present state of economic and legal knowledge, the sweeping condemnation which the Task Force has accorded them appears to be rooted in dogmas I do not share. Moreover, the remedies which the Task Force would apply could have a potentially disruptive impact upon American economic life and growth in which potential mischief far outweighs demonstrable benefits.

1) Concentrated Industries. The Task Force report proposes a statute which would place a blanket prohibition (together with a requirement of a substantial reduction of concentration in the direction of individual market shares of 12% or less) upon any market structure in which, for a prescribed period of years, four or fewer firms had an aggregate market share of 70% or more and industry sales exceeded $500,000,000. The proposed statute has no defenses (or discretion) except as to relief, and a firm could resist dissolution or divestiture only if it could demonstrate affirmatively that such remedies "would result in substantial loss of economies of scale," whatever that may mean.

I see no reason for imposing such a strait-jacket on big business. */ Rather, it is my view that the government now has the power to seek a panoply of equitable relief, on a "shared monopoly" theory under section 2 of the Sherman Act, against the dominant firms in any oligopoly industry where it believes that concentration has produced stagnant market behavior and where it believes that the proposed relief would result in more vigorous competition, lower prices, technological innovation and other benefits to consumers. If the Supreme Court were to refuse to apply section 2 to such a shared monopoly, I would then recommend that section 2 be amended or a new statute enacted empowering the government to proceed where oligopoly conditions have produced a substantial lessening of competition.

As I see it, the difference between the Concentrated Industries Act and the selective approach I have sketched is the difference between a bludgeon and a scalpel.

2) Conglomerate Mergers. The Task Force has recommended a statute which would prohibit flatly any acquisition by a large firm (a firm with $500 million in annual sales or $250 million in assets) of any "leading firm" (a firm with a market share greater than 10% in a market where four or fewer firms have 50% of the market and industry sales exceed $100 million). The Task Force has adduced no evidence that conglomerate mergers have resulted, in general (or in specific), in any lessening of competition in any industry. On the other hand, one certainly cannot say that conglomerate mergers are always procompetitive. Thus, again, the proposed statute tinkers, drastically and unnecessarily, with an economic phenomenon which deserves neither sweeping condemnation or uncritical approval.

In my view, section 7 of the Clayton Act (buttressed by section 1 of the Sherman Act) provides an adequate weapon to attack those conglomerate mergers which may have an adverse effect upon competition. For example, if it can be demonstrated that acquisition by a large firm of a leading firm would tend to impair the ability of other firms to compete or discourage independent entry into an industry, the Justice Department could and should appropriately attack the acquisition.

If, on the other hand, there is no evidence that the acquisition of a leading firm by a large firm will have any substantial adverse impact upon the industry in which the acquisition takes place, then there is no reason for banning the merger. In other words, enforcement agencies should be required to do their economic homework on conglomerate mergers, without benefit of per se rules.

3) Patent Licensing. I agree with the changes recommended by the Task Force in patent licensing except for the requirement that a licensor, if it licenses anyone, must license everyone. Few of the members of the Task Force have had any experience in patent licensing or patent litigation. I certainly have not. There may be instances in which a refusal to license more than one company constitutes part of a scheme for market division, price fixing, or other anticompetitive behavior. But there may also be instances where a licensor, in the exercise of business judgment, has concluded that he will maximize exploitation of a patent (i.e., the larges output of effort by those licensed) if a relatively few licensees participate in its exploitation. The draft statute would require of every patent license either (a) that the licensor be big enough so that it need not license anyone, (b) that the licensor sell the patent to someone who is big enough, or (c) that the licensor license everyone. Such tampering with corporate decision-making requires proof I have not seen.

4) Other Matters.

(a) I agree with the proposed revision of the Robinson-Patman Act, though as a matter of technique I would urge that the Federal Trade Commission pursue powerful buyers with greater frequency than it has.

(b) I agree with the recommendations as to greater information being made available to antitrust enforcement agencies so that their decisions will be better informed.

(c) I agree with the recommendation as to pre-merger notification and setting a 10-year limit on attempts to undo old mergers.

(d) I agree that antitrust decrees should be limited to ten years in duration.

(e) I agree that the Miller-Tydings and McGuire Acts should be repealed so that state-sanctioned fair trade price-fixing would become unlawful.

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*/ It would apply, for example, to industries as diverse as aircraft and cereal preparations, and to each oligopolist regardless of its profitability, market behavior, or increasing or decreasing market share.

One final note. The Task Force has been too kind to the enforcement agencies and to the courts. The Antitrust Division has shown limited imagination and strategic planning in its program for enforcement of the antitrust laws. And it has entered into a number of consent decrees (and obtained a number of litigated decrees) which have done little or nothing to remedy the evils against which they were fashioned. At least as much can be said of the Federal Trade Commission. As a result, cases have been brought that should never have been brought. And other cases have been brought in which the relief was irrelevant or absurd. The courts come off no better than the enforcement agencies. Many decisions may be justified in result but have been accompanied by opinions which are illogical or unintelligible. Other decisions have been both wrong and badly reasoned. Judicial bias against bigness in the Section 7 sector has resulted in a retreat from hard economic and legal analysis to the lotus-land of percentage tests. */

The performance of the courts, and in particular the Supreme Court, bespeaks the desirability of amending the Expediting Act so as to permit the Courts of Appeals to review, hopefully in depth, district court decisions. Such review may not be superior to Supreme Court review, but it cannot be more cursory, and the Supreme Court would continue to be available for ultimate discretionary review.

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*/ A lotus-land now codified in Mr. Turner's guidelines.

C. REPORT OF PRESIDENT NIXON'S TASK FORCE ON PRODUCTIVITY AND COMPETITION ("THE STIGLER REPORT")

EDITORIAL NOTE.—The report of President Nixon's Task Force on Productivity and Competition has not (as of late October, 1969) been officially released, but it has had widespread unofficial circulation, first in summary, then in a partial text, and finally in what appears to be a complete text. The first summary of the report appeared in an article by Stephen M. Aug published in the Evening Star (Washington, D.C.) on May 22, 1969. (See part D–2 of this appendix, infra.) A substantially complete text (lacking only two lines of the majority report and the two dissenting opinions) was published in the Bureau of National Affairs' *Antitrust & Trade Regulation Report*, June 10, 1969, and, in that version, was inserted into the *Congressional Record* by Senator Nelson, June 12, 1969, page S6350. On June 16, 1969, Senator Talmadge inserted the complete text, dissents, and four working papers in the *Congressional Record*, page S6472. The remarks of Senators Nelson and Talmadge on the occasions of their respective insertions appear, infra, in parts D–3 and D–4 of this appendix. The text that follows is the one inserted in the *Record* of June 16 by Senator Talmadge.

1. Summary of Recommendations of the Task Force on Productivity and Competition

[From the Congressional Record, June 16, 1969]

SUMMARY OF RECOMMENDATIONS OF THE TASK FORCE ON PRODUCTIVITY AND COMPETITION

We present here a summary of the recommendations of the Task Force on Productivity and Competition. These recommendations are elaborated and defended in the accompanying Report.

1. We recommend that the President issue a general policy statement (a) establishing the Antitrust Division as the effective agent of the Administration in behalf of a policy of competition within the councils of the Administration and before the independent regulatory commissions; (b) urging those commissions to enlarge the role of competition in their industries; (c) marshalling public support for the policy of competition.

2. We urge the commissions to permit free entry in the industries under regulation and to abandon minimum rate controls, whenever these steps are possible—and we think they usually are: and we urge the President, when occasion permits, to appoint at least one economist to membership in each of the major commissions, and institute effective procedures for the review of the performance of the commissions.

3. To enhance the effectiveness of the Antitrust Division, we urge the Attorney General and the Assistant Attorney General in Charge of Antitrust to insist that every antitrust suit make good economic sense, and to institute semi-public conferences to assist in the formulation and frequent reevaluation of enforcement guidelines.

4. We recommend that the Department of Justice establish close liaison with the Federal Trade Commission at the highest levels, with a view toward fostering a harmonious policy of business regulation.

5. We recommend that the Department bring a series of strategic cases against regional price-fixing conspiracies, which we believe to be numerous and economically important.

6. We cannot endorse, on the basis of present knowledge of the effects of oligopoly on competition, proposals whether by new legislation or new interpretations of existing law to deconcentrate highly concentrated industries by dissolving their leading firms. But we urge the Department to maintain unremitting scrutiny of highly oligopolistic industries and to proceed under section 1 of the Sherman Act—which in our judgment reaches all important forms of collusion—in instances where pricing is found after careful investigation to be substantially noncompetitive.

7. The Department of Justice Merger Guidelines are extraordinarily stringent, and in some respects indefensible. We suggest a number of revisions in the accompanying Report.

8. We strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises, pending a

conference to gather information and opinion on the economic effects of the conglomerate phenomenon. More broadly, we urge the Department to resist the natural temptation to utilize the antitrust laws to combat social problems not related to the competitive functioning of markets.

9. We recommend new legislation to increase the monetary penalties, at present largely nominal, for price fixing.

10. We urge a new policy for antitrust decrees. The Department should not seek the entry of regulatory decrees; decrees that envisage a continuing relationship with the defendant. Save in exceptional circumstances, all decrees should contain a near termination date, ordinarily no more than 10 years from the date of entry. And the Department should undertake a review of existing decrees to determine which should be vacated as obsolete or inappropriate.

11. The Expediting and Webb-Pomerene Acts should be repealed, and the Robinson-Patman Act substantially revised.

12. Mr. Alexander L. Stott dissents from certain parts of the Report and from certain of the above recommendations. Mr. Raymon H. Mulford dissents from two recommendations.

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2. Report of the Task Force on Productivity and Competition, with Dissenting Views

[From the Congressional Record, June 16, 1969]

REPORT OF THE TASK FORCE ON PRODUCTIVITY AND COMPETITION

The Task Force on Productivity and Competition submits its report on the problems which will be confronted by the new administration in this area, and the steps which we recommend to be taken. The report is presented under three general headings:

I. The Administration's Policy of Competition and the Role of the Antitrust Division and the Regulatory Commissions in This Policy.

II. Organization and Procedure in the Antitrust Division.

III. Recommendations for Change in Antitrust Policy.

Individual task force members would often change the emphasis of the Report, and larger differences are presented as dissents.

I. GENERAL POLICY

A. Antitrust policy

The American Way, as we are constantly told, is to rely upon competitive private enterprise to do most of the work of allocating resources to industries and firms, organizing production, and providing economic progress. We are constantly travelling a shorter distance down this Way, however: for good reasons and for bad we have almost continuously expanded the governmental controls over economic life, and in recent years important restrictions have been placed upon private enterprise to protect the balance of payments. Some of the vast arsenal of public controls are unnecessary, and a large proportion of the necessary controls are excessively restrictive of competition. As one example, the safety of financial institutions is of course a major public concern, but this safety can often be achieved by insurance or similar devices, and hardly ever requires that competition be suppressed to the extent that the most incompetently managed institution will be prosperous, and hence safe.

The traditional American policy of seeking to minimize regulation of economic life is a profoundly wise policy, and deserves to be reasserted and implemented. Both logic and political expediency—not always close allies—dictate that economic freedom be subjected to the discipline of competitive markets. We believe therefore, that the President should issue a general policy statement on competition and public regulation. to achieve at least three important purposes:

1. To establish the Antitrust Division as the effective agent of the Administration in behalf of a policy of competition, in intragovernmental groups, and before independent regulatory bodies.

2. To encourage and urge the regulatory bodies—which cannot ignore the clear policy positions of the President even when his appointive power is dormant—to enlarge the role of competition in their respective industries.

3. To review and strengthen public support for the policy of competition, and to establish the bona fides of the Administration as the protector of *both* consumer and businessman.

An executive order or a major presidential address would be an appropriate vehicle for this declaration. Whether or not a formal statement commends itself, we believe that the correct policy *is* one of persistent and resourceful exploitation of competition wherever possible.

B. The policy of competition in the regulated industries

Our mandate to examine productivity and competition in the American economy compels us to brief examination of the work of the regulatory commissions themselves. The regulated industries comprise one-eighth or more of the economy in terms of income, and are too important to be omitted from our Report.

The tasks assigned to the regulatory agencies are various; to prevent monopoly pricing (as with telephone and pipelines); to prevent congestion (as with radio and television frequencies); to provide safety to savers (as with financial institutions); and so on. It is not possible for us here to examine these purposes critically, although it is notorious that in certain industries (such as motor trucking) there is no respectable case for economic regulation. There is widespread disenchantment with regulatory purposes as well as regulatory processes, and a general belief that excessive rigidity, expensive review of economically trivial details and frequent failure to achieve any important results have characterized our regulatory efforts.

In two directions, we are convinced, there should be a major reorientation of the regulatory policy:

1. Entry of new firms should be encouraged wherever an absolute contradiction with regulatory goals is not involved. At present the practice is universally the opposite; to prohibit or ration with utmost severity the entrance of new firms.
2. Allow much freedom in price competition. The regulatory bodies should abandon *minimum* rate regulation whenever possible (and it is usually possible), and rely chiefly on maximum rate regulation.

Where rates are regulated, it is essential to make *both* changes: there is little merit in allowing additional firms to enter if they are not held to the test of unfettered competition with the existing firms.

We urge the Administration to pursue three complementary paths of reform in the regulated industries:

First, the commissions should have the merits of competition pressed upon them. Competition is not a matter of all or none, and the fact of regulation should not exclude competition as a force at each of a hundred points where it is relevant and feasible. If there must be only one railroad there can still be several truckers, several freight forwarders, and the possibility of inter-model competition.

Second, the primary method of giving a larger role to competition is by appointing commissioners who understand and believe in a policy of competition. *We believe that every regulatory body should have at least one economist as a commissioner.* Quite aside from the implementation of the desire for more competition, this proposal has a decisive defense: economic regulation poses more economic than legal problems, and an economist knows more about economics than a non-economist. The economic triviality and irrelevance of much activity of the regulatory commissions is patent and inexcusable.

Third, the regulatory commissions are largely out of public control. Once in a decade or two, at most, a commission will be investigated by Congress. The Administration should explore methods of getting more meaningful and effective reviews than we now get. We do not know whether the best method is an enlarged Bureau of the Budget section, a national commission, the creation of academic review committees, or a special adviser to the President. The best method, however, is surely not infrequent, partisan Congressional review. The present rule of the regulatory bodies is undirected, unmeasured, and unevaluated.

II. ORGANIZATION AND PROCEDURE IN THE ANTITRUST DIVISION

A. The utilization of economic knowledge

We anticipate little opposition to the proposition that the Antitrust Division make full and effective use of economists and their special skills. These skills are often necessary to understand the effects of economic practices (an example is market-sharing in fixed proportions), to assess the economic importance of individual cases, and to assist in devising remedies that will shatter on economic realities. We endorse the policy of having a highly professional economist serv-

ing as adviser to the head of the Division, and a strong permanent staff of economists.

The problem is not the goal of an economically sophisticated antitrust policy, but its implementation. A division charged with the enforcement of a statute must of course be directed and largely staffed by lawyers. Unless there are substantial incentives to the staff to utilize economics—whether by central direction, or vastly more powerfully, by demonstrated assistance in winning cases—the non-lawyer will often be viewed by the lawyers as a mysteriously necessary obstacle to smooth operations. The Assistant Attorney General will have succeeded in making a truly major contribution to antitrust policy if he establishes the relevance of economic knowledge.

B. The development of criteria for classes of cases (guidelines)

When the Antitrust Division is confronted by a large number of similar cases—and it must now be scanning many hundreds of mergers each year—it will inevitably have rules to guide the numerous men who pass on individual cases. The question is not whether to have criteria or guidelines, but how to arrive at them.

We believe, for reasons we discuss below, that the present merger guidelines are questionable in important respects. Here we consider the procedures for formulating guidelines.

A set of rules for a class of cases will be desirable only if two conditions are fulfilled:

1. There are a large number of uncontroversial, easily identified cases. If there are not, the rules give little help to either business or the Division.
2. Controversial or objectionable cases cannot be repackaged to avoid scrutiny.

The way to determine whether mergers, for example, meet these conditions is to examine a large number of them in the light of legal and economic knowledge. The Antitrust Division will perform this task vastly better if it uses the large amount of professional expertise available outside the Division. We therefore recommend that the Division have semi-public conferences to explore difficult areas of policy, inviting legal and economic experts to propose or discuss guidelines. Some members of the task force would prefer to have formal notice and public hearings in establishing rules. If rules are adopted, a periodic review of them by the same procedure will be a useful method of conferring flexibility upon them. A specific application of this method is proposed below for mergers.

C. The role of the Federal Trade Commission

No review of antitrust policy would be complete that ignored the Federal Trade Commission, which is charged with enforcement of, among other statutes, the Clayton Act, of which Section 2, the Robinson-Patman Amendment, and Section 7, prohibiting mergers and acquisitions that may substantially lessen competition, are particularly important; and the Federal Trade Commission Act, whose operative provision, Section 5, forbids "unfair or deceptive acts or practices," a term that has been interpreted to embrace even more than the vast area of anticompetitive behavior proscribed by the Sherman and Clayton Acts, as well as consumer fraud and some "immoral" sales methods such as lotteries. As is evident, the Commission's jurisdiction largely overlaps that of the Antitrust Division.

In its antitrust work, the FTC has concentrated on price discrimination, on practices believed to oppress or coerce small dealers, and on mergers, especially vertical and conglomerate, and usually in industries such as food products, groceries, and cement—industries which by long-established understanding with the Antitrust Division have been assigned as the Commission's sphere of primary competence.

Unhappily, little that the Commission undertakes in the antitrust area can be defended in terms of the objective of maintaining and strengthening a competitive economy. Consider price discrimination. There is now an impressive body of literature arguing the improbability that a profit-maximizing seller, even one with monopoly power, would or could use below-cost selling to monopolize additional markets. Yet, not only has the Commission continued to bring predatory price discrimination cases, but the alleged danger of predatory pricing remains a principal prop of its vertical and conglomerate antimerger cases. As for "secondary line" discrimination (that is, giving discounts to some dealers or distributors but not to others who compete with them), the Commission has never at-

tempted to differentiate those cases (if there are any) in which a monopsonistic buyer is able to extract unjustified price concessions from his suppliers to the prejudice of his competitors from those in which discrimination is employed by oligopolistic sellers who wish to cut prices secretly—and should be encouraged to do so—and those in which price *differences* (which the Commission tends to equate, erroneously, with *discriminations*) are not, in fact, discriminatory. Over the last eight years the Commission, often under the prodding of reviewing courts, has pulled some of the sting from enforcement of Robinson-Patman against secondary-line discrimination. It has demanded somewhat stronger proof of competitive injury; the meeting-competition and cost-justification defenses have been rendered meaningful; and the provisions of the Act relating to advertising allowances and brokerage payments are, in general, no longer used to compel sellers to compensate for services that are not economically beneficial to the seller (such as advertising by tiny retail outlets or brokerage when a broker's services can be dispensed with).

Although the retreat from *per se* rules against secondary-line discrimination has led to a general diminution of enforcement activity by the FTC (private suits continue, of course, and are discussed later) the Commission still brings many cases that impair, rather than promote, competition and efficiency. For example, the Commission has in recent years waged vigorous war against "functional discounts," which are discounts offered to middlemen who perform certain distributive functions (such as warehousing) that other middlemen, who are not given the discounts, do not perform. Moreover, as explained later in this Report, we can conceive of no case of discrimination in which the Sherman Act would not provide an adequate remedy—adequate, that is, to protect the interest in maintaining an effectively competitive economy—and so we view Robinson-Patman enforcement as inherently likely to be pushed beyond proper limits.

The efforts of the Commission to protect small dealers from allegedly unfair and coercive business practices constitute a dark chapter in the Commission's history. Much of this enforcement activity does not eventuate in formal proceedings. What happens is that a dealer who is terminated, for whatever reason, is likely to complain to the Commission, knowing that the relevant Commission staff is well disposed toward "small business." The staff uses the threat of an FTC proceeding to get the supplier to reinstate the dealer, and if threats fail—usually they succeed—the FTC may file a complaint charging the supplier with having cut off the dealer because he was a price cutter, or for some other nefarious reason. Our impression, in sum, is that the Commission, especially at the informal level, has evolved an effective law of dealer protection that is unrelated and often contrary to the objectives of the antitrust laws. The Commission is supported in this endeavor by the Supreme Court's rulings that Section 5 of the FTC Act empowers the Commission to suppress practices that *resemble* antitrust violations.

With respect to the Commission's enforcement policy in the merger field, it is illuminating to compare the recent statements of Commission merger policy with the Department of Justice Merger Guidelines, discussed elsewhere in this Report. The Commission is even more severe. Unlike the Department, it attaches a good deal of significance to the absolute size (independent of market share) of merging firms; to the alleged power that large firms have over small; and to the dangers of "price squeezes". It will, for example, challenge virtually *any* acquisition by a cement producer of a ready-mix concrete company, virtually *any* substantial acquisition by a large food chain, etc. The Merger Guidelines are models of restraint compared to those promulgated by the Commission, which are as hard on economic theory as on mergers.

We conclude that substantial retrenchment by the Commission in the antitrust field is highly desirable. In addition to retrenchment (at least by stopping the increase of the Commission's appropriations), its resources devoted to regulating competition might be redeployed. The two principal possibilities are (1) consumer protection, and (2) economic studies utilizing the very broad fact-gathering powers vested in the Commission by its enabling legislation. Unhappily, either route could be followed in a way that endangered competition. An incompetent economic study can be influential on policy makers—witness the influential 1948 FTC study which erroneously suggested that concentration was on the rise in American industry. Overzealous enforcement of consumer-protection legislation can also have errant results. We note that the application of consumer-protection law is almost always invoked not by consumers but by competitors, whose interest lies in protecting their market, not in giving consumers full information:

and that elaborate requirements relating to packaging, safety, etc. can curtail consumer choice, limit competition, reduce the consumer's incentive to exercise care, and—what is most serious—impose substantial costs on society.

The Federal Trade Commission urgently needs a basic reform, but this need will be difficult to fulfill. Quite apart from the fact that there are no vacancies on the Commission, any dramatic or far-reaching Presidentially-inspired reforms would run up against the long tradition of regarding the independent agencies in general—and the FTC in particular—as "arms of the Congress". That has at times meant an office of economic opportunity for Congressmen; more important, it means that a strong showing of Presidential interest in the operations of the Commission will not be welcome on the Hill.

Perhaps the best short-run path of improvement runs through the offices of the Attorney General and the Assistant Attorney General in charge of Antitrust. Since the jurisdictions of the Commission and of the Antitrust Division are so largely overlapping, no one could object to the establishment between the Commission and the Division of closed liaison at the highest levels. Indeed, it is something of a wonder (though explicable in terms of bureaucratic rivalry) that such liaison has been wholly lacking heretofore; the only coordination between the agencies is at very low levels, and consists largely of haggling over who shall sue in cases where both agencies are interested. Especially at the beginning of a new Administration, it should be quite feasible, as well as wholly appropriate, for the Attorney General and Assistant Attorney General to establish a close cooperative relationship with the Chairman of the Commission. We think it likely that the Commission will pay some heed to the Department's views, if forcefully expressed, on antitrust and trade-regulation policy.

III. RECOMMENDED CHANGES IN ANTITRUST POLICIES

The general policies of the Antitrust Division are profoundly good, and we propose no major change in its emphasis or directions of policy. In fact, the main thrust of the following recommendations is that certain recent developments of policy or doctrine should not be allowed to divert the agency from its basic task of striking down conspiracies and mergers in restraint of trade.

A. Price-fixing

The price-fixing cases of the Antitrust Division are its bread and butter, and understandably its staff would prefer more cake. We emphasize the great economic and social importance of continued, vigilant, aggressive seeking-out and conviction of conventional price-fixers. Every victory weakens the efficiency of undetected collusion in that area of economic life. We strongly recommend the bringing of a series of strategic cases against regional conspiracies, which we believe to be numerous and economically important.

B. Concentration and oligopoly

Oligopoly—the industry composed of a small number of independent enterprises—undoubtedly presents the most difficult problems in a policy for competition. The difficulties arise because of a combination of three circumstances. The first is *factual:* there are many important industries in our economy whose structure is oligipolistic—how large a number depends upon what a "small number of firms" means. The second is *interpretive:* the economists have not succeeded in fully identifying the characteristics of an industry which determine whether it will behave competitively or monopolistically. The third is the matter of *action:* If firms in an oligopolistic industry are convicted of collusive behavior, must one press for a remedy so radical as dissolution in order to stop future repetitions of the offense? (And should the standards of permissible concentration be wholly different for pending mergers that for established enterprises?)

The circumstances which determine whether or not the firms in an oligopolistic industry will usually behave more or less competitively (seeking by independent actions to improve their individual profits at the cost of rivals' profits, with the eventual general erosion of unusual profits) are partly known:

1. The easier (quicker and cheaper) new firms can enter the industry, the smaller and more short lived will be the monopolistic restrictions.

2. The more elastic the demand for the product of the oligopolistic industry the less the reward from restrictions of output below the competitive level, and hence the less the inducements to act collusively. This in turn usually depends upon what alternative products the buyers may turn to.

3. The larger the effective number of firms the less the probability of collusive behavior—collusion increases in expense (including probability of detection) as numbers increase. However, a given number of firms is more likely to result in collusion, the more concentrated is production in the hands of a few firms. If we correct for this and take the effective number of rivals to be the number of rivals of equal size which would produce the same competitive situation as the firms (not of equal size) actually in the industry, the effective number may be very roughly estimated at twice the number there would be if all firms were as large as the largest in the industry. That is, if the largest firm has ⅕ of the industry's output and the remaining firms fall off in size regularly, the effective number of firms is of the order of magnitude of 10. By this is meant that the concentration in the industry is equivalent to what would exist if there were 10 firms of equal size.

There are other influences which probably but less certainly affect the probability of competitive behavior. One of these is the size of buyers; larger buyers, for a variety of reasons including possibility of backward integration, make for more competitive prices.

Numerous statistical studies have been made of the relationship between concentration and rates of return on investment, and these studies generally yield positive but loose relationships: concentration is not a major determinant of differences among industries in profitability, although it may sometimes be a significant factor. It appears also to be true that somewhere between five and ten *effective* rivals (i.e., a larger firm with a share of ⅓ to ⅕ are usually enough to insure substantial elimination of the influence of concentration upon profitability.

Concern with oligopoly has led to proposals to use the antitrust laws (perhaps amended) to deconcentrate highly oligopolistic industries by dissolving their leading firms. We cannot endorse these proposals on the basis of existing knowledge. As indicated, the correlation between concentration and profitability is weak, and many factors besides the number of firms in a market appear to be relevant to the competitiveness of their behavior. While a flat condemnation of oligopoly thus seems to us unwise, we commend to the Antitrust Division a policy of strict and unremitting scrutiny of the highly oligopolistic industries. If, in any of these industries, pricing is found after careful investigation to be substantially non competitive, the Division will have a clear basis for proceeding against the leading firms under Section 1. Collusion that can be incontrovertibly inferred from behavior (such as persistent, stable price discrimination in the economist's sense) should not bring immunity from the Sherman Act, and we are confident that structural remedies will be sanctioned by the courts in cases where, due to number of firms and the other conditions of the market, lesser remedies are likely to be unavailing. In assessing the gain from such structural remedies, account should be taken of any reduction in efficiency which the remedy entails.

The concern with oligopoly is also quite visible in the Department of Justice's major recent innovation, the Merger Guidelines, to which we now turn.

C. Mergers and the guidelines

The present merger Guidelines impose stringent restrictions upon the relative sizes permitted to companies which desire to merge. The impact of these percentages is reinforced by a definition of the market (within which shares of companies are reckoned) so loose and unprofessional as to be positively embarrassing. We propose to reverse this emphasis: not to tell companies which mergers are forbidden, but which mergers are permitted. We are persuaded that this orientation better serves the interests of both business and the Antitrust Division. Before we turn to the methods by which more appropriate Guidelines for mergers are achievable, we shall briefly discuss the present Guidelines, and indicate our reasons for dissatisfaction with them in their present orientation.

Market definition.—The delineation of a relevant market within which to appraise the lawfulness of a merger is crucial, for if the market is drawn narrowly enough, virtually any merger can be made to seem monopolistic in its effects. Unfortunately, as they are presently drafted the Guidelines seem to invite a substantial degree of market gerrymandering, especially in delineating regional or local markets. The Guidelines' test of whether a product is sold in less than a national market is loose. Any group of competing sellers in the industry is a relevant market, unless the defendant can show that there is no "economic barrier" preventing other sellers from selling in the particular area. Such a barrier may consist of freight costs, customer inconvenience, customer preference for the

brands presently sold in the areas, or the absence of good distribution facilities.

This is a misleading test. An industry may be riddled with the kind of "barriers" cited in the Guidelines and yet still not contain any meaningful local markets. An example will illustrate. Assume that the price of steel bars is $2 in Minnesota and $1.60 in Chicago, and the cost of shipping the bars from Chicago to Minnesota is 41 cents. On these facts, it is plain that the Minnesota sellers could not raise their price significantly without immediately losing their business to the Chicago sellers. Minnesota is thus not a meaningful local market even though, at the existing price, freight costs do impose an effective economic barrier against the Minnesota sellers. Moreover, additional firms will establish production or distribution facilities in Minnesota if it becomes profitable to do so. The same analysis can be extended to the other barriers discussed in the Guidelines.

In criticizing the test of "economic barrier", we do not mean to deny the difficulty of devising rules of market definition that will be at the same time simple and sensible. This is most probably not an area in which Guidelines provide a useful enforcement tool. If there are to be Guidelines, though, they should at least not misstate the applicable economic theory. It would, accordingly, be a decided improvement if the Guidelines were revised (at a minimum) to explain that a distant seller of a product must be included in the local market if a modest price increase in the local area—a price increase unrelated to *his* costs—would bring him in forthwith.

Horizontal mergers.—The provisions of the Guidelines governing horizontal mergers—that is, mergers between direct competitors—are extraordinarily strict. If a market is "highly concentrated" (defined as where the 4 largest firms account for at least 75 percent of the sales in the market), then a merger between two firms, each of which has a 4 percent market share, will be challenged: and if the acquiring firm has a share as large as 15 percent, then the acquired firm need have only a 1 percent share for the merger to be challenged. Different levels of permissible size are stated for less concentrated industries, and some account is taken of the trend of concentration.

We agree with the basic premise of the horizontal-merger provisions of the Guidelines that market-share percentages are the appropriate touchstone of illegality for such mergers. We would favor levels of concentration modesty *lower* than those now used (but differently structured), with the purposes of (1) allowing all mergers below the Guidelines levels, and (2) not prohibiting, but reviewing, those above the critical level, with an implied probability that the more a proposed merger lies above the level of automatic approval, the less the probability of its acceptance. We discuss below the procedure that should be followed better to utilize existing knowledge in fashioning the Guidelines.

Vertical mergers.—A merger that involves the acquisition not of a competitor but of a customer or a supplier is a vertical merger, and the present Guidelines contain strict provisions limiting such mergers. For example, if the supplying firm in the merger has a 10 percent share of its market and the purchasing firm has 6 percent of the purchases in that market, the merger will be challenged.

Our task force is of one mind on the undesirability of an extensive and vigorous policy against vertical mergers: vertical integration has not been shown to be presumptively non-competitive and the Guidelines err in so treating it. Within this area of agreement there are two positions around which the task force members cluster.

The one position asserts that many, and perhaps most, vertical mergers which do not have direct horizontal effects are innocuous, but that in certain situations a vertical merger will have anti-competitive effects. These situations include: increases in the capital or other requirements for an integrated firm may reduce the possibility of new entry; or price discrimination may be implemented when a monopolist integrates forward or backward. A showing that an anticompetitive effect of these sorts exists is essential before a vertical merger is challenged.

The other position denies that a vertical merger has the potentiality for economic harm in the absence of horizontal effects. To some of our members, it is wholly implausible that vertical integration places entering firms at a disadvantage. A seller who fails to minimize his input and distribution costs will be undersold by his competitors; he cannot afford to sell to or buy from an affiliate if there are more efficient alternative means of supply and distribution available to his competitors (and to him). Even if the seller is a monopolist, the desire to maximize profits will lead him to seek the most efficient methods of supply and distribution, and there will be ample opportunities for nonaffiliated suppliers

and outlets to compete for his patronage. Except in the case of the monopolist who cannot discriminate in price effectively without control of his outlets, vertical integration will be initiated and maintained only if and so long as it is justified by the cost savings it permits. It is not a method of extending monopoly power.

The two positions coalesce on one policy conclusion: vertical mergers should not be forbidden as a class.

The conglomerate merger.— The large conglomerate enterprise with an aggressive acquisition policy has only recently become prominent and newsworthy. Almost by definition such a firm poses at most a minor threat to competition, but nevertheless criticism of it is beginning to mount. Some critics deplore the disappearance of independent enterprises and find a threat of sheer bigness to political or economic life. Other critics believe that the conglomerate firm is spawning unhealthy speculation in the securities markets.

Antitrust law has seemed to some a convenient weapon with which to attack large conglomerate mergers. If one interprets "elimination of potential competition," "reciprocity," and "foreclosure" as threats to competition, one can always bring and usually win a case against the merger of two large companies, however diverse their activities may be. These are often makeweights. The economic threat to competition from reciprocity (reciprocal buying arrangements) is either small or nonexistent: monopoly power in one commodity is not effectively exploited by manipulating the price of an unrelated commodity. The argument advanced against the simplistic treatment of vertical mergers—essentially that one cannot use the same monopoly power twice—also challenges the fears of reciprocity.

Potential competition, on the contrary, can be a decisive limitation on the exercise of market power, and a merger which eliminates an imminent new competitor is anticompetitive. If entry into a field is relatively easy, however, there are a vast number of potential entrants and the elimination of one or a few has no effect. If entry is difficult, and only a select few firms are capable of entry and on the record likely to enter, their independence should be preserved. The identity of potential entrants should not be established by introspection. If the producer of X is truly a likely entrant into the manufacture of Y, the likelihood will have been revealed and confirmed by entrance into Y by other producers of X (here or abroad), or by the entrance of the firm into markets very similar to Y in enumerable respects.

We seriously doubt that the Antitrust Division should embark upon an active program of challenging conglomerate enterprises on the basis of nebulous fears about size and economic power. These fears should be either confirmed or dissipated, and an important contribution would be made to this resolution by an early conference on the subject. If there is a genuine securities market problem, probably new legislation is necessary. If there is a real political threat in giant mergers, then the critical dimension should be estimated. If there is no threat, the fears entertained by critics of the conglomerate enterprises should be allayed. Vigorous action on the basis of our present knowledge is not defensible.

The central task of the Antitrust Division is to preserve competition in the American economy. This is a splendid and challenging task and deserves and requires the full resources of the Division. We shall be much the losers if we compromise the discharge of this central task by burdening the Division also with tasks such as the combatting of organized crime or the achievement of general political goals.

The use of conferences.—We have proposed that conferences be used to revise the Guidelines and to identify the problems, if any, created by the large conglomerate enterprise. The conference will allow the Antitrust Division to utilize the expertise and wide factual knowledge of economists, lawyers, securities analysts, and other groups without the laborious machinery of formal hearings. We strongly recommend that before such conferences are held, leading students and exponents of particular positions be asked to prepare position statements which present explicit and specific theories and evidence. Then the conference members will have specific questions to address and specific views to combat or support.

D. Antitrust sanctions

The cutting edge of law is not the abstract statement of a legal duty but the sanction provided for its nonperformance, and that is true of the antitrust laws as of other systems of legal obligation. It is essential that those laws clearly and accurately define and forbid the practices that impair competition and efficiency

but it is equally essential that the sanctions for violation be effective in compelling compliance and with a minimum of undesirable side effects.

In testing the antitrust sanctions by this standard, it will be helpful to distinguish two purposes of sanctions: that of preventing (or, if it has already occurred, undoing) a specific violation; and that of deterring violations that might not always be detected. Sanctions of the first type—remedial sanctions—suffice where there is no problem of detection (e.g., in the case of an illegal merger). But take the case of price-fixing. Price-fixing conspiracies can be, and one suspects often are, successfuly concealed. A sanction that merely prevented the continuation of the conspiracy, such as an injunction, or one that merely restored the losses of the injured consumers, such as ordinary damages, would in these circumstances probably be insufficient. For in deciding whether to comply with the law, a seller would discount the very modest (or negligible) injury to him if his participation in a price-fixing conspiracy was detected, and he was required to stop and to pay actual damages, by the considerable probability that he would escape detection altogether: and he could conclude that he had little to lose by participating. That is why punishment by fine or imprisonment is an appropriate sanction for illegal price-fixing; it provides deterrence, as the purely remedial sanction does not.

But the deterrent sanction in antitrust is weak. A price fixer can be imprisoned and fined but prison terms are almost never imposed in price-fixing cases and when they are, they are nominal in length; and the maximum fine of $50,000 will deter only a very small corporation. The possibility of a private treble-damage suit doubtless provides additional deterrent effect, but there are serious limitations: judges are reluctant to authorize damage awards that seriously hurt a company; damages are difficult to prove in price-fixing cases: and, most important, the injury caused by a price-fixing conspiracy is often so widely diffused (for example, among millions of consumers) that no one has an incentive to bring a suit. The government itself can sue for damages only when it was the victim of the unlawful conspiracy.

If concealable offenses under the antitrust laws are to be effectively deterred, either the resources devoted to the detection of such offenses must be vastly augmented—and there are obvious limitations to this route—or the fines must be increased to a point where they will give even the large corporation considerable pause before participating in (or condoning its officers' individual participation in) an illegal conspiracy. Precedent for much more severe sanctions can be found abroad. The European Economic Community, for example, may impose penalties of up to $1,000,000, or, in the case of willful violations, up to 10 percent of annual sales. We have not attempted to determine the appropriate level of antitrust fines but we urge the Department of Justice to accord high priority in its lgeislative program to the upward revision of these penalties.

The creation of a more realistic scheme of antitrust fines would enable a long-overdue reexamination of the punitive aspects of the private antitrusty suit. It is anomalous that private plaintiffs who have done nothing to uncover or prove an antitrust violation (the usual case) should be permitted to claim treble damages on the basis of a judgment obtained by the Antitrust Division. In such circumstances, the excess over actual damages and costs represents a pure windfall to the private plaintiff. Today, one can defend this arrangement on the ground that it furnishes an element of added deterrence which is necessary in light of the inadequacy of the existing criminal fines. But that ground would be removed if the fines were revised to a more appropriate level: and a more rational scheme of deterrence would become feasible. We are also deeply concerned that private treble damage suits provide undesirable opportunities for harassment and the furtherance of a variety of anticompetitive practices.

With regard to remedial sanctions, the principal question involves the undesirable side effects that frequently accompany a poorly formulated decree. Ideally—and it is an attainable ideal—an antitrust decree should be a "one shot" affair: dissolving the monopoly, or diversting the acquired assets, or terminating the basing-point system, etc. The antitrust laws were never intended to be a system of continuing regulation. Antitrust policy has as its basic principle the preservation of a competitive environment within which individual enterprises are free from continuing supervision. When a decree says, in effect, "Let us return to the court, or give the power to the Antitrust Division, to adjudge the propriety of various behavior of the defendant for years to come," one can be sure that the suit has failed in its purpose of restoring competitive conditions. Nor is the Department equipped to function as a regulatory agency, and it is not likely to escape that common pitfall of economic regulation, the

suppression of competition. Nonetheless, such decrees are frequently entered, especially by consent of the parties in cases where the Department (or the Federal Trade Commission, to which these remarks apply with equal, if not greater, force) is unsure of its litgation prospects and wishes to salvage something from the investment of enforcement resources.

For the future, we urge that the Department adopt a firm policy of not proposing or accepting decrees that envisage a continuing, regulatory relationship with the defendant. A correlative policy that we suggest is that every decree contain a definite—and near termination date, ordinarily no more than 10 years from the date of the decree is entered. Such a principle would compel the Department to devise decrees that restore competition rather than establish regulation, as well as assure that decrees do not remain in effect long after the relevant industrial conditions have changed (such as with the 1920 decree against the meat packers).

Little is known of the extent to which a large number of past decrees are still operative, and if operative, of any real value in protecting competition. We recommend, therefore, some such procedure as this in dealing with outstanding decrees:

1. The past decrees still running should be compiled, and the types and duration of prescribed conduct summarized.
2. The current relevance of the decrees, or at least those running against large industries, should be examined—presumably by the economics section of the Antitrust Division.
3. The older (say 25 years and over) and obsolete younger decrees should be vacated.

E. Recommended changes in antitrust statutes

Several legislative reforms could improve substantially the functioning of the antitrust laws. We have recommended above a substantial increase in the maximum level of fines. In addition, we recommended immediate repeal of the Expediting Act. The low quality of many Supreme Court antitrust opinions can be traced in no small measure to the fact that direct appeal frequently requires the Supreme Court to pass on an extensive record without the benefit of the winnowing and focusing process involved in an intermediate appeal. The Supreme Court itself has noted that direct appeal is unsatisfactory. If repeal is politically impossible, then an amendment that would drastically limit the number of direct appeals would be desirable.

The Webb-Pomerene Act should also be repealed. The creation of cartels in foreign commerce is antithetical to the underlying theory of the Sherman Act. The danger that exempted cooperation between competitors in the export field will lead to illegal cooperation at home is too great to be viewed as merely a potential abuse. Nothing in U.S. domestic competition policy or foreign economic policy warrants the retention of this outmoded approach to international competition.

On the agenda for long-term legislative reform must be the Robinson-Patman Act. The Act leads to rigidity in distribution patterns and to uniform, inflexible pricing. In industries with few sellers, price reductions are more likely to be made if they can be made convertly. Such limited reductions often lead over time to generally lower prices. Thus, a prohibition against price discrimination may preclude the kind of competition that is most likely to lead to lower prices in oligopolistic industries. We view the Federal Trade Commission's tendency in recent times to relax the enforcement of the Act as a desirable but, so long as private treble damage actions are available, an inadequate reform.

In reforming the Robinson-Patman Act, two kinds of amendment are desirable. First, the general prohibition against price discrimination in Section 2(a) should be made more supple by broadening the meeting competition and cost justification defenses so as to make them more readily available for sellers whose price differentials do not stem from a predatory purpose and do not injure competition in the market place (as opposed to disadvantaging individual firms). Second, the more absolutist brokerage, payments and services prohibitions of subsections (c), (d) and (e) should be repealed while making clear that the standards of amended subsection (a) remain applicable to practices that would previously have been treated under those repealed subsections. The Task Force recognizes the political support that the Robinson-Patman Act retains in some quarters and the danger that an attempt to amend the Act might give particular interests in opportunity to add even more restrictive provisions. As a conse-

quence, some of our members view amendment of the Act as a long-term, albeit important, reform; others wish to leave it alone.

Ward S. Bowman, Jr., Ronald H. Coase, Roger S. Cramton, Kenneth W. Dam, Raymond H. Mulford,* Richard A. Posner, Peter O. Steiner, Alexander L. Stott,* George J. Stigler, Chairman.

DISSENT OF R. H. MULFORD WITH RESPECT TO PORTIONS OF REPORT OF TASK FORCE ON PRODUCTIVITY AND COMPETITION

Mr. Raymon H. Mulford dissents from two recommendations in the Report:
1. He does not believe that the maximum fine of 50 thousand dollars for violation of the Sherman Act should be increased.
2. He does not believe that the Webb-Pomerene Act should be repealed.

DISSENT OF A. L. STOTT WITH RESPECT TO PORTIONS OF REPORT OF TASK FORCE ON PRODUCTIVITY AND COMPETITION

I cannot accept the recommendations of the Task Force with respect to competition in the regulated industries.

What is recommended is that, without seeking Congressional action changing existing regulatory statutes, the Administration exert pressure to compel regulatory authorities to adopt a new interpretation of such statutes which is radically different from the interpretation long established as being intended by Congress. The report recommends that the President issue a general policy statement to implement this approach. I believe that these recommendations of the Task Force are unwarranted and that it would be unwise for the President to assume the role which the report contemplates for him in the regulated area of the economy.

Under the approach of the Task Force regulatory authorities would be pressured by the Administration into giving primary importance to the imposition of competition on regulated industries. The basic difficulty I have with this approach is that it ignores the fact that in certain areas of the economy, notably in industries with "natural monopoly" characteristics, Congress has clearly and unmistakably adopted a policy not to promote but to limit competition. Moreover, it ignores the fact that it is for Congress, not the Executive Branch, to determine the relative roles of competition and regulation in the economy.

The report treats as regulated industries not only the industries with "natural monopoly" characteristics, such as the electric, gas, water and communications industries, but also the financial, radio and television industries. It then takes a broad view as to all of them that the present statutory controls should be replaced wherever possible by competition, and that the Administration should direct its attention toward imposing competition on regulated industries.

However, the public interest considerations and the schemes of governmental control are entirely different in the case of (1) industries with "natural monopoly" characteristics and (2) the other industries mentioned. Although the industries in the second group are subject to varying degrees of governmental control, prices are not regulated, except in unusual situations, and competition is expected and required by law. It has been the long established public policy of this country, however, to subject industries with "natural monopoly" characteristics to much more comprehensive governmental regulation, in lieu of competition, as to many aspects of their businesses including entry, prices, services accounting, depreciation, etc. This method of regulation has not been free of problems. However, I believe that such problems can be solved within the framework of the present regulatory structure without a change of existing laws.

The report is critical of the existing regulatory purposes as well as the regulatory processes, and casts doubt on the effectiveness of regulations in general. The criticism is not supported by any factual showing. The report urges that only by superimposing competition on regulation can proper objectives be achieved. There is no reference to the unfortunate results that the imposition of competition has produced in the railroad industry.

I want to make it clear that I am not urging that competition is never appropriate in the regulated field. My point is that, where legislation calling for strict regulation of the prices and services of an industry because of its "natural monopoly" characteristics has been enacted by Congress, any competition imposed upon the industry must be consistent with the statutory scheme of regula-

*Subject to dissent which follows below.

tion. Competition cannot properly be imposed on such an industry just for the sake of competition on the general assumption that competition is bound to be of advantage. The courts have held that it is for Congress to establish the public policy of the United States as to the relative role of regulation and competition in our economy. In *FCC v. RCA Communications, Inc.*, 346 U.S. 86 (1953), the Supreme Court held that the Congress has *not* established a national policy in favor of competition within the regulated public field. Indeed, in that case the Court expressly prohibited the FCC from authorizing competition in a comprehensively regulated field without warranting some specific benefits to the public, saying: "Merely to assume that competition is bound to be of advantage, in an industry so regulated and so largely closed as is this one, is not enough."

Under the existing statutory schemes of regulation competition is permitted in an industry with "natural monopoly" characteristics only when found to be in the public interest by the governmental agency having jurisdiction over the industry. Before a determination of this kind is made the governmental agency holds extensive hearings, and all parties affected are heard. Of course, the views of economists are sought and carefully weighed in the process. However, in proceedings of this nature no generally accepted economic principles have emerged that could substitute for the judgment determinations intended by the statutes and made by regulatory agencies after considering the business, economic, sociological, political and other public interests factors involved.

It must be recognized that a proceeding of this kind can involve issues of a major national importance. This is certainly true as to a number of proceedings of this nature now pending before the Federal Communications Commission.

The Task Force report would change this present regulatory procedure, and it makes several recommendations as to the courses of action that should be taken to effect the change. Among the recommendations, the report would "urge the commissions to permit free entry in the industries under regulation and to abandon minimum rate controls, whenever these steps are possible—and we think they usually are". The President is asked to designate the Antitrust Division as the "effective agent of the Administration" to put pressure on the regulatory agencies to act in accordance with the views expressed in the report. This approach appears to me a misunderstanding of the proper function of the Department of Justice in the regulated field.

Like all executive departments, the proper function of the Department of Justice is the enforcement and execution of the laws of the United States. Activities of the Department of the kind proposed by the Task Force before regulatory agencies would, however, not relate to the enforcement of the antitrust laws. On the contrary, the proposal would seem designed to place the Department in the position of urging regulatory commissions to adopt economic policies which are *not* based on the public policy of the United States as expressed by Congress in the antitrust laws or elsewhere. To the extent that it is within the power of commissions to adopt competition in the regulated areas, they can do so only in the exercise of their administrative discretion. The Department of Justice, however, has no special competence in advising commissions how to exercise their discretion in the proper discharge of their regulatory functions. In this connection it is significant that the Attorney General has consistently taken the position that it is improper for him, in the exercise of his function of giving opinions to executive departments, to advise them as to questions of administrative policy. I believe that it would be equally improper for the Department to use its prestige and power to force regulatory agencies to adopt administrative policies along the lines urged in the report.

Another important recommendation is that the President issue a general policy statement which would place the prestige and force of his office behind the recommended changed method of operation under regulatory statutes. It would place the President in the position of attempting to change national public policy as incorporated in the statutes which dictate that competition should be introduced into the regulatory industries only when commissions who have extensive experience with the industry are satisfied after careful study that the public interest requires such competition. It might be construed as an attempt by the Administration to interfere improperly with the operations of the independent regulatory agencies. If the President has doubts as to the effectiveness of the present regulatory laws, I believe the proper approach for him would be to request Congress to study the situation with a view to altering the existing laws. Based on my knowledge of the purposes and performance of regulation, I feel that the approach of the Task Force is unwarranted and is not the proper way to undertake such an important change in regulatory policy.

3. *Working Papers for the Task Force on Productivity and Competition*

[From the Congressional Record, June 16, 1969]

Working Paper for the Task Force on Productivity and Competition: the Conglomerate Merger

(By Ronald H. Coase)

There is a loud clamour to proceed against conglomerate mergers under the antitrust laws and the political pressures exerted for such action are strong. It is my view that such pressures should be resisted, an opinion which I know is shared by some other members of the Task Force.

The acquiring of an enterprise by a firm which has interests in other unrelated enterprises, unlike a horizontal merger, has no direct anti-competitive effects. It leaves the competitive situation essentially unchanged. Indeed, the main complaints about the conglomerate relate to other things. It is said that a firm with a high price/earnings raio (based on the assumption that its profits will grow rapidly) is able, through acquiring firms with a low price/earnings ratio, to produce an apparent rise in the per-share earnings and thus justify the pre-existing belief in the rise in its profits. It is, of course, clear that this process cannot go on for long, (if this is the real basis for the conglomerate's rapid growth in profits) since it needs more and more acquisitions of organizations with low price/earnings ratios to maintain this apparent rapid growth in the earnings of the conglomerate, as the acquired firms are presumably ones in which there is little prospect of a rise in earnings or a considerable chance of decline. Whether investors are, in fact, misled about what is going on, I do not know. But if there is a problem, it seems clear that is one for the Securities and Exchange Commission.

It is also claimed that these conglomerates will be inefficient. A more likely result is that some will be inefficient and some will be efficient. Competition will sort them out. Those that are inefficient will find resources hard to get and may indeed be forced to dispose of some of their constituent parts. As it is impossible to determine by court proceedings which of these mergers will be efficient and which will not, and competition will in fact do this (and probably in less time than the court proceedings would take), there seems little point in using the efficiency issue as a basis for antitrust actions.

Some support for antitrust action against conglomerate mergers has been based on the fact that the firms might engage in reciprocal buying between constituent units. This practice might, of course, lead to greater efficiency (for example, by reducing marketing costs) or it might lead to inefficiency (by substituting a subsidiary's higher cost supplies for an outsider's lower cost supplies). If this practice leads to efficiency, there is no reason to stop it; if it leads to inefficiency there is no reason why the conglomerate should not adopt it (since it would reduce its overall profits).

No convincing case has as yet been made for taking antitrust, action against conglomerate mergers. Until it has, the Antitrust Division shoudl resist the pressures and devote its resources to combatting clear threats to the competitive process.

I do not regard this conclusion as inconsistent with the view that there are other values to be taken into account apart from the efficiency, narrowly conceived, with which society uses its resources. One of these values is that it is undesirable to hang a man for an imaginary crime. If policy is to be based on "fear of size," it is surely desirable to discover what is really feared, whether it results from size and whether this comes about in all circumstances or only in some. Even if these fears are properly based and size in certain circumstances is found to have these consequences are such as to be properly dealt with under the antitrust laws, it is by no means clear that the Department of Justice should give first priority to recent conglomerate mergers, most of which are outranked in size by a hundred or more other firms in the United States. What I urge (with no more than that modicum of moral fervour proper in the circumstances) is that antitrust actions should not be brought unless there is reason to believe that the practices attacked have serious adverse consequences, properly handled by the antitrust laws. This does not seem to me to have been established, as yet, in the case of the conglomerate merger. A regard for procedural decency may indeed often reduce one's chance of influencing policy but not, I hope, when one is dealing with the Department of Justice.

Working Paper for the Task Force on Productivity and Competition: Reciprocity

(By George J. Stigler)

The allegation of reciprocity in the dealings between independent companies is extremely widespread, although systematic quantitative study of the extent of reciprocity has never been made. The doubts of the importance of reciprocity (except in one important and identifiable class of dealings) held by the economist may be stated.

Consider first the fully competitive situation in which seller S produces X, and purchases Y in producing it, and buyer B produces Y, and purchases X in producing it. Now let B initiate reciprocity, refusing to buy X from S unless S buys Y from B. The possibilities are:

1. B sells Y on the same terms as his rivals (and, in each of these cases, S sells X on the same terms as *his* rivals). There is no cost-or-gain to either party in the reciprocity.

2. B sells Y on more favorable terms than his rivals. Then compulsion is not necessary to get S's patronage.

3. B sells Y on less favorable terms than his rivals. Then S will be injured by purchasing from B.

Clearly, in case 2 there need be no compulsion to reciprocity and in case 3 the reciprocity will be refused. Case 1 is harmless and pointless, and I assert that it is quantitively negligible. The non-economist will often object to case 1:

(a) The preference given B's product is unfair to rivals selling on equal terms. The answer is double: the preference will not be given if it imposes *any* cost on S: and if there is competition the rivals are not injured in the least: they can sell elsewhere the quantity they previously sold to S, and without a reduction of price. Differently put: neither supply nor demand has changed, so price will not change.

(b) The reciprocity eliminates "selling expenses". Putting the question of fact (for often reciprocity complicates trading), if there are economies from the reciprocity, the practice *should* spread, and will not injure competition.

The opposite situation, where S is the only seller, B the only buyer, raises no interesting questions of reciprocity, which is inherent and unavoidable. There remains the case of one-sided monopoly.

So long as the seller (or buyer) with monopoly power has a single price, reciprocity has no real effect. Suppose the monopolistic seller extorts a preferential price from the buyer—then he is using a portion of his monopoly powers indirectly when he could be obtaining the same extra sum directly by selling at a higher price. If the seller (or buyer) with monopoly power sets a different price for some buyers than for others (and so practices price discrimination), it is possible that he may increase his profits. But the only purpose in varying prices through reciprocity (paying different prices to different customers for their products) would be to conceal the discrimination.

The case *for* reciprocity arises when prices cannot be freely varied to meet supply and demand conditions. Suppose that a firm is dealing with a colluding industry which is fixing prices. A firm in this collusive industry would be willing to sell at less than the cartel price if it can escape detection. Its price can be reduced in effect by buying from the customer-seller at an inflated price. Here reciprocity restores flexibility of prices.

In short reciprocity is probably much more talked about than practiced, and is important chiefly where prices are fixed by the state or a cartel.

Working Paper for the Task Force on Productivity and Competition: Vertical Integration by Merger or by Contract

(By Ward S. Bowman)

The law prohibiting vertical mergers and various forms of vertical contracts has become increasingly stringent, inconsistently applied to different arrangements having identical economic effects, but more important, has had profoundly anticompetitive results. The notion that vertical arrangements can, by foreclosing or excluding rivals create or maintain monopoly has been misconceived by legislators, antitrust prosecutors and courts. Such integration, neither in theory nor in practice, has yet been shown to confer any ability to alter market price, to

impede entry, or to add any unique ability to employ predatory tactics. Vertical integration provides no disclosed means of leveraging into new monopoly, of exercising "price squeezes", or of discriminatorily cutting prices at one level by advancing prices at another. On the contrary, this form of integration, whether by merger or various forms of contractual arrangements, can and does enable the integrating firm to bypass or erode monopoly elsewhere, and, equally important in achieving antitrust goals, to attain efficiencies in production and distribution.

Antitrust law is composed of two very different theories of how competition may be injured—how, through misdirection of resources, the output of what consumers want most is restricted. The firts theory holds that competition may be injured, and resources misallocated so as to reduce the real wealth of the community, by the elimination of competition among consenting rivals. This is the theory upon which the law against cartels and horizontal mergers is based. Though sometimes difficult to apply in merger cases because of inability to prodict whether the output-restricting effect of the merger, occasioned by the fewer number of competitors, will be outweighed by the output-expanding effect, occasioned by more efficient production and distribution, it is appropriate to stress the very real danger that competition can be injured by horizontal merger in the same manner as it can be by cartels when the merging companies achieve control of high proportions of sales in a market.

A second theory of how competition may be injured, the one relevant in the assessment of vertical arrangements, holds that any substantial adverse effect upon competitors' access to customers or suppliers can be harmful to competition. The foreclosing of rivals from those sources of supply or markets which absent the vertical arrangement might conceivably be available to them, this theory holds, will make for fewer actual or potential market participants thereby making competition less effective than would be the case if the vertical arrangements were proscribed. Thus, when a "dominant" firm acquires ownership of retail outlets (as in the *Brown Shoe* case, or as in the recent action against Hart, Schaffner and Marx) or, similarly, when such a firm makes a long-term exclusive dealing contract with its outlets (the *Anchor Serum* and *Dictograph* cases provide examples) an "exclusionary tactics" theory is applied. The theory seems to be that "equally or better qualified" competitors are "arbitrarily" prevented from access to the "better outlets" thus maintaining the market position of the seller who integrates by merger or contract; or in its more extreme version, that vertical integration is a means of leveraging the integrating firm into new or greater monopoly.

"The theory of exclusionary tactics underlying the law" as Professor Bork and I have elsewhere stressed, "appears to be that firm X which already has ten percent of the market can sign up more than ten percent of the retailers perhaps twenty percent and by thus 'foreclosing' rivals from retail outlets obtain a larger share of the market. But one must then ask why so many retailers are willing to limit themselves to selling X's product. Why do not ninety percent of them turn to X's rivals? Because X has greater market acceptance? But then X's share of the market would grow for that reason and the requirements contract would have nothing to do with it. Because X offers them some extra inducement? But that sounds like competition. It is equivalent to a price cut and surely X's competitors can be relied upon to meet competition.

"The theory of exclusionary practices, here exemplified in the use of requirements contracts, is in need of one or two additional assumptions to be theoretically plausible. One is the assumption that there are practices by which a competitor can impose greater costs upon his rivals than upon himself. That would mean that X could somehow make it more expensive for his rivals to sign retailers to requirements contracts than it is for X to do so. It would be as though X could offer a retailer a one dollar price reduction and it would cost any rival two dollars to match the offer . . ."

"The other assumption upon which the theory of exclusionary practices might rest is that there are imperfections in or difficulties of access to the capital market that enable X to offer a one dollar inducement (it has a bankroll) and prevents its rivals from responding (they have no bankroll and, though the offering of the inducement is a responsible business tactic, for some reason they cannot borrow the money). But it is yet to be demonstrated that imperfections of this type exist in the capital market."

The exclusionary practices theory—foreclosure—has been applied with varying but increasing rigor in a wide variety of contexts under Sections 3 and 7 of the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission

Act, the Millard-Tydings and McGuire Acts, as well as under the Sherman Act. The forms of vertical integrations embraced include, in addition to merging with suppliers or outlets, exclusive dealing contracts, requirement contracts, territorial allocations, franchise arrangements, non-collusive resale price maintenance, discriminatory pricing contracts, tie-in sales, and full-line-forcing contracts among others.

The defects in the foreclosure theory are equally applicable to all the forms in which it is manifested, and not met in the cases in which it is applied. The Antirust Division, the Federal Trade Commission and the Courts have not faced up to demonstrating how any of these forms of vertical business relationships can impose higher costs upon rivals.

I do not state that there *can* be no vertical arrangement which will be injurious to competition, nor that all practices currently judged exclusionary should be *per se* lawful. I do urge strongly, however, that standards of assessments be realigned with the basic goal of antitrust—providing society with the maximum output that can be achieved with the resources at its command. Competition serves this end. Protecting competitors from more efficient rivals (aggressive or not) is not protecting competition. Both the prosecuting agencies and the courts increasingly treat vertical contracts either as conclusively illegal or so presumptively illegal that relevant and appropriate aspects of efficiency are ignored even when occasionally such economic evidence is presented or admitted.

Specifically it is recommended that no vertical arrangement be treated as *per se* illegal. *Presumptively legal* would be a far better rule. And in applying the essentially implausible "incipent monopoly" hypothesis contained in the Clayton and Robinson-Patman Acts (and increasingly in the Sherman Act by judicial adoption) by which certain business practices, including a variety of vertical arrangements, are to be illegal where their effect *may be substantially to lessen competition or tend to create a monopoly in any line of commerce*, it is recommended that both prosecution agencies and courts apply reasoned explanation of how this result is supposed to be achieved. If any such practice *may* have the tendency which the specific language of these statutes calls for, then it should be prerequisite to finding illegality that it be explained how and why the activities complained of are *more* rather than *less* likely to restrict rather than to expand the output of the goods and services involved.

Working Paper for the Task Force on Productivity and Competition: Advertising and Product Differentiation

(By Richard Posner)

"Product differentiation" is the phenomenon of purchasers' distinguishing among different sellers or brands of the same product. Some consumers prefer Bayer to other brands of aspirin; some construction companies prefer Euclid to other manufacturers of earth-moving equipment. Product differentiation, which manifests itself in consumer loyalty, is associated with product differences, trademarks, differential reputations of sellers for reliability, promptness, answerability, etc.—and with advertising. Of late, product differentiation of consumer goods has moved to the center stage of antitrust concern:

(1) The attack on franchising in the *Schwinn* case was premised in major part, especially at the Supreme Court level, on the argument that franchising contributes to product differentiation.

(2) A recent proposal by Donald Turner to limit the advertising expenditures of firms convicted of antitrust violations is bottomed on the idea that advertising contributes to market power.

(3) In the *Pabst* case and again in the Merger Guidelines the Justice Department declared that in a case involving an advertised product (like beer), members of the industry who do not sell in a local market will not be considered a part of that market. Even if transportation costs do not preclude their selling there, they would have to overcome the allegiance of the consumer to the established brands.

(4) The *Clorox* decision holds that a merger than enhances the ability of the resulting firm to advertise violates antitrust principles, on the theory that product differentiation serves to entrench the dominant firms in an oligopoly.

(5) The Supreme Court held in *Clorox* and the Department intimates in the Guidelines that economies of scale in advertising or promotion will never be

accepted as a justification for an otherwise unlawful merger, although production economies just might.

These examples could be multiplied, but they will suffice to show the pervasive concern of the antitrust agencies with advertising and product differentiation.

Before analyzing the agencies' concern, a word about the role of product differentiation and advertising in a complex modern economy. No one objects, surely, when a seller improves his product or earns a reputation for reliability that distinguishes him from his rivals. These are important and salutary forms of competition, no less worthy than price competion among sellers of undifferentiated products. Concern creeps in only when it is suspected that product differentiation is created or entrenched by advertising. We shall discuss in a momen the criticisms of advertising; here let us just remind that advertising plays an indispensable social role. A modern economy requires the generation of a vast amount of information on the identity and location of sellers, on types of said changes in product and on prices and other terms of sale. It is not surprising, therefore—and certainly not to be deplored—that there is a vast amount of advertising: a practical alternative, not involving economic stagnation, is not immediately evident. Nor is it surprising or plorable that there is a good deal of repetitiousness in advertising, for changes in the identity of buyers and sellers, the constant influx of new consumers, forgetfulness, and frequent changes in products, make it imperative that the advertiser repeat his meassage over and over again. Nor, finally, is it surprising, or in a democratic and egalitarian society deplorable, that advertising is frequently vulgar by the standards of intellectuals; intellectuals are a small minority of the consuming population, and it would be cultural tyranny were there tastes to dominate advertising directed at the mass buying public.

With this as background, let us consider the arguments of those who believe that advertising may be inimical to the objectives of the antitrust laws:

(1) Advertising, except so much as is necessary to provide the consumer with "essential" information, is said to waste resources; anything that may lead to an increase in advertising beyond some minor useful level is, therefore, undesirable. This assumes, however, that we can distinguish "information" from "persuasive" advertising, and draw a line above which advertising contributes less to the consumer's ability to make rapid and satisfactory choices than it costs to advertise. And it also assumes that consumers are are so foolish as to be willing to pay more for advertising (in a higher price for advertised brands) than its value to them in helping them make choices. Both assumptions are highly dubious on their face.

(2) Advertising is said to distort consumer choice, to make the consumer buy many things he doesn't really want. This "brainwashing" theory would be more plausible if there were a monopoly on advertising. In fact, advertisers compete for the consumer's patronage. One would expect the best products to win out in competition among advertisers, just as the market in ideas, a market also characterized by inflated claims, is assumed to lead to the adoption of the best ideas. Why individuals can be trusted to make intelligent political choices, but not intelligent product choices, is not explained.

(3) Advertising is said to be an important factor in the diminished rivalry that is thought to characterize many oligopolistic markets. The reasoning is that advertising creates brand loyalties that rival sellers find very difficult to erode and that this is a source of formidable barriers to new entry into concentrated markets. Thus, the argument runs, if it costs Proctor & Gamble, Colgate-Palmolive, and Lever Brothers 2 cents to sell a bar of soap, because they got there first, it would cost a new entrant (say) 2.2 cents. The established firms, therefore, can price up to 2.19 cents (if they collude, tacitly or expressly) without attracting new entry, and thereby realize a monopoly profit of .19 cents.

Apart from the question whether collusion by oligopolists is as routinely commonplace as the argument assumes, no proof has yet been offered that it is easier for the first advertiser to win a consumer's patronage than it is for a second advertiser to shift it to him. The fact that the soap companies are constantly bringing out new brands suggests a taste for novelty on the part of the consumer that does not square with the theory of the first advertiser's advantage. To be sure, advertising has cumulative effects and that will give an established firm an advantage over a newcomer. But how is that different from the advantage an established firm has by virtue of an experienced organization, customer contacts, a plant that has been paid for, etc.? Moreover, a new entrant will often have access to a ready fund of accumulated consumer goodwill: by distributing through

and under the trademarks of one of the established retail chains such as Sears Roebuck.

The theory that advertising creates barriers to entry is said to be confirmed by, but receives at most partial support from, statistical studies showing a correlation between the amount of money an industry spends on advertising and the industry's profit rate. The studies are far from conclusive, in part because following normal accounting practice they treat advertising expenditures as current expenses of the year in which incurred, rather than as a capital investment whose effects persist into subsequent years. The rate of return in industries that advertise heavily tends, in consequence, to be overstated.

(4) Finally, it argued that oligopolists devote excessive resources to advertising as an alternative mode of rivalry to price cutting, a tactic they are said to eschew because they know it will lead to lower prices and profits for all sellers in the market. However, if oligopolists spend more on advertising or otherwise differentiating their brands than the consumer deems warranted, attractive opportunities for lower-priced off-brand or distributor-brand substitutes will be created. Moreover, if oligopolists were able tacitly to collude to avoid price competition, would they not also collude to limit selling expenses that would equally erode their monopoly profits? Since advertising is public, an agreement limiting it to a specified percentage of each firm's sales would be easy to enforce.

My point is that on the basis of present knowledge advertising seems essentially symmetrical with other competitive business tactics such as raising quality, reducing production costs, and cutting price. It is difficult to resist the suspicion that the hostility to advertising derives more from concern with the level of public taste or culture than from concern with competition and efficiency.

D. COMMENTARY ON THE ATTORNEY GENERAL'S SPEECH, THE "NEAL REPORT" AND THE "STIGLER REPORT"

1. Article by Morton Mintz, "Justice Dept. to Reveal Secret Report on Antitrust Laws"

[From the Washington Post, May 18, 1969]

JUSTICE DEPARTMENT TO REVEAL SECRET REPORT ON ANTITRUST LAWS

(By Morton Mintz, Washington Post Staff Writer)

The report of a secret Johnson Administration task force on the antitrust laws will be released by the Justice Department in a few days.

This was disclosed by Assistant Attorney General Richard W. McLaren, head of the Antitrust Division in an interview with The Washington Post.

There is no precident for release of the report. The estimated 50 to 70 reports of other secret Johnson Administration task forces remain—along with other private presidential papers—in custody of the National Archieves.

At the White House yesterday, a press aide said he did not know if additional reports will be made public.

McLaren gave no hint of the content of the antitrust paper except to say that it is a "broad-scale report on recommendations for legislative and administrative action to implement enforcement of the antitrust laws."

He said he had received "clearance" to issue the report but did not say from whom. However, he said the task force members were "quite agreeable" to releasing it.

The secret status of the report "has lead to some awkwardness" for members of the task force, McLaren said. For example, members have been unable to reply to statements about the report "that were not factual," he said.

The existence of the task force, head by Phil C. Neal, dean of the University of Chicago Law School, was disclosed in February, 1968, by the New York Times.

At the time, Sen. Philip A. Hart (D-Mich.), chairman of the Senate Antitrust subcommittee, protested that the task force should operate out in the open, so as to "surface all elements in the equation."

AIDE DISAGREES

But in an interview with The Washington Post, then White House aide Joseph A. Califano Jr. disagreed.

He said that in order to get "straight answers" on a variety of hard problems from "the best brains in the country," the President has to assure his sources that neither their appointments nor reports will be made public, and that their "confidential advice" will be divulged by the President only to his closest advisers.

McLaren said he felt the report should be available not only to scholars, but more immediately to a committee of the American Bar Association that, at the request of President Nixon, now is appraising the antitrust and consumer protection roles of the Federal Trade Commission.

Califano, now a member of the law firm of Arnold & Porter, yesterday declined to comment on the impending release of the task force report.

He did say, however, that the task force reports generally contain "a lot of valuable material" and some "frontier thinking." He said that "maybe 10 or 15" of the papers are worthy of publishing in a book by a university.

In the interview at the Justice Department, McLaren said he favors increasing the present maximum fine for a criminal antitrust violation from the present $50,000 to $500,000. (Donald F. Turner, his predecessor during most of the Johnson Administration, once told a reporter that a maximum fine of $1 million "would not be unreasonable.")

McLaren said he prefers such direct penalties as fines and jail sentences to "indirect" increases in penalties such as would result from legislation favored by the chairmen of the Congressional antitrust subcommittees, Hart and Rep. Emanuel Celler (D.-N.Y.), and Sen. Russell B. Long (D.-La.), chairman of the Senate Finance Committee.

The legislators want to reverse a 1964 Internal Revenue Service ruling that permits convicted antitrust violators to deduct as "necessary business expense" payments made to settle treble-damage suits brought by victims of price-fixing.

The Justice Department had opposed the IRS. In 1963, for example, Assistant Attorney General William H. Orrick Jr. said the impending ruling would "encourage disrespect" for the anti-trust laws and reduce their "deterrent effect."

But McLaren, expressing "serious reservations" about the proposed legislation, said it could force out of business some small firms that "just went along with what the bigger guys did" and thus have an "extremely anti-competitive effect."

END TO COURT BACKUP

"Perhaps more importantly," he said, the bill would eliminate incentives to settle treble-damage claims and thus "clog the courts from here to Canarsie."

Unlike Donald Turner, McLaren believes existing laws give him the weapons he needs—and already has used—to attack big conglomerate mergers that have "anti-competitive consequences." And again unlike Turner, McLaren prefers a "flexible approach" to such proposals as a requirement that giant firms spin off assets equal to new acquisitions.

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2. *Article by Stephen M. Aug, "Secret Nixon Study Would Avoid Probe of Conglomerates"*

[From the Evening Star, Washington, D.C., May 22, 1969]

SECRET NIXON STUDY WOULD AVOID PROBE OF CONGLOMERATES

FTC, OTHER AGENCIES ACCUSED ON WEAK ANTITRUST ACTIVITY

(BY STEPHEN M. AUG)

A secret study made for President Nixon on antitrust policy strongly urged the Justice Department not to undertake action against conglomerate mergers, it was learned today.

"Vigorous action on the basis of our present knowledge is not defensible," said the study, made by a nine-member task force appointed by Nixon before his inauguration.

The recommendations by the group—made up of seven professors and two industry executives—appear to conflict sharply with the direction taken by the Nixon administration.

Richard W. McLaren, assistant attorney general in charge of the Justice Department's Antitrust Division, has filed three major cases so far to break up conglomerate mergers. He has said he is willing to risk losing some cases to find out how far present laws "will take us in halting the current accelerated trend toward concentration by merger."

The third suit was filed yesterday in Chicago to prevent the takeover of B. F. Goodrich Co., the nation's 82nd largest corporation, by Northwest Industries Inc., the 63rd largest. The government contended the merger, which has been vigorously resisted by Goodrich, would be anticompetitive and encourage the trend toward economic concentration.

The task force study also rapped the Federal Trade Commission and other regulatory agencies.

It said the FTC's undertakings in the antitrust area have done little to maintain and strengthen competition, its efforts to protect small businessmen have been inadequate, and its "overzealous enforcement of consumer-protection" laws has not helped consumers, but rather businesses "whose interest lies in protecting their market."

The study urged Nixon to issue a general policy statement that would encourage agencies to permit greater competition in the industries they regulate.

Asked for comment on the report, McLaren said, "it's a different group and they came out with some different answers." He added, however, that he agreed with the task force on the need for greater competition in regulated industries and in price-fixing penalties, which it termed "largely nominal at present."

The task force "go-slow" approach is similar in some ways to the attitude of Johnson administration antitrust lawyers, who declined to prosecute conglomerates—widely diversified corporations—on the grounds present laws would not support such challenge.

The Justice Department yesterday made public an antitrust policy study completed last summer at the request of former President Lyndon B. Johnson

Legislation a Prerequisite

It recommends that if conglomerate mergers—those between companies in unrelated businesses—are to be fought successfully, further legislation is necessary.

Under existing law, it said, the detection of possible anticompetitive effects of conglomerate mergers "rests, in general, on factual and theoretical judgments that are more speculative" than those in merger cases involving firms in competing businesses.

The study also recommends legislation that would break up highly concentrated industries—oligarchies—such as the automotive industry.

It found also that the present merger movement—despite the already large and increasing activity—does not mean that concentration of economic activity into a few giant firms is imminent.

The Nixon task force urged the Justic Department "to resist the natural temptation to utilize the antitrust laws to combat social problems not related to the competitive functioning of markets."

"We seriously doubt that the Antitrust Division should embark upon an active program of challenging conglomerate enterprises on the basis of nebulous fears about size and economic power," it said.

The report said also that the Antitrust Division should not be burdened with such tasks as "combatting of organized crime or the achievement of general political goals." Atty. Gen. John N. Mitchell has suggested use of antitrust laws to combat organized crime.

In its criticism of regulatory agencies, the task force said there is generally "excess rigidity, expensive review of economically trivial details, and frequent failure to achieve any important results."

While the commissioners should encourage entry of new firms into business, it said, "the practice is universally the opposite: to prohibit or ration with utmost severity the entrance of new firms."

It also urged more freedom in price competition—and assailed the agencies' common practice of approving minimum rates, saying they should instead concentrate on setting maximum rates.

Although it did not name the Interstate Commerce Commission, it singles out the trucking industry as one in which "there is no respectable case for economic regulation."

Among other key points, the Nixon task force:

Refused to endorse new legislation or use of existing law to deconcentrate highly concentrated industries— such as auto makers—by dissolving their leading firms.

Called for revision of the Justice Department's merger guidelines, announced last year, which it termed "extraordinarily stringent, and in some respects indefensible."

The task force was directed by George J. Stigler, a professor of law at the University of Chicago. Other members were Ward S. Bowman Jr., Yale law and economics professor; Roland H. Coase, University of Chicago economist; Roger S. Cramton, public regulations professor at the University of Michigan; Kenneth W. Dam, University of Chicago law professor; Raymon H. Mulford, president of Owens Illinois Glass Co.; Richard A. Posner, Stanford University professor; Peter O. Steiner, University of Michigan economist and Alexander L. Stott, vice president and controller at American Telephone & Telegraph Co.

Stott and Mulford filed partial dissents. Stott said the suggestion of pushing regulatory agencies to give greater importance to imposing competition ignores the fact that Congress has adopted a policy of limiting competition in some areas. He also said the criticism of regulatory purposes and processes was not supported by facts.

Mulford saw no need to increase the maximum fine for price fixing violations.

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3. Statement by Senator Nelson, "The Stigler Report on Antitrust Policy and Enforcement," with Insertions in the Record

[From the Congressional Record, June 12, 1969]

THE STIGLER REPORT ON ANTITRUST POLICY AND ENFORCEMENT

Mr. Nelson. Mr. President, it seems to me that one of the poorest things to do with an idea is to suppress it. This is true of bad ideas and good ideas alike, in my opinion. It is especially true of ideas having to do with complex areas of public policy. It is especially true of policy ideas contained in a report to the President of the United States by a Commission of experts appointed by him.

For many months it was common knowledge, reported in the public press, that President Johnson had appointed a task force to review and report on antitrust policy. For many months it was well known that President Johnson's task force had completed its review and submitted its report and recommendations to the White House in July 1968. But it was only in May of 1969 that the contents of the Johnson task force report were made known, and the text released, by the new administration.

At about the same time that the Nixon administration released the text of the report prepared by President Johnson's task force, it became known that President Nixon—before he became President—had also appointed a task force to review antitrust law and policy. Indeed, on May 22, 1969, a reporter for the Evening Star of Washington, D.C., Mr. Stephen M. Aug, published in that newspaper a summary of the contents of that task force's "secret report" to the President.

Subsequently, other reporters have written summaries of the report, from which it might reasonably be inferred that they—or at least some of them—have had access to a copy of the document.

Then, on Tuesday of this week, Antitrust and Trade Regulation Report, a publication of the Bureau of National Affairs, published a partial text. All the while, and to this day, the document is officially "confidential."

I am not going to speculate on the reasons the Johnson administration did not release its report, while the Nixon administration released the Johnson task force report and failed to release its own. I should like to believe that the present administration has released the report of President Johnson's task force and suppressed the report of President Nixon's task force because it approves the former and disapproves the latter on certain of their more important policy differences; but I do not know that, and it is not the issue with which I am now concerned.

The issue with which I am now concerned is unnecessary secrecy in Government. I think that the best number of secrets for the government of a democracy is the smallest possible number. I also think that if something deserves to be kept secret, it deserves to be well kept. The report of President Nixon's task force fails both tests. It is a pleasure, therefore, to have the text from Antitrust and Trade Regulation Report for the Record.

This text is unfortunately not complete. There is some ellipses indicated in the principal report, and the dissents are entirely missing. Nevertheless, it is helpful to have so much of this important and widely discussed document available, and I am happy to bring it to the attention of Senators. I, therefore, ask unanimous consent to have printed in the Record the partial text of the report to President Nixon by his Task Force on Productivity and Competition, presided over by Prof. George J. Stigler, of the University of Chicago. If I come into possession of the missing language from the principal report, or the dissenting views, they will be placed in the Record. I would suggest that the whole report should be available and that the administration is in the best position to furnish the dissenting views.

In addition to Professor Stigler, the signers of the report are Ward S. Bowman, Jr., Ronald H. Coase, Roger S. Cramton, Kenneth W. Dam, Raymond H. Mulford, Richard A. Posner, Peter O. Steiner and Alexander L. Stott. Mr. Mulford and Stott dissented from some of the report.

By placing this in the Record I do not wish at this time to imply agreement or disagreement with all or any part of the "Stigler report." Indeed, on the basis of my initial examination of both, I would judge the "Neal report"—the report of the Johnson administration's task force—to be the more strongly reasoned on the issues of concentration and conglomerates; but both reports are valuable and should be available to the public. It is a disservice to have the one officially available, the other not. I think that all the economists, lawyers, and reporters who are talking about the "Stigler report" should have a chance to read the text and know exactly what they are talking about.

I also ask unanimous consent to have printed in the Record several of the newspaper articles describing the report, including the original article in the Evening Star of May 22.

There being no objection, the items were ordered to be printed in the Record, as follows:

(NOTE.—Senator Nelson's first insertion, a partial text of the Stigler report, is omitted. The complete text will be found in part C of this appendix, supra. The article from the Evening Star, by Mr. Ang, referred to by Senator Nelson, will be found in part 2 of this part D of this appendix, supra. The remainder of Senator Nelson's insertions in the Record follow:)

[From the New York Times, May 22, 1969]

TRUST-LAW SHIFT URGED

(By Eileen Shanahan)

Washington, May 21.—Radical changes in the anti-trust laws that would permit the Government to break up large companies that dominate an industry have been recommended by a group of noted lawyers and economists. They were appointed by President Johnson to study the antitrust laws.

The report of the Johnson task force, which was made public today by the Justice Department also recommends legislation spelling out just what kinds of acquisitions may and may not be permitted by the large, widely diversified companies known as conglomerates.

Briefly, this portion of the report proposes that an acquisition by a conglomerate of a company that is among the top four in its industry would be prohibited but that an acquisition of a nondominant company would not be.

If the standards covering conglomerate mergers, as set forth in the task force's report, were enacted into law, some mergers that have recently been attacked by the Justice Department would be legal.

Other recommendations of the task force include a considerable relaxation of the prohibitions against price discrimination contained in the Robinson-Patman Act and considerable tightening of the rules concerning patent licensing.

The task force also proposed a number of other changes in the antitrust laws, including establishment of a 10-year limit on the ability of the Government to undo old mergers.

The task force, which was headed by Prof. Phil C. Neal of the University of Chicago Law School, was appointed by President Johnson in December, 1967, and made its report to him in July, 1968.

For reasons that have never been explained, Mr. Johnson refused to let the report be made public. It was made public today by the Justice Department with the specific concurrence of President Nixon. Richard W. McLaren, head of the Justice Department's anti-trust division, said that publication of the report "is not in any sense an official endorsement of it in whole or in part but is simply designed to make the report available for study and comment."

DIVERSE VIEWPOINTS

Despite Mr. McLaren's disclaimer, it seems likely that the report will have considerable influence, largely because of prestige of the task force members, who appeared to have been carefully chosen to represent all viewpoints.

Among the 12 members of the task force, there was only one who dissented from virtually all the major recommendations of the report. That was Prof. Robert H. Bork of Yale, who has long been known as an advocate of almost complete freedom to merge.

More limited dissents were registered by Paul W. MacAvoy, a professor of economics at Stanford and Richard E. Sherwood, who is in private law practice in Los Angeles.

The leading companies in the automobile, steel, computer and many other industries would have to be split up if the proposals of the task force to break up oligopolies were adopted.

The task force defines an olgiopolistic industry (one dominated by a few companies) as one in which four companies have at least 70 per cent of the market.

VOLUNTARY STEPS

If such concentration is found to exist, after investigation by the Justice Department and the Federal Trade Commission, the oligopoly companies would be given a year to take voluntary steps—such as selling off assets—to reduce their degree of economic power, under the task force's proposal.

If adequate voluntary action is not taken, the Government could then order steps, to be completed within four years, to reduce the market share of the oligopoly companies to a maximum of 12 per cent each.

Divestiture would not be the only permissible means of reducing market shares, although the task force indicated it would probably be the most common one.

But if an adequate reduction of concentration could be achieved through liberalized licensing arrangements or changes in contracts (presumably including Government contracts) then this would be permitted.

As has been the case under present antitrust laws, the standards the task force would set up for disapproval of new mergers would be stricter than those for breaking up old companies.

There would be several different tests for the legality of new mergers—which would actually cover acquisitions by any large company and not just by conglomerates.

First of all, the acquiring company would have to have sales of $500-million or assets of more than $250-million for its acquisition of a "leading company" in an industry to be prohibited.

A "leading company" is defined as one of the top four in an industry in which the top four companies have at least 50 per cent of the market. To meet the definition of "leading company" the concern in question would also have to have more than 10 per cent of the market and the market itself would have to involve sales of more than $100-million.

Under these tests, the Justice Department would not have been able to bring two of the three cases against conglomerate mergers that have been brought since the Nixon Administration came into power.

The acquisition of the Jones & Laughlin Steel Corporation by Ling-Temco-Vought, Inc., would be legal under the task force proposals, because J. & L. ranks only sixth in the steel industry.

The acquisition of the Canteen Corporation by the International Telephone and Telegraph Corporation also would probably be legal under the task force proposals because the top four companies in the food-vending market do not have 50 per cent of the market, nor do they in the narrower market line of in-plant feeding.

It appeared at first glance, however, that today's suit challenging the acquisition of the B. F. Goodrich Company by Northwest Industries, Inc. would still be possible, even if the task force proposals were written into law.

As for the Robinson-Patman Act, the task force proposed that no discriminations in price between different customers be considered illegally unless they (1) were systematic and part of a pattern of favoring larger customers, or (2) threatened the elimination of a "significant" competitor, or (3) involved discrimination of a geographical basis with sales below cost in some areas—the type of price discrimination by chain groceries that led to adoption of the Robinson-Patman Act in the first place.

The major proposal of the task force dealing with patents provides that, "if the patentee chooses to license others, rather than exploiting the patent himself, he shall make such licenses available on nondiscriminatory terms to as many competitors as may desire it."

The task force would also require publication of all patent license agreements and would ban enforcement of a patent against some infringers if the patent owner has not taken "reasonable steps" to enforce the patent against others.

[From Business Week, May 24, 1969]

The Switch on Mergers: Report of Panel Picked by Johnson Runs Counter to New Tack on Conglomerates

President Nixon's chief antitruster, Richard W. McLaren, performed the unpleasant job this week of releasing a Johnson Administration task force report on the antitrust laws that was weak where he has been emphatically strong—but strong where he has been quietly weak.

The report, written last summer by a blue-ribbon panel of lawyers and economists headed by Dean Phil C. Neal of the University of Chicago Law School, was implicitly critical of the attack on conglomerates that got under way as soon as McLaren took office.

Using the argument that the giant diversified companies are dangerously increasing industrial concentration, the Justice Dept.'s Antitrust Div. has sued Ling-Temco-Vought, International Telephone & Telegraph, and this week Northwest Industries. The Neal group pointedly warned that any attack on conglomerates through the existing Clayton Act would have to be through a "contrived interpretation."

The Neal task force also proposed a major change in the patent laws to require equal treatment of licensees and rewriting of the Robinson-Patman Act.

It was only after a lot of public—and private—heat was applied that the Neal report saw the light of day. President Johnson ordered it early last year, during a short burst of public controversy about conglomerates. Delivered to the lame-duck President in June, it was confined to the dustbin until it was picked up as a weapon by opponents of the Justice Dept.'s new look at conglomerates.

The last bit of pressure came from LTV's James J. Ling, whose company was selected as McLaren's first test case. iStting on the same panel with the Republican head of the Antitrust Div. on Wednesday, Ling talked of a "still secret" report that would "exonerate the conglomerate movement of any monopolistic tendencies." He demanded that the report be released. Without comment, the Justice Dept. complied later in the day, handing out Xeroxed copies to reporters.

Alternative. Actually, the Neal group was not all that concerned with defending the conglomerate movement—or James Ling. Its real disagreement was only over whether existing law covered diversified mergers. Denying that the Clayton Act was adequate, it suggested that Congress draft a new law barring any company with assets of more than $250-million from acquiring any market leader in a concentrated industry, where four companies have more than 50% of the business.

The panel also urged Congress to write new legislation that would eventually lead to the breaking up of big companies in highly concentrated industries such as autos, flat glass, tobacco, and organic chemicals. The proposed law would allow courts to declare that an "oligopoly" existed in any industry where four companies accounted for more than 70% of sales. In such a case the companies would be given one year to reduce their share (presumably by spin-offs) to no more than 12%. If they did not do so voluntarily, the government could get a court order directing the required action within four years.

This is just the sort of head-on attack on oligopoly that McLaren's Democratic predecessors dreamed of—and occasionally proposed. But so far McLaren has viewed such a campaign as too disruptive even to be talked about.

[From the Washington (D.C.) Post, May 23, 1969]

Caution Urged With Mergers

(By Morton Mintz)

A Nixon Administration task force report on competition warns against vigorous action on conglomerate mergers because of inadequate knowledge about them.

This finding runs counter to the policy of the Justice Department. Backed by Attorney General John N. Mitchell, Richard W. McLaren, Assistant Attorney General in charge of the Antitrust Division, has filed three suits to break up major conglomerate mergers.

A member of the task force said yesterday that the report is "ill-suited to the tastes of McLaren and Mitchell." McLaren had no comment and declined—at least temporarily—to release the report.

The head of the task force—seven professors of law and economics and two business executives—was University of Chicago economist George J. Stigler. The group was appointed in January by then President-elect Nixon and submitted its report in March.

A member of the task force, asking not to be named, noted that the unit called for an immediate study of the financial operations of conglomerates in securities markets.

In a 10-month-old report released by the Justice Department Wednesday, a Johnson Administration task force staked out a different position on conglomerates—one intended to make acquisitions by these large diversified corporations consistently procompetitive.

The recommendation of the Johnson advisers: a law to prevent any large firm from acquiring any leading company in an industry in which four leaders have half or more of the market.

The Nixon task force members reached yesterday confirmed one publication's account of additional differences between the views of most of his colleagues and the Justice Department:

ORGANIZED CRIME

In an interview last Friday, McLaren said that steps have been taken to use the antitrust laws against "strong-arm" business methods—an idea McLaren and Mitchell discussed at their first meeting in January in New York City. But the Nixon task force said the Antitrust Division should not be responsible for tasks such as "combating organized crime or the achievement of general political goals."

MERGER GUIDELINES

These were promulgated late in the Johnson Administration. McLaren said that he uses them, and hopes to enlarge them with "more specifics." But the Stigler group called them "extraordinarily stringent, and in some respects indefensible."

But the Stigler unit and McLaren agree on other points. Both want criminal antitrust penalties sharply increased from the present $50,000, for example. Both are concerned about ways to make regulatory agencies stimulate competition in the industries in their jurisdiction (the task force said that insofar as trucking is concerned, there is "no respectable case for economic regulation").

The most controversial recommendation of the Johnson consultants was for a law to attack existing industrial concentration by forcing "oligopoly" firms to reduce their share of the market to a maximum of 12 per cent. The Nixon advisers want no such legislation—or, for that matter, use existing laws to dissolve dominant firms such as General Motors McLaren, in the interview, indicated that his views were along similar lines.

[From the Wall Street Journal, May 23, 1969]

Study of Conglomerates for Nixon Urges No Antitrust Suits To Bar Their Mergers

(By Louis M. Kohlmeier)

Washington.—The growing conglomeration of antitrust studies of conglomerates includes a secret one made for President Nixon soon after his election last fall.

The Nixon study is thinner and less formal than most, but, like the others that have been finished thus far, it hasn't made any perceptible impression on its intended beneficiaries.

A major recommendation is that the Justice Department not sue to prevent conglomerate mergers—meaning those of companies that aren't competitors. "Vigorous action on the basis of our present knowledge is not defensible," the study asserts.

But Richard W. McLaren, the Chicago lawyer Mr. Nixon picked to head the Justice Department's Antitrust Division, has undertaken a crusade against large conglomerates, filing suits to stop them from taking over companies that are leaders in their industries. His targets have been among the nation's largest conglomerates—Ling-Temco-Vought Inc., International Telephone & Telegraph Corp. and Northwest Industries Inc.

PRESENT LAW SEEN SUFFICIENT

Mr. McLaren is trying to prove that big conglomerate mergers can be dealt with under existing antitrust law and thus there isn't any reason for Congress to enact a new law. His suits have been approved by his boss, Attorney General Mitchell, and Mr. Mitchell is perhaps closer to the President than anyone else in the Nixon Administration.

The Nixon study wasn't released by the Justice Department. The department's public information office confirmed yesterday that such a study had been made, but refused to release it, although the same office the day before had released the antitrust study that had been prepared last year for President Johnson, which he had kept secret.

The public information office defended its secrecy on the Nixon report by saying that it was more informal than the Johnson study and was written to be read in confidence by Nixon Administration officials.

Details of the study were confirmed elsewhere.

Both the Nixon and Johnson studies were headed by University of Chicago academicians. But there are differences between the two, George J. Stigler, University of Chicago Law School professor who headed the Nixon group, is generally regarded as a conservative on antitrust matters. Phil C. Neal, dean of the same school, headed the Johnson group and has a more liberal reputation.

The other members of the Nixon group were six professors of law or economics and two industry executives—R. H. Mulford, President of Owens-Illinois Inc., and Alexander L. Stott, vice president of American Telephone & Telegraph Co. The 11 other members of the Johnson group were professors or practicing lawyers.

On conglomerate merges, the Nixon study group says "we seriously doubt that the Antitrust Division should embark upon an active program of challenging conglomerate enterprises on the basis of nebulous fears about size and economic power."

It also says antitrust laws shouldn't be used to combat "social problems," "organized crime" or for the "achievement of general political goals." Attorney General Mitchell has suggested using such laws to break up syndicated gambling rings and other operations of organized crime.

The Nixon task force is critical of the Federal regulatory agencies, which control private industries that in general are exempt from antitrust laws. It takes the agencies to task for "excessive rigidity, expensive review of economically trivial details and frequent failure to achieve any important results." And it criticizes them for using their licensing powers to restrict entry into regulated industries and for restricting price and rate competition in the airline, railroad and other industries.

The study singles out the Interstate Commerce Commission's regulation of the trucking industry, saying "there is no respectable case for economic regulation" of trucking.

It also criticizes the Federal Trade Commission, saying its "overzealous enforcement of consumer-protection" laws hasn't helped consumers so much as it has protected some small businessmen. The criticism apparently relates to the FTC's enforcement of the Robinson-Patman Act which bars manufacturers from giving price discounts to big customers unless the discounts and other allowances also are made available to small retailers.

COMPARISON OF STUDIES

The Nixon group doesn't recommend any new legislation or the use of present antitrust laws to attack large companies in highly concentrated industries where a handful of corporations have the lion's share of total sales.

The Johnson group advocated a new Concentrated Industries Act to break up companies in "oligopoly industries" where four or fewer companies account for 70% or more of total industry sales. That group also proposed a new Merger Act to prevent large conglomerate companies from acquiring big corporations in concentrated industries.

President Johnson didn't propose any such laws to Congress and didn't disclose that they had been recommended. President Nixon has remained silent about his task force's report as his antitrust chief has attacked large conglomerate acquisitions.

A third antitrust study was recently completed by the antitrust section of the American Bar Association. It's a formal and voluminous document that brings antitrust laws up to date by tracing and explaining court interpretations of those laws in recent years. It doesn't contain recommendations, however.

CONGRESS TO USE REPORT

All three reports will become part of the antitrust literature that Congressional committees will use later this year when they begin hearings on what, if any, new legislation is needed to deal with conglomerates and concentration.

In addition, Congress by September will have the benefit of at least two other studies. The FTC is studying conglomerate mergers. And the American Bar Association is studying the FTC, at President Nixon's request.

The House Antitrust subcommittee is making its own study of conglomerates, and also is awaiting the FTC's study. The Senate Antitrust subcommittee, which already has held lengthy hearings on concentration and conglomerates, is awaiting the FTC report too.

[From Newsweek, June 2, 1969]

ANTITRUST: "LET'S TURN IT LOOSE"

For months there had been talk in conglomerate circles of a secret antitrust report prepared for President Johnson by a blue-ribbon task force of professors and lawyers under the direction of Phil C. Neal, dean of the University of Chicago Law School. The report, kept secret by the Johnson Administration, was said to recommend concentration of the Justice Department's fire on such giants as General Motors rather than on conglomerate mergers. In effect, it was rumored, the report would undercut the anti-conglomerate stand of President Nixon's antitrust chief, Richard W. McLaren.

Last week, almost a year after it had been submitted to the White House, the task force's report was made public—at the specific behest of McLaren himself, who went to Mr. Nixon and said, "Let's turn it loose."

The report's main target proved indeed to be the giants of what it called the "oligopolistic" industries, those where "monopoly power is shared by a few very large firms." It proposed a Concentrated Industries Act that would require divestiture of interests by companies dominating such fields as autos, steel and computers. In short, its message was break up GM, not Litton or Ling-Temco-Vought.

THE TERMS

But the conglomerates were by no means let off—certainly not to the extent they had hoped. The report recommended a second law, the Merger Act, that would prohibit the acquisition by "large" companies (i.e., with sales of more than $500 million or assets of more than $250 million) of "leading companies" in their field. Even so, the task force took a more lenient view of conglomerate mergers than McLaren has put on the record. "An active merger market," it said, "suggests a healthy fluidity in the movement of resources and management in the economy toward their more effective utilization." (Another, still-secret Presidential study apparently supports conglomerates even more force-

fully.) Furthermore, the Neal study's proposed legislation—should it ever be enacted—would apparently invalidate the two major cases McLaren had already launched, one against the acquisition of Jones & Laughlin Steel by Ling-Temco, the other against the acquisition of the Canteen Corp. by the International Telephone and Telegraph Corp. Neither J&L, the sixth-largest steelmaker, nor Canteen, a food vendor, would meet the report's strict definition of what constitutes a "leading company."

Why had McLaren urged release of a report that, however musty and academic, could only make his life more difficult? McLaren's answer, as he put it in a cover letter transmitting the report to Congress, was that its publication "is simply designed to make the report available for study and comment." It was not, he took pains to point out, "in any sense an official endorsement" of the report. Certainly it was putting no brakes on McLaren's own merger-challenging course. On the same day the report was made public, his antitrust division took its third major anti-conglomerate action with the filing of a suit, in Chicago, to prevent the bitterly contested take-over by Northwest Industries, Inc., of B. F. Goodrich Co.

[From Automotive News, June 9, 1969]

Nixon Task Force Writes Its Own Antitrust Report—Different View Taken on How To Handle U.S. Auto Industry

(By Helen Kahn)

Washington.—This is the season for antitrust reports. Two weeks ago, a study made by a Johnson Administration Task Force was released, but not endorsed, by the Nixon Administration.

Now comes the report of the Nixon Administration's own Task Force on antitrust matters.

Similar, but not identical, ground is covered in both. A major point of agreement is the need to revise the Robinson-Patman Act. A major disagreement is how to handle an oligopolistic industry like the auto industry.

The Johnson group suggested legislation drastic enough to break up each of the Big Three auto companies.

The Nixon Task Force suggests "unremitting scrutiny," but it favors proceeding under present law where pricing is found to be substantially noncompetitive and where collusion can be inferred.

The Johnson Task Force was headed by Phil C. Neal, dean of the University of Chicago Law School, and was composed of lawyers and economists.

The Nixon Task Force was headed by George J. Stigler, economics professor at the University of Chicago. It was made up of lawyers and economists plus two businessmen—one from Owens-Illinois Glass Co. and one from American Telephone & Telegraph.

The Neal report (Johnson) runs 200 pages. The Stigler report (Nixon) runs 28 pages. The opinions in both reports are expected to be aired in congressional hearings.

In addition to the recommendations to leave antitrust action against highly concentrated industries to collusive behavior under the Sherman Act, the following are the major recommendations of the Stigler report:

Issuance by the President of a general policy statement "(a) establishing the antitrust division as the effective agent of the administration in behalf of a policy of competition within the councils of the administration and before the independent regulatory commissions; (b) urging those commissions to enlarge the role of competition in their industries;

(c) marshaling public support for the policy of competition.

Urging of commissions to permit free entry into regulated industries and where possible to abandon minimum rate controls.

Urging the attorney general and the antitrust chief to make sure that every antitrust suit make good economic sense and to start semi-public conferences to make and oversee enforcement guidelines.

Closer liaison between the Justice Department and the Federal Trade Commission at the highest levels.

Bringing a series of strategic cases against regional price fixing where the Stigler group believes conspiracies are "numerous and economically important."

Making changes in the present Justice Department merger guidelines which are described as "extraordinarily stringent and in some respects indefensible."

Recommending against any action against conglomerate mergers and conglomerate enterprises, pending more information, and urging the Justice Department to "resist the natural temptation to utilize the antitrust laws to combat social problems not related to the competitive functioning of markets."

(EDITOR'S NOTE: New Antitrust Chief Richard McLaren has already taken action against three conglomerate mergers.)

New legislation to increase the fines for price fixing.

A new policy for antitrust decrees: Not seeking the entry of regulatory decrees; almost always using decrees with a termination date of not more than 10 years, and reviewing decrees to see which should be vacated as obsolete or inappropriate.

Repealing the Webb-Pomperene and the Expediting Acts.

Substantially revising the Robinson-Patman Act.

Although the Stigler report does not call for mandatory dissolution of companies in highly concentrated industries (as does the Neal report), neither does it play down the problems of oligopoly.

In fact, the Stigler report calls the problems of oligopoly the "most difficult ones" in a policy for competition.

The report gives three reasons for this: The first, described as "factual," is that there are many important industries that are oligopolistic.

The second, described as "interpretive," is that "economists have not succeeded in fully identifying the characteristics of an industry which determine whether it will behave competitively or monopolistically."

The third, described as a "matter of action," is "if firms in an oligopolistic industry are convicted of collusive behavior, must one press for a remedy so radical as dissolution in order to stop future repetitions of the offense? (And should the standards of permissible concentration be wholly different for pending mergers than for established enterprises?)"

The Stigler report lists circumstances which determine whether the companies in an oligopolistic industry behave more or less competitively.

"The easier new firms can enter the industry, the smaller and more short-lived will be the monopolistic restrictions."

"The more elastic the demand for the product of the oligopolistic industry, the less the reward from restrictions of output below the competitive level, and hence the less the inducements to act collusively. This in turn usually depends upon what alternative products the buyers may turn to."

"The larger the effective number of firms the less the probability of collusive behavior . . ."

Another factor suggested by the Stigler group as "probably but less certainly" affecting the probability of competitive behavior is the size of buyers, since larger buyers make for more competitive behavior.

The Stigler group believes that although concentration may be a "significant factor" in profitability, it is not a "major deterimnant."

The Task Force believes that "somewhere between five and ten effective rivals (i.e., a largest firm with a share of ⅓ to ⅕) are usually enough to insure substantial elimination of the influence of concentration upon profitability."

The Stigler group cannot go along with proposals to break up oligopolies by dissolving the leading firms because the "correlation between concentration and profitability is weak, and many factors besides the number of firms in a market appear to be relevant to the competitiveness of their behavior."

Nevertheless, the Task Force counsels a "policy of strict and unremitting scrutiny" for oligopolies. If after a careful investigation, pricing is found to be "substantially noncompetitive," then it thinks there are grounds for proceeding under the Sherman Act.

The Robinson-Patman Act is put on the agenda for long-term legislative reform by the Stigler group on grounds that it "leads to rigidity in distribution patterns and to uniform, inflexible pricing."

The Stigler group thus joins the Neal group of the Johnson administration in calling for changes. The two panels agree that limited price reductions may lead over time to generally lower prices.

The Stigler group feels that a "prohibition against price discrimination may preclude the kind of competition that is most likely to lead to lower prices in oligopolistic industries."

The Stigler report suggests two kinds of changes in the R–P act:

1. Making the general ban against price discrimination in Section 2–A more "supple by broadening the meeting-competition and cost-justification defenses so as to make them more readily available for sellers whose price differentials

do not stem from a predatory purpose and do not injure competition in the marketplace (as opposed to disadvantaging individual firms)."

2. Repealing subsection C, D and E while making clear that standards of the amended Section A apply to practices which would have been handled under the repealed sections.

The Stigler group "recognizes the political support" the R–P Act has and the danger that trying to change it might give some interests a chance to add even more restrictive provisions. That is why some members of the Task Force want change to be a long-term reform and others wish to leave it alone.

The Federal Trade Commission—still reeling from the body blows by Ralph Nader's Ivy League law students—comes in for some sharp criticism from the Stigler panel.

"Unhappily," said the Stigler group, "little that the commission undertakes in the antitrust area can be defended in terms of the objective of maintaining and strengthening a competitive economy."

As an example, it slaps FTC actions against companies for predatory pricing. It accuses FTC of never properly distinguishing between price differences and price discriminations.

Although the Stigler group finds some improvement over the last eight years—helped by reviewing courts—it believes that FTC still brings many cases that impair, rather than promote, competition and efficiency.

The Stigler panel "can conceive of no case of discrimination in which the Sherman Act would not provide an adequate remedy," and so it views the enforcement of the R–P Act as "inherently likely to be pushed beyond proper limits."

FTC's efforts "to protect small dealers from allegedly unfair and coercive business practices constitute a dark chapter in the commission's history," according to the report.

Much is not even formal proceedings, compains the Stigler panel.

According to the Stigler group, the small dealer, no matter for what reason he is terminated, complains to FTC knowing of its bias for small business and FTC uses the threat of a proceeding to "get the supplier to reinstate the dealer, and if threats fail—usually they succeed—the FTC may file a complaint charging the supplier with having cut off the dealer because he was a price cutter, or for some other nefarious reason."

The report added: "Our impression, in sum, is that the commission, especially at the informal level, has evolved an effective law of dealer protection that is unrelated and often contrary to the objectives of the antitrust laws."

Further, the Stigler report asserts, FTC is even more severe in its merger policy than the Justice Department, and it concludes that "substantial retrenchment" by FTC in the antitrust field is "highly desirable."

The Stigler group feels FTC resources might be redeployed into two possible areas—consumer protection and economic studies—but it adds: "Unhappily, either route could be followed in such a way that endangered competition. . . ."

Although FTC needs "basic reform," the Stigler panel admits it will be hard to do, partly because the President would run up against the tradition of regarding the commission as an "arm of Congress."

Because of likely opposite on the Hill to reforming FTC, the panel suggests for the short-run closer cooperation between the Justice Department and FTC on the highest levels with the hope that FTC will pay some attention to the department's view of what it should do on antitrust and trade-regulation matters.

[From Antitrust and Trade Regulation Report, June 10, 1969]

Nixon Task Force Disagrees With Present and Past Administrations' Merger Policies

Unable to agree with either the Johnson Administration's merger guidelines or the present Administration's policy toward conglomerates, the Nixon Task Force on Productivity and Competition does recommend sweeping reform of present antitrust laws. Everything from the Expediting Act to price-fixing, Webb-Pomerene, Robinson-Patman, and consent decrees were touched upon by the Task Force.

The Nixon Task Force made the following recommendations:

1. That the Department of Justice decline to undertake a program of action

against conglomerate mergers and conglomerate enterprises, pending a conference to gather information and opinion on the economic effects of the conglomerate phenomenon. More broadly, the Department should resist the "natural temptation to utilize the antitrust laws to combat social problems not related to the competitive functioning of markets."

2. That the Department of Justice maintain "unremitting scrutiny of highly oligopolistic industries" and proceed under Section 1 of the Sherman Act in instances where pricing is found to be substantially noncompetitive. The Task Force does not endorse proposals, whether by new legislation or new interpretations of existing law, to deconcentrate highly concentrated industries by dissolving their leading firms.

3. That a number of revisions be made in the Department of Justice Merger Guidelines which are "extraordinarily stringent, and in some respects indefensible."

4. That the Robinson-Patman Act be substantially revised and that the Expediting and Webb-Pomerene Acts be repealed.

5. That a new policy for antitrust degrees be promulgated. The Department of Justice should "not seek the entry of regulatory decrees: Decrees that envisage a continuing relationship with the defendant. Save in exceptional circumstances, all decrees should contain a near termination date, ordinarily no more than 10 years from the date of entry. And the Department should undertake a review of existing decrees to determine which should be vacated as obsolete or inappropriate."

6. That new legislation be passed to increase the monetary penalties for price-fixing.

7. That the Department of Justice bring a series of strategic cases against regional price-fixing conspiracies, which "we believe to be numerous and economically important."

8. That the Department of Justice establish close liaison with the Federal Trade Commission at the highest levels, with a view toward fostering a harmonious policy of business regulation.

9. That substantial retrenchment by the Federal Trade Commission in the antitrust field is highly desirable. In addition to retrenchment, its resources devoted to regulating competition might be redeployed. "The two principal possibilities are (1) consumer protection and (2) economic studies utilizing the very broad fact-gathering powers vested in the Commission by its enabling legislation. Unhappily, either route could be followed in a way that endangered competition. Overzealous enforcement of consumer-protection legislation can also have errant results. The Federal Trade Commission urgently needs a basic reform."

10. That the Attorney General and the Assistant Attorney General in Charge of Antitrust insist that every antitrust suit make good economic sense, and institute semi-public conferences to assist in the formulation and reevaluation of enforcement guidelines.

11. That regulatory commissions permit free entry in the industries under regulation and abandon minimum rate controls, whenever these steps are possible and that the President appoint at least one economist to membership in each of the major commissions, and institute effective procedures for the review of the performance of the commissions.

12. That the President issue a general policy statement (a) establishing the Antitrust Division as the effective agent of the Administration in behalf of a policy of competition within the councils of the Administration and before the independent regulatory commissions; (b) urging those commissions to enlarge the role of competition in their industries; (c) marshaling public support for the policy of competition.

Many similar suggestions were made in a Neal Report released (p. A–1, ATRR No. 411, 5/27/69) late last month. Both reports agreed upon the need to revise the Robinson-Patman Act and the need for improvement in the quality and enforcement of the antitrust laws. But each went its separate way on the conglomerate and oligopolistic industry problems. The "Neal" Report recommended enactment of legislation to supplement Section 7 of the Clayton Act to prevent some possibly anticompetitive mergers which might go unchallenged because of the difficulty of applying Section 7 standards. Also, the "Neal" group recommended legislation that would employ established techniques of divestiture to reduce concentration in industries where monopoly power is shared by a few large firms.

Members of the Task Force on Productivity and Competition were: George J. Stigler, Chairman; Ward S. Bowman, Jr., Ronald H. Coase; Roger S. Cramton; Kenneth W. Dam; Raymon H. Mulford; Richard A. Posner; Peter O. Steiner; and Alexander L. Scott. Mr. Mulford and Mr. Scott dissented from some of the report.

Full text of the Task Force Report appears in the Text Section, p. X–1.

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4. Statement by Senator Talmadge, "Report of President Johnson's Task Force on Productivity and Competition," with Insertions in the Record

[From the Congressional Record, June 16, 1969]

REPORT OF PRESIDENT NIXON'S TASK FORCE ON PRODUCTIVITY AND COMPETITION

Mr. Talmadge. Mr. President, I believe every Member of Congress would stand with me to endorse the proposition that business under our free enterprise system deserves great acclaim for its role in promoting economic growth unprecedented in the history of this country. Despite inflationary pressures, high interest rates, overseas investment restrictions, and increasingly complex technology, it has met the challenge and provided our people with a remarkably high standard of living.

A thriving, advancing free enterprise system is dependent upon sound governmental policies developed clearly and with logic and reason. Of late, however, I have begun to question the development of policy in the antitrust field, a matter of great concern to all American business. And certainly the leaders of U.S. industry must be equally baffled and confused by the array of conflicting statements and reports emanating from Washington recently.

The profusion of statements by administration officials and reports by various study groups are enough to make any businessman question the logic of our current antitrust policy.

This problem was brought to mind by the publication of the report of the Nixon Task Force on Productivity and Competition in the Bureau of National Affairs Report to Executives on Monday, June 9. The report, prepared by a distinguished group of educators and businessmen at the request of President Nixon, was designed to give the new administration some realistic guidelines for establishing antitrust policy.

One of its recommendations called for the Justice Department to be certain that every antitrust suit "make good economic sense" and suggested calling semipublic conferences to help draw up and reevaluate enforcement guidelines. It further cautioned Justice against taking antitrust action against large companies on the basis of "nebulous fears about size and economic power" and stated without reservation that "vigorous action on the basis of our present knowledge is not defensible."

The recommendations of the Stigler Report appear to be reasonable and well founded. They merely say that the full facts should be determined before precipitous action is taken in the antitrust field. I am sure my colleagues in Congress, who follow this same process in legislating, would agree. In fact, one committee of the House has already called for hearings on mergers and several agencies of government are now undertaking studies to determine the facts about mergers and its effect upon economic and social structure of the country.

In contrast to the approach, however, I was dismayed to read the statements of Attorney General John Mitchell given recently before the Georgia Bar Association. In that speech, he fashioned new antitrust policy that will affect all of the leading corporations in America. He made clear that, without the benefit of the facts considered important by the Stigler Report, the Justice Department intends to oppose any merger among the top 200 manufacturing firms. Furthermore, he declared his intention to fight mergers between one of the top 200 and any leading producer in any concentrated industry. This approach certainly seems to lack the prerequisite of economic sense which the Stigler group determined was important.

Furthermore, the Attorney General has come dangerously close to espousing the philosophy that bigness per se is bad. Despite denials by Mr. Mitchell and Mr. McLaren, his antitrust chief, that they subscribe to such a philosophy, this announced attack on the 200 largest firms amounts to exactly that.

It is also interesting to note a recently released report made by a blue ribbon panel appointed by President Johnson to examine antitrust policy. While this study—the Neal Report—differed in many respects from the Stigler Report, it,

too, warned that antimerger attacks on large companies using he Clayton Act would have to be through a contrived interpretation. Section 7 of the Clayton Act is exactly the vehicle Mr. Mitchell intends to use to implement his newly announced policy.

I am not advocating a policy of unrestricted mergers. I, like many other Members of Congress, believe that the merger trend should be closely examined. When sufficient facts are available, it is the duty of Congress to heed them and take appropriate action if necessary. I do not believe the Attorney General has the right to extend the law as he seems to be doing.

A portion of this report was placed in the RECORD last week by the Senator from Wisconsin, although his entry did not encompass the full report and other relevant matter. I believe the full report by President Nixon's factfinding group, along with Attorney General Mitchell's address in Savannah, Ga., and a newspaper article on his address, bear careful consideration. I ask unanimous consent that they be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

(NOTE.—Senator Talmadge's first insertion—the summary, text of report, dissents, and working papers of the Task Force on Productivity and Competition—will be found in part C of this appendix, supra. Senator Talmadge's second insertion—the text of an address by Attorney General Mitchell—will be found in part A of this appendix, supra. His third insertion follows:)

[From the Washington (D.C.) Evening Star, June 6, 1969]

MITCHELL WARNS "TOP 200" ON MERGERS

(By Lyle Denniston)

Atty. Gen. John N. Mitchell today warned the nation's top 200 manufacturing companies not to try to merge with each other or with leading companies in any industry already dominated by only a few firms.

Mitchell, speaking in Savannah, Ga., said the Justice Department plans to move "aggressively" to stop the growing trend toward "super-concentration."

TIME TO ACT

He listed as "probabilities" that the government would oppose any merger between any two or more of the top 200 manufacturing firms or between any of them and large firms in non-manufacturing industries.

In addition, he said, if any one of the 200 manufacturers tries to absorb a leading company, of what ever size, in an industry that is already "concentrated," the government will probably challenge that too. Mitchell aimed his challenge at the big manufacturers because he said they now control more than 58 percent of all producing assets.

Unless their merging is stopped now, the attorney general said, the government will be less able to resist demands for direct government controls over their operations.

Mitchell clearly hoped that lawyers for business would take his advice, and counsel their clients not to risk being taken into court. He said the aim of his remarks and the aggressive policy he was declaring is to achieve "voluntary compliance."

Mitchell said flatly the future of the nations free economy "may be in danger because of the increasing threat of economic concentration by corporate mergers."

Mitchell predicted that companies which together own $18 billion in assets would be absorbed by other companies this year. That would compare with companies owning $12 billion in assets that were absorbed just last year.

MERGER ALTERNATE

He said that there would be 600 more companies with assets of more than $25 million each if it had not been for mergers during the past 10 years.

The attorney general frankly acknowledged to his Savannah audience that the Nixon administration is aiming for a decentralization of the American economy.

Directly challenging the management and financial power concentrated in New York, Chicago, and Los Angeles, Mitchell said: "We do not want our middle-sized and smaller cities to be merely 'branch store' communities."

He argued that average consumers should be able, in their own communities, "to exercize local economic options."

Mitchell defended his proposed policy of challenging big company mergers as fully within present law.

In the past, Justice Department officials have said they could move against giant mergers only after Congress enacted new antitrust legislation.

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5. Letter dated July 11, 1969, from Nick Papolos, Investors in America, 6005 Eighth Ave. North, St. Petersburg, Florida 33710, to Senator Nelson with enclosure and related correspondence

(NOTE.—The letterhead of Investors in America describes it as "A National organization for the preservation of stockholders and their companies.")

JULY 11, 1969.

Hon. Senator GAYLORD NELSON,
Senator from Wisconsin,
Washington, D.C.

DEAR SENATOR NELSON: On June 6, Attorney General John Mitchell announced: "The Department of Justice will probably oppose any merger among the top 200 manufacturing firms of any leading producer in any concentrated industry."

Mr. Mitchell's decision is an arbitrary one, but nevertheless one which will have enormous and harmful impact upon the leading firms in American industry. For the first time an Attorney General has made it official government policy that bigness in industry will be the test for antitrust action. And this without Congressional sanction.

The 26 million investors with their risk capital help make America the greatest industrial country in the world. The unprecedented actions of the Justice Department in the past 6 months have shaken the faith of investors, and have cost stockholders billions of dollars.

There is no support in economics for Mr. Mitchell's position. Indeed, a task force of eminent economists formed to advise Mr. Nixon on antitrust policy expressed a view completely at odds with the policy which the Department of Justice is attempting to create.

The remarks made by Mr. Mitchell are without any basis in fact. The attached critique of that speech, done by a leading economist, should be of interest to you in evaluating the present course the Department of Justice, and particularly the Antitrust Division, has set for itself. We would be interested in your reaction to this critique.

Sincerely,

NICK PAPOLOS.

MEMORANDUM

JULY 7, 1969.

Subject: *Analysis of Address by John N. Mitchell before the Georgia Bar Association, June 6, 1969.*

Mitchell.—"We have constructed a complex economic structure which successfully reflects adherence to the political and social principles of our free society."

Comment.—This is true. But such an economic structure requires a variety of instrumentalities to provide the maximum amount of flexibility. The conglomerate is one approach among many. It provides a prod to lethargic management. It adds a dimension to competition.

* * * * * * *

Mitchell.—"The danger that this super-concentration poses to our economic, political and social structure cannot be over-estimated. Concentration of this magnitude is likely to eliminate existing and potential competition. It increases the possibility for reciprocity and other forms of unfair buyer-seller leverage. It creates nationwide marketing, managerial and financial structures whose enormous physical and psychological resources pose substantial barriers to smaller firms wishing to participate in a competitive market. And, finally, super-concentration creates a 'community of interest' which discourages competition among large firms and establishes a tone in the marketplace for more mergers."

Comment.—What is the support for this statement? In what industries have these smaller firms found these "substantial barriers" and were they erected by large companies as such?

Despite the giants like Western Electric, GE, and Westinghouse, small companies proliferated in the electronics field and in some cases have grown to considerable size.

The highly concentrated chemical markets have been exposed to so many new entrants that today about one company in three among the 500 largest industrials produces chemicals.

Giant IBM didn't prevent the start and growth of Control Data, Scientific Control, Scientific Data Systems and the other companies which have entered the computer industry. Nor did it prevent the host of software and leasing companies which have become of considerable importance in recent years (Leasco, Data Processing and Financial General, University Computing, Computer Sciences, et cetera, et cetera).

The large food companies haven't prevented the large number of franchise operations which have developed (e.g. Kentucky Fried Chicken).

Actually the areas with greatest barriers to entry (usually capital requirements) are those where mergers have been relatively unimportant—steel, aluminum (with several new entries in recent years), gasoline (a few mergers).

Moreover, these alleged barriers to entry have not kept out foreign competitors who have been increasingly important in a number of concentrated industries: steel, synthetic fibers, electronics, and others.

Mitchell.—"They do not necessarily increase efficiency and profits. Studies show that, in general, the relative profits of medium size businesses are as large as those giant firms. Corporate bigness does not necessarily stimulate the most imaginative scientific research. Recent studies show that the medium size firm tends to be more productive in its scientific research precisely because it is not in a dominant position."

Comment.—Mr. Mitchell appears to be citing studies, the conclusions of which do not "necessarily" apply to conglomerates. Studies of the results of size usually deal with the results of size within an industry or product market. Such studies often conclude that medium size producers are more efficient than the largest producers in an industry. But these conclusions are not applicable to a conglomerate in terms of its size. A billion dollar conglomerate may operate in five or ten industries but be a medium sized participant in each or most of them. Its experience, therefore, can be significantly different from that of a billion dollar company in one industry.

For example, Western Electric had $4,033 million in sales in 1968. This volume was concentrated in telecommunications and defense work. In contrast, ITT with similar volume ($4,067 million) operated in at least eight broad areas (telecommunications equipment, industrial and consumer products, defense and space programs, natural resources, food processing and services, consumer services business and financial services, and utilities). And within some of these eight groups a number of different industries were involved. For example, the consumer services group included hotels (Sheraton), home building (Levitt and Son), and auto rentals (Avis) among others. Similarly, it is one thing to have an enormous staff for R & D in one industry and to have a number of teams operating in widely disparate industries.

Even more important, Mr. Mitchell has ignored a number of advantages of bigness including:

1. Its vital contributions to national defense.
2. A big company permits more diversification and intensifies competition.
3. It often is a major innovator.
4. It contributes to rising living standards.
5. It makes a significant contribution to economic and social progress.

Mr. Mitchell described our enormous economic progress in the past 80 years and concluded . . . "the evidence strongly supports our belief that the antitrust laws have served us well." Why give all the credit to antitrust? Isn't this conclusion equally applicable to big business which developed during this same period?

Mitchell.—"It has also been argued that the large firm, because of its concentration of talent and other resources, is better able to market goods and services that the public wants. But this, too, is not proven by the facts.

"For example, leading firms in two of our most highly concentrated industries—automobiles and razor blades—only offered the American consumer important new products in response to aggressive foreign competition.

"Thus, our experience has been that the American consumer is not always benefited by the very large corporation. Indeed the evidence indicates that bigness may frequently favor the status quo."

Comment.—This is a remarkable statement in light of the enormous variety of new products which has flooded the American market. These products have ranged from television to electric toothbrushes, from sophisticated equipment for medical services to the miracle drugs, from frogen foods to precooked foods, from miracle fibers to outdoor carpets, from automatic dishwashers to blenders. They are reflected in the highest levels of real earnings and living standards in the world. Many products considered to be luxuries elsewhere in the world are practically necessities here.

The illustrations of automobiles and razor blades used by Mr. Mitchell underline the responsiveness of our large corporations to competitive pressures—from overseas as well as at home. There is an understandable pride in having all new products developed first in the United States. But it is no criticism of American industry to find that they have adopted many products developed overseas just as foreign consumers demand many American products. Rather it is an indication of the adaptability of American companies that they respond to these pressures. Incidentally, when American auto companies did introduce small cars, the public didn't show much interest. It was more interested in foreign than in small when it bought foreign small cars.

Any examination of the changes in the product mix of companies over time, makes it difficult to understand Mr. Mitchell's conclusion that "bigness may frequently favor the status quo." Is he talking about companies in chemicals, electrical equipment, drugs, office equipment, aluminum, or cigarettes to mention but a few?

Mitchell.—"One of the most easily understandable dangers posed by the conglomerate merger is reciprocity—when a diversified corporation favors with purchases firms which purchase from it."

Comment.—The reasons why reciprocity is not a special problem resulting from conglomerate mergers are summarized below:

". . . concerns become one another's customers because each is the best and cheapest source of supply for what the other wants."

(Corwin D. Edwards, *Maintaining Competition*, McGraw-Hill Book Company, New York, 1949, p. 179)

"Where neither industry is characterized by concentration, . . . neither party can impose on the other reciprocal agreements in which any firm is forced to purchase inputs at prices higher than those available from other sources. Each firm has numerous alternative suppliers and will not voluntarily sacrifice the opportunity to purchase from others at lower prices without receiving significant consideration."

(James M. Ferguson, "Tying Arrangements and Reciprocity: An Economic Analysis," *Law and Contemporary Problems*, Summer 1965, p. 568)

". . . a firm with market power combined with restrictions on price cutting uses reciprocity as a means of selling at a discount. The firm . . . does not coerce its suppliers. . . . Suppliers are able to buy from the dominant firm at prices below those quoted to other buyers."

(Ferguson, *op. cit.*, p. 571)

". . . removal of market concentration would not eliminate the factors that give rise to reciprocity. At best, reciprocity can secure sales for the firm at equal prices. Competitors are foreclosed from sales at equal prices, but this will not affect competition as all firms can practice reciprocity. . . . Any successful selling technique will increase a firm's sales at the expense of rivals, but this is the very essence of competitive rivalry. These agreements will not lessen competition. . . ."

(Ferguson, *op. cit.*, pp. 579–80)

". . . reciprocity is of less consequence in causing market imperfections now than in years past. . . . it is of less sifinificance among major industrial concerns than in small business, the retail trades, and in local communities."

(Almarin Phillips, "Reciprocity Under the Antitrust Laws: Observations on the Hales' Comment," *University of Pennsylvania Law Review*, November 1964, p. 77)

"Reciprocal dealing . . . would seem to be impossible for firms without market power and unprofitable for firms with market power."

(John P. Anderson, "Reciprocal Dealing," *Yale Law Journal*, April 1967, p. 1025)

". . . a trade relations program is costly . . . the practice of reciprocity has been alleged to be inherently unprofitable."

(K. A. Hinnegan, "Potential Reciprocity and the Congolmerate Merger: Consolidated Foods Revisited," *Buffalo Law Review*, Spring 1968, p. 649)

"Reciprocal dealing is also claimed to [adversely] affect the sales effort." (Hinnegan, *op. cit.*)

"While diversification may increase the potential for reciprocity, whether there is a major causal nexus between the two is quite doubtful. Diversification existed long before the recent popularity of reciprocity."

(Milton Handler, "Emerging Antitrust Issues: Reciprocity, Diversification, and Joint Ventures," National Industrial Conference Board, 1963, p. 9)

"Reciprocal purchases based on equal percentages . . . is not likely to represent a stable relationship—since the value of the two products is unrelated."

(Betty Bock, *Mergers and Markets*, Fifth Edition, 1966, p. 194)

". . . reciprocity usually performs the function of an indirect price cut."

(Anderson, *op. cit.*, p. 1025)

* * *

Mitchell.—"A more complex but equally troublesome danger in the conglomerate merger movement is the elimination of potential competition."

"It has always been assumed that in our free market a businessman should be encouraged to enter an industry where profits and other conditions make his competition attractive. This should be particularly encouraged in a highly concentrated industry because such industries average substantially higher profits than unconcentrated industries.

"But super-concentration, coupled with conglomerate corporate structures and large financial capabilities, discourages the prudent businessman from entering such an industry.

"This elimination of potential competition tends to maintain the inflated price structure in a concentrated industry."

Comment.—The above statements represent assertions rather than fact. There is a significant difference between a potential competitor and potential competition. Potential competition embraces all of the companies which may enter a market and it is the composite effect that is expected to have a restraining effect upon actual competitors. But as Professor Jules Backman of New York University has pointed out:

"The effects of potential competition are not diluted because one potential competitor is eliminated unless it is the only company which may enter the market.

"Potential competitors usually cannot be identified in advance. The willingness and ability of a company to enter a market will be determined by its past experience, the products now handled, technical know-how, cost-price-profit relationships, funds available for investment, competing opportunities to use capital funds, and the philosophy of management (is it expansionist-minded or not). Moreover, the number of and identity of potential competitors change as economic conditions change. An improvement in cost-price-profit relationships, for example, will increase the number of potential competitors, while a narrowing of profit margins will have the reverse effect.

"The inability to identify specific potential competitors is one reason why economists have been more concerned with the conditions of entry than with the identity of the entrants. Who would have been willing to predict not only that Alcoa would have seven competitors but also their identity in light of the enormous capital requirements for entry into the aluminum ingot market? Who was willing to predict some fifteen years ago that most of the petroleum companies would enter the chemical industry or that companies such as Eastman Kodak, W. R. Grace, and many others would, in a short period of time, obtain more than one-quarter of their sales volume from the production and sale of chemicals? The enormous expenditures for research and development have changed the conditions of entry significantly in many industries and have increased the magnitude of potential competition both from identical products and closely substitutable products.

"Greater attention also must be given to the differing impact on the market of actual and potential competition. The competitive effects differ significantly in intensiveness and in effectiveness. The main impacts of potential competition are negative to the extent that they create a barrier to the ability of existing competitors to take advantage of their position by raising prices, by limiting output, or by refusing to innovate. In contrast, actual competition makes a positive contribution because it stimulates affirmative competitive responses to counter possible gains by the new competitor."

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("Joint Ventures and the Antitrust Laws," *New York University Law Review*, October 1965, pp. 669–70) Dr. Jules Backman.

A National Industrial Conference Board study has warned ". . . there is danger that too loose an interpretation of the proof required to show the existence of a peripheral [potential] competitor might turn the concept of probability into a concept of possibility—while too tight an interpretation might be incompatible with the use of the periphery criterion at all." (Betty Bock, *Mergers and Markets*, 1968, p. 138)

What evidence does Mr. Mitchell have to show that concentrated industries "maintain [an] . . . inflated price structure." There are no comprehensive statistical studies to support this position. The available evidence shows exactly the opposite. Thus, after studying the relationship between the concentration and price increases during the 1955–57 price rise, Professor Jules Backman concluded that in five important industries (primary metals, fabricated metal products, electrical machinery, non-electrical machinery and transportation equipment) "there was no relationship between price change . . . and the degree of concentration" (p. 12) and ". . . it also seems probable that administered prices for products subject to high concentration of control have not acted differently from prices of products with low concentration." (p. 18) ("Administered Prices, Administered Wages, and Inflation", Society of Business Advisory Professions, October 16, 1957)

Thomas A. Wilson analyzed the changes in the prices of electrical and non-electrical machinery from 1954 to 1957 and presented the following data:

	Percent rise in price, 1954–57	Weighted average concentration ratio: 4 firms
Metalworking	25.38	17.21
General industrial	22.93	24.09
Concentration	21.58	20.00
Electrical	18.07	53.36
Agricultural	9.33	52.07

He concluded that:

"The subsectors of machinery that led the price upswing had quite low concentration ratios, lower than other subsectors of the industry. These data suggest that market power probably did not play a major role in the recent inflation of machinery prices. This is not to deny, however, that market power may be of significance for downward price rigidity during recessions." [1] (Italics added.)

A study of price changes between 1953 and 1959 by Richard Selden and Horace J. DePodwin has been reported to show that:

"Only 1 percent of price changes is 'explained' be concentration * * *; and within two digit industry categories there is no relationship between concentration and price movements." [2]

In light of these studies, it is evident that no casual relationship between the extent of concentration and the magnitude of price increases in the latter half of the 1950's has been established. For the period prior to 1955 Professor Richard Ruggles concluded: "The major patterns of price behavior in the economy can be adequately explained in terms of factors other than industrial concentration." [3]

In testimony before the Senate Subcommittee on Antitrust and Monopoly in 1965, Professor Jules Backman presented data to show that "Price competition has become increasingly vigorous in many concentrated industries. Prices of many chemicals, paper products, aluminum products, and electrical equipment and appliances have been buffeted badly in recent years." Many other instances were cited of price leaders who weren't followed and of large companies which were forced to reduce prices when small companies initiated the cuts. (Hearings on Economic Concentration, part 2, pp. 567, 890–98.)

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[1] Thomas A. Wilson, "An Analysis of the Inflation in Machinery Prices," *Study Paper No. 3*, Joint Economic Committee, Congress of the United States, Washington, D.C., November 6, 1959, pp. 51–2.

[2] George J. Stigler, "Administered Prices and Oligopolistic Inflation," *The Journal of Business*, January 1962, p. 9.

[3] Richard Ruggles, "The Nature of Price Flexibility and the Determinants of Relative Price Changes in the Economy." *Business Concentration and Price Policy*, National Bureau of Economic Research, Princeton University Press, Princeton, N.J., 1955, pp. 488–89.

It is instructive to note that the only case cited of a price being reduced when a new competitor entered the market was for the regulated natural gas industry.

* * * * *

Mitchell.—"Large conglomerate mergers also pose substantial dangers to free competition by the expansion of nationwide marketing structures, capital resources and advertising budgets. Such a structure may offer a diversified firm a physical advantage over its competitors in terms of volume discounts on transportation and advertising."

Comment.—Again Mr. Mitchell exaggerates the power of big companies. The experience is that no company can hold on to product markets by advertising. There is constant turnover in the leading products. All of the power of advertising couldn't prevent Supersuds, Rinso, and Oxydol from declining in importance from about half of their market in 1949 to less than 10% a few years later. With all of its expertise in the wet soup market, Campbell Soup had to abandon its Red Kettle brand of dry soups after spending more than $10 million on advertising. Despite large advertising, Gillette and Coca Cola have experienced sharp attrition in market shares. And these illustrations could be multiplied many times. Moreover, the volume discounts on television have been substantially reduced in the past few years.

It is true that transportation costs are lower for large shipments than for small ones. It is one of the advantages of large scale production. But since when is that bad? The companies do not pocket these differences. Rather they contribute to greater efficiency in distribution and hence benefit the consumer. They also make it possible for the consumer to increase the number of choices.

Mr. Mitchell also underestimates the imagination and effectiveness of small and medium size companies at this point although on page 8 he stated: "that the medium size firm tends to be more productive in its scientific research" and "that, in general, the relative profits of medium size businesses are as large as those of the giant firms." He can't have it both ways.

* * * * * * *

Mitchell.—"Another danger posed by the current merger trend is what is known as a 'community of interest.' But it is not a formal agreement but merely the recognition of common goals by large diversified corporations . . . It posits that large diversified corporations may have little interest in competing with each other in concentrated markets."

Comment.—This conclusion appears to be based upon the assumption that corporations have grand boards of strategy which treat the various divisions as pawns to be maneuvered in their relationships with other companies. This is a view of corporate activity which will come as news in corporate headquarters throughout the country. Actually, many large companies have divided their activities into profit centers with compensation of the people involved related to their performance. Each division fights vigorously to increase its share of total profits. As a result, the managers of each division are not philanthropically inclined to help another department make profits at their expense.

Moreover, it is assumed that the various conglomerates have a " 'community of interest' which discourages competition among large firms." This will also be news in corporate headquarters. It ignores the fact that conglomerates usually are headed by individuals who are intensely competitive and who are seeking more growth and greater influence. If one is to believe many of the criticisms of conglomateers, they are the last ones to seek out or go along with the accommodations required under such a "community of interests".

Of course, if there is cooperation among these companies it should be stopped by antitrust enforcement. This is another of the "potential" threats that have been conjured up by antitrust officials. One wonders why the Department of Justice sues to stop potential reciprocity but not to stop the alleged potential "community of interest".

* * * * * * *

Mitchell.—"Certainly, some of the issues are open to argument."

Comment.—As the preceding analysis has shown, this is one statement with which there can be no quarrel.

* * * * * * *

Mitchell.—"The Department of Justice may very well oppose any merger among the top 200 manufacturing firms or firms of comparable size in other industries.

"The Department of Justice will probably oppose any merger by one of the top

200 manufacturing firms of any leading producer in any concentrated industry."

Comment.—The selection of the top 200 firms as the cutoff point to determine when a merger should be opposed is an arbitrary figure. Why not the top 100 or the top 500? The language used is also surprising. The Department "may very well oppose" mergers among the top 200 but it "will probably oppose" mergers by any of the top 200 with "any leading producer in any concentrated industry". Mr. Mitchell doesn't indicate what is meant by "any leading producer"—the largest, one of the four largest, one of the ten largest? Nor does he indicate what is meant by a "concentrated industry"?

Nowhere in the antitrust laws nor in the case law is there warrant for preventing bigness per se. Size becomes important only when it tends to lessen competition or tends toward monopoly. This would appear to be a decision to be made by the Congress rather than the Department of Justice. With hearings scheduled before the Cellar and Hart Committees, shouldn't Mr. Mitchell have waited to see what action Congress will take?

* * * * * * *

Mitchell.—"By halting the trend toward concentration, we remove what we believe is an inadvisable alternative of outright government regulation as is now applied to public utilities, communications and other highly concentrated industries. We will stimulate our most reliable economic regulator—free competition."

Comment.—Public utilities and communications are not regulated because they are concentrated. Rather they are regulated as a quid pro quo for the monopoly they are granted by the government. And they are granted a public monopoly because it would be uneconomic to have more than one company rendering the service in a given area because of the enormous capital required (about $4 in assets for every dollar in sales) and the resulting increase in costs to the public if there were not a monopoly.

U.S. SENATE, SELECT COMMITTEE ON SMALL BUSINESS,
July 23, 1969.

Mr. NICK PAPOLOS,
Investors in America,
St. Petersburg, Fla.

DEAR MR. PAPOLOS: Thank you for your letter of July 11 and its interesting enclosure.

Your communication is most pertinent to the recent hearings of the Senate Small Business Committee's Subcommittee on Monopoly on "The Role of Giant Corporations in the American and World Economies: Automobile Industry—1969."

Unless I hear from you that you would have some objection to publication of your letter and its enclosure, the Subcommittee may print it in the public record of the hearings.

It would be interesting to me to know the name of the economist who prepared the critique of Attorney General Mitchell's speech, if you are at liberty to inform me.

Sincerely,

GAYLORD NELSON,
Chairman, Subcommittee on Monopoly.

(EDITORIAL NOTE.—No reply to the foregoing letter had been received at the time this record went to press in October 1969.)

E. Report by the Bureau of Economics, Federal Trade Commission, "Current Trends in Merger Activity, 1968," March 1969.

Statistical Report No. 3

Current Trends in Merger Activity, 1968

BUREAU OF ECONOMICS
FEDERAL TRADE COMMISSION

March 1969

Total Acquisitions Rise Sharply in 1968

All previous levels of merger activity were eclipsed by developments in 1968. Total mergers climbed to 4,003, an increase of 68 percent over the previous year (Table 1). Also in 1968, for the first time in history, a firm with assets of more than a billion dollars was acquired. Although manufacturing acquisitions accounted for the greatest share of total activity (63 percent), mergers in trade and services rose most sharply. Such mergers accounted for 29 percent. Wholesale and retail trade acquisitions nearly doubled in 1968, while acquisitions in the area of services rose even more sharply, from 310 to 696. These trends indicate that as the merger movement reaches new heights, firms in a wider variety of fields are taking part.

Manufacturing and Mining Acquisitions

Manufacturing and mining mergers rose 63 percent on top of a previously recorded increase of 50 percent for 1967. Acquisitions totaled 2,442 for 1968 compared to an annual average of 983 in the period 1960-1967 (Table 2, chart I). No segment of manufacturing and mining was left untouched by the current boom. Manufacturing sectors currently experiencing the greatest number of mergers include electrical and non-electrical machinery, chemicals and fabricated metals. In these sectors nearly 900 acquisitions were recorded last year (Table 3).

Large Manufacturing and Mining Acquisitions

The number of large acquisitions, those involving acquired firms with assets of $10 million or more, also increased in 1968, totaling 192 as compared to 169 in 1967 (Table 5, chart I). The total value of large acquired assets equaled $12.6 billion, 50 percent greater than in 1967, and three times greater than the total

for 1966. The most striking development, however, is the continued increase in size and frequency of large acquisitions. The average size of large acquisitions has grown sharply in recent years, from $27.6 million in 1966 to $65.7 million in 1968, an increase of 138 percent (Table 6). In comparison, the average size of all manufacturing and mining corporations with assets of $10 million and over rose from $96.3 million to $142.6 million, or an increase of only 48 percent. In the same period the number of manufacturing and mining corporations with assets of $10 million and over rose by 28 percent, while the number of large acquisitions increased by 210 percent from 1960 to 1968. Clearly, therefore, as merger activity has increased, it has become progressively more concentrated among large firms.

Striking evidence of this trend is seen in the growing number of disappearances of companies with assets of $250 million or more (Table 7). During the whole period 1948-1967 12 firms with assets of more than $250 million were acquired. In 1968, alone, 12 such firms were acquired including one firm with assets in excess of $1 billion. Six of these acquired firms were among the 200 largest corporations in 1967. In 1968 it became clear that not even the largest firms in the economy were free from the threat of takeover.

Throughout the post-World War II period the largest firms have been the most active acquirers (Table 8). In 1968 acquiring firms with assets of $250 million and over made 51 percent of the number and 73 percent of the assets of all large acquisitions. Their share rose substantially in relation to 1967 when the respective percentages were 42 percent and 61 percent. In fact virtually all of the increase in large firm disappearances (both in number and assets) between 1967 and 1968 is due to increased acquisitions by the largest acquiring firms.

Acquired Assets Compared with New Investment

Another perspective on the growing importance of acquisitions as a technique of firm expansion is seen in Table 9. In 1968 the value of acquired large firm assets totaled $12.6 billion, equivalent

to 45 percent of the total value of new plant and equipment investment in mining and manufacturing. This ratio represents a substantial growth over earlier years (Chart II). In the late 1940's acquired assets were infinitesimal in comparison to the value of new investment. Even in the early 1960's the proportion averaged only 15 percent. The sharp increases for 1967 and 1968 eclipse all earlier postwar years.

Conglomerate Mergers Increasingly Prevalent

From the standpoint of public policy the most unique aspect of the current merger movement is its conglomerate character. In 1968 these mergers accounted for 84 percent of the number and 89 percent of the assets of all recorded large acquisitions (Table 10). These proportions are higher than those of 1967 and continue the upward trend of recent years. The unique development of 1968 with respect to conglomerate mergers was their dramatic change in character and average size. The conglomerate merger classification includes a disparate variety of combinations. In studying these acquisitions the Bureau of Economics has regularly maintained three classifications (Tables 10 and 11). The product extension and market extension categories represent acquisitions in which the acquired and acquiring firms are discernibly related in a production or marketing sense. The "other" category represents combinations in which such relationships are not discernible. It is this type of merger which has assumed increasing significance. In 1968 43 percent of all large acquired assets fell in the "other" category. Among this group are such mergers as Loew's (a movie distributor) acquisition of P. Lorillard & Co. (a tobacco company), and ITT's (a communication and electronics company) acquisitions of Continental Baking and of Rayonier (a paper company). Virtually all of the increased large merger activity of 1968 involved expanded patterns of diversification.

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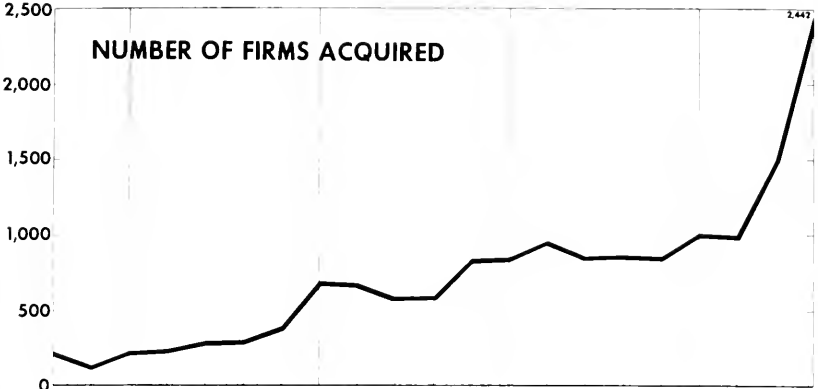
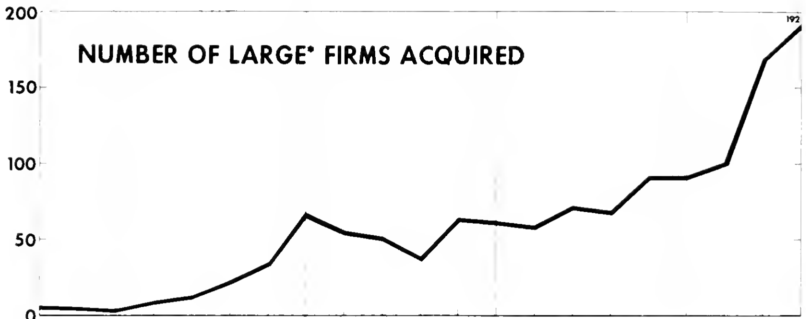
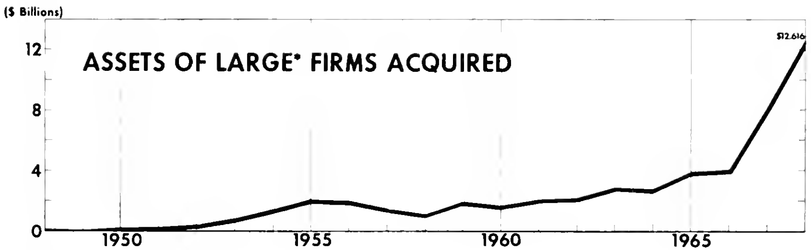
Chart I

MANUFACTURING AND MINING FIRMS ACQUIRED 1948 - 1968





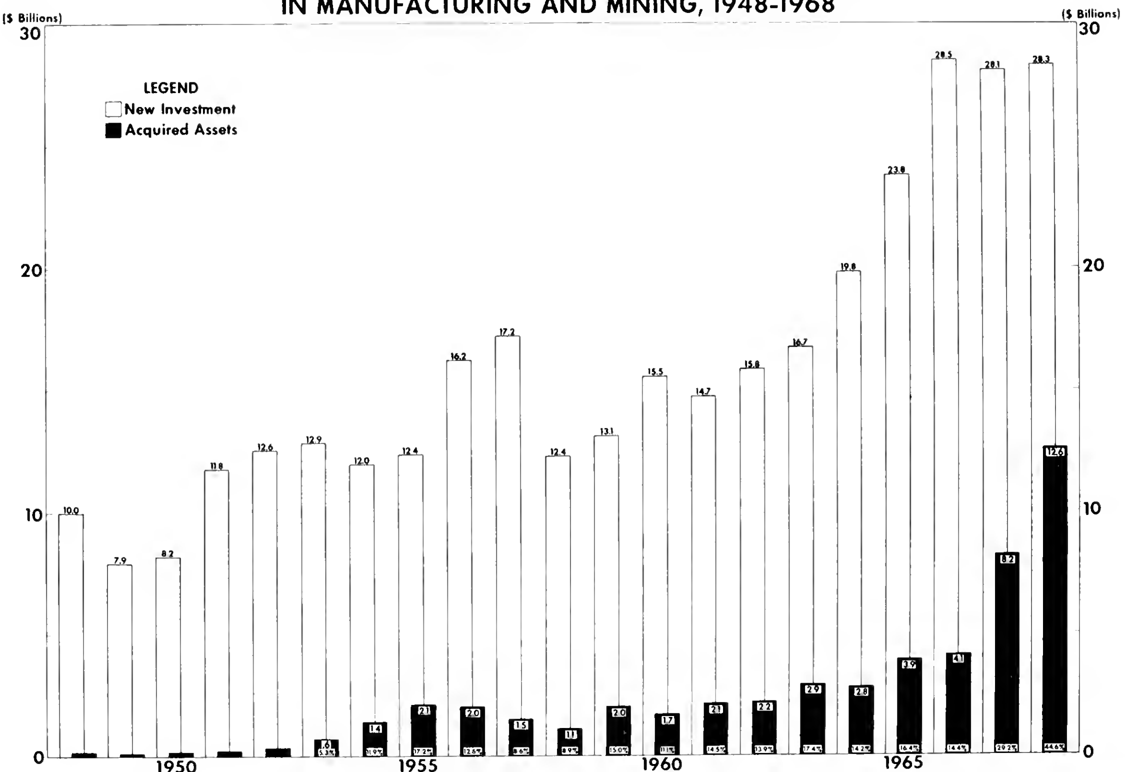


*Firms with assets of $10 million or more.

SOURCE: Bureau of Economics, Federal Trade Commission.

Chart II

ACQUIRED ASSETS[1] COMPARED WITH NEW INVESTMENT[2], IN MANUFACTURING AND MINING, 1948-1968



1/ Acquisitions of mining and manufacturing firms with assets of $10 million or more.

2/ Total new investment for plant and equipment by mining and manufacturing firms.

Source: Bureau of Economics, Federal Trade Commission; and Economic Report of the President, Jan. 1969, p. 271.

Table 1.--Overall number of mergers and acquisitions recorded, by industry of acquiring company, 1960 - 1968

Industry 1/ of acquiring company	1960	1961	1962	1963	1964	1965	1966	1967	1968
Total recorded	1,345	1,724	1,667	1,479	1,797	1,893	1,746	2,384	4,003
Full acquisitions 2/	1,216	1,592	1,504	1,329	1,519	1,628	1,517	2,181	3,803
Mining*	48	74	48	79	59	62	55	82	130
Manufacturing*	918	1,043	985	906	1,006	1,063	1,051	1,557	2,525
Trade 3/	127	255	235	186	207	191	188	232	452
Services and others 4/	123	220	236	158	247	312	223	310	696
Partial acquisitions 5/	129	132	163	150	278	265	229	203	200

1/ Broad industrial classification of acquiring company in full acquisitions only.

2/ Acquisitions of other independent companies, subsidiaries of other independent companies, and whole divisions of other independent companies.

3/ Wholesale and retail trade combined.

4/ "Others" consists mainly of companies engaged in insurance, warehousing and storage, commercial farming, contract construction, and extending credit to businesses and individuals (other than banks).

5/ Acquisitions involving less than half of the assets or stock of a company.

* Totals are larger than those shown on subsequent tables because of the use of additional sources.

Sources: Moody's Industrials (semi-weekly), Standard Corporation Records (daily), Wall Street Journal, Journal of Commerce, and New York Times.

Bureau of Economics, Federal Trade Commission.

Table 2.--Number of manufacturing and mining concerns acquired, 1940-1968

Period	Number	Period	Number
1940	140	1954	387
1941	111	1955	683
1942	118	1956	673
1943	213	1957	585
1944	324	1958	589
1945	333	1959	835
1946	419	1960	844
1947	404	1961	954
1948	223	1962	853
1949	126	1963	861
1950	219	1964	854
1951	235	1965	1,008
1952	288	1966	995
1953	295	1967	1,496
		1968	2,442
1967:		1968:	
First quarter	279	First quarter	482
Second quarter	372	Second quarter	546
Third quarter	377	Third quarter	725
Fourth quarter	468	Fourth quarter	689

Sources: Data limited to mergers and acquisitions reported by Moody's Investors Service, Inc., and Standard & Poor's Corporation. Comparable totals for the years 1919 to 1939 were published in the Commission's Report on Corporate Mergers and Acquisitions, May 1955, p. 33.

Bureau of Economics
Federal Trade Commission

Table 3.--Distribution of the number of acquired manufacturing and mining concerns, by industry of acquiring company, 1960-1968

Major industry group 1/ of acquiring company	1960	1961	1962	1963	1964	1965	1966	1967	1968
Total 2/	844	954	853	861	854	1,008	995	1,496	2,442
Manufacturing	742	780	744	716	712	826	841	1,261	1,969
Food and kindred products	61	73	56	67	69	86	69	95	133
Tobacco manufactures	2	5	5	6	6	5	9	5	6
Textile mill products	42	31	22	37	25	34	27	22	64
Apparel	11	20	37	25	30	42	37	45	71
Lumber products, except furniture	26	10	12	21	6	13	15	24	45
Furniture and fixtures	6	5	9	8	6	11	14	16	38
Paper and allied products	52	28	23	16	14	27	21	36	47
Printing and publishing	26	46	31	31	24	30	23	33	60
Chemicals	68	86	108	78	103	89	105	123	154
Petroleum	10	10	25	14	19	24	13	10	12
Rubber and plastics	14	18	15	14	13	20	15	29	45
Leather products	1	7	9	6	9	6	6	7	29
Stone, clay and glass	27	24	22	15	15	24	27	35	68
Primary metals	29	34	36	35	39	28	33	65	139
Fabricated metal products	45	57	32	46	45	63	50	87	143
Nonelectrical machinery	77	87	73	88	72	87	102	155	259
Electrical machinery	113	122	113	109	116	117	145	257	337
Transportation equipment	67	47	56	46	56	59	64	103	135
Professional and scientific	35	50	42	28	34	36	50	92	133
Miscellaneous and ordnance	30	20	18	26	11	25	16	22	51
Mining	33	50	32	55	39	47	42	56	70
Other	69	124	77	90	103	135	112	179	403

1/ As defined in Standard Industrial Classification Manual, 1957 and 1967, U. S. Bureau of the Budget.

2/ Same totals as in Table 2.

Source: Data limited to mergers and acquisitions reported by Moody's Investors Service, Inc. and Standard and Poor's Corporation. Bureau of Economics, Federal Trade Commission.

Table 4.--Distribution of the number of acquired manufacturing and mining concerns, by size of assets of acquiring company, 1960 - 1968

Assets of acquiring company	1960	1961	1962	1963	1964	1965	1966	1967	1968
A. Number									
Total 1/	844	954	853	861	854	1,008	995	1,496	2,442
$100,000,000 and over	172	166	161	200	207	270	274	429	615
$50,000,000 to $99,999,000	103	100	76	92	73	109	122	178	226
$10,000,000 to $49,999,000	261	261	244	287	283	325	318	480	828
$5,000,000 to $9,999,000	102	152	130	101	99	104	107	157	258
$1,000,000 to $4,999,000	115	149	146	120	101	101	102	193	370
Under $1,000,000 or unknown	91	126	96	61	91	99	72	59	149
B. Percent 2/									
Total	100	100	100	100	100	100	100	100	100
$100,000,000 and over	20	17	19	23	24	27	28	29	25
$50,000,000 to $99,999,000	12	10	9	11	9	11	12	12	9
$10,000,000 to $49,999,000	31	27	29	33	33	32	32	32	34
$5,000,000 to $9,999,000	12	16	15	12	12	10	11	10	11
$1,000,000 to $4,999,000	14	16	17	14	12	10	10	13	15
Under $1,000,000 or unknown	11	13	11	7	11	10	7	4	6

1/ Same as in Table 1.

2/ Details may not add to total due to rounding.

Sources: Data limited to mergers and acquisitions reported by Moody's Investors Service, Inc. and Standard & Poor's Corporation. Data on assets from Moody's Industrial Manuals, annual reports of companies, financial reports on individual companies by Dun & Bradstreet, and other sources.

Bureau of Economics, Federal Trade Commission.

Table 5.--Large acquisitions in manufacturing and mining made by firms classified among the 200 largest in 1967, 1948 - 1968

Year	Total large acquisitions 1/		Total acquired by 200 largest firms 2/	
	Number	Assets (Millions)	Number	Assets (Millions)
1948	6	$130	6	$130
1949	5	67	4	45
1950	4	173	3	118
1951	9	201	7	155
1952	13	327	5	172
1953	23	679	18	623
1954	35	1,425	16	911
1955	68	2,129	41	1,589
1956	58	2,037	41	1,739
1957	50	1,472	32	1,212
1958	38	1,107	21	638
1959	64	1,960	38	1,270
1960	62	1,710	35	1,041
1961	59	2,129	30	1,728
1962	72	2,194	34	1,227
1963	68	2,917	46	2,051
1964	91	2,798	39	1,815
1965	93	3,900	34	2,151
1966	101	4,100	33	2,385
1967	169	8,222	67	5,417
1968 3/	192	12,616	74	6,890
Total	1,280	$52,293	624	$33,307

1/ Acquired units with assets of $10 million or more.

2/ Ranked by 1967 total assets.

3/ Figures for 1968 are preliminary.

Source: Bureau of Economics, Federal Trade Commission.

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Table 6.--Large manufacturing and mining acquisitions compared to total manufacturing and mining corporations, 1960 - 1968

(Dollar amounts in millions)

Year 1/	Manufacturing & mining corporations over $10 million in asset size			Large acquisitions 2/		
	Total assets	Number of corporations	Average asset size	Total assets	Number of companies	Average asset size
1960	202,787	2,106	96.3	1,710	62	27.6
1961	210,186	2,100	100.1	2,129	59	36.1
1962	225,114	2,178	103.4	2,194	72	30.5
1963	236,656	2,244	105.5	2,917	68	42.9
1964	251,865	2,307	109.2	2,798	91	30.7
1965	273,492	2,396	114.1	3,900	93	41.9
1966	307,323	2,535	121.2	4,100	101	40.6
1967	344,235	2,685	128.2	8,222	169	48.7
1968 3/	383,903	2,692	142.6	12,616	192	65.7
	Change, 1960-68	586	46.3		130	38.1
	Percent increase	27.6	48.1		209.7	138.0

1/ Corporate manufacturing totals are for the first quarter of each year.

2/ $10 million and over.

3/ Figures for 1968 are preliminary.

Source: Corporate manufacturing assets and number of corporations obtained from Quarterly Financial Reports; totals for mining derived from IRS Statistics of Income. Bureau of Economics, Federal Trade Commission.

Table 7.--Acquisitions of companies with assets of $250 million or more, by year of acquisition, 1948-68 1/

Year	Acquiring company	Acquired company	Assets ($Millions)
1959	General Tel. & Electron.	Sylvania Electric	264.9
1963	F M C	American Viscose	334.8
1965	Union Oil Co. of Calif.	Pure Oil	766.1
1966	Continental Oil	Consolidation Coal	446.1
1966	Atlantic Refining	Richfield Oil	449.7
1966	Phillips Petroleum	Tidewater Oil (Western manufacturing & marketing properties)	305.0 2/
1967	U. S. Plywood	Champion Papers	335.3
1967	McDonnell	Douglas Aircraft	564.7
1967	Tenneco	Kern County Land	253.9
1967	Signal Oil & Gas	Mack Trucks	303.0
1967	North American Aviation	Rockwell Standard	391.2
1967	Studebaker	Worthington	296.6
1968	Montgomery Ward	Container Corp. of America	397.4
1968	Colt Industries	Crucible Steel	303.9
1968	Singer	General Precision Equipment	322.7
1968	Occidental Petroleum	Hooker Chemical	366.5
1968	Ling-Temco-Vought	Jones & Laughlin Steel	1,092.8
1968	Loew's Theatres	P. Lorillard	375.3
1968	Kennecott Copper	Peabody Coal	315.6
1968	Northwest Industries	Philadelphia & Reading	318.6
1968	International Telephone & Telegraph	Rayonier	296.3
1968	Glen Alden	Schenley Industries	570.7
1968	Sun Oil	Sunray DX Oil	749.0
1968	American Standard	Westinghouse Air Brake	302.7

1/ No acquisitions of firms with assets of $250 million or more took place in the period 1948 through 1958.

2/ Consideration paid.

Source: Bureau of Economics, Federal Trade Commission.

Table 8.--Number and assets of large manufacturing and mining companies acquired, by asset size of acquiring company, 1967 and 1968 1/

Asset size of acquiring company (Millions)	Number of acquired companies		Percent		Assets of acquired companies ($Millions)		Percent	
	1967	1968	1967	1968	1967	1968	1967	1968
Unknown & under $10	7	8	4.1	4.2	123.7	174.7	1.5	1.4
$10 to $25	7	8	4.1	4.2	93.6	165.3	1.1	1.3
$25 to $50	16	22	9.5	11.5	412.1	506.6	5.0	4.0
$50 to $100	28	19	16.6	9.9	985.8	789.2	12.0	6.3
$100 to $250	40	38	23.7	19.8	1,608.6	1,797.1	19.6	14.2
$250 and over	71	97	42.0	50.5	4,997.8	9,183.3	60.8	72.8
Total	169	192	100.0	100.0 2/	8,221.6	12,616.2	100.0	100.0

1/ Figures for 1968 are preliminary.

2/ Percentages do not add to 100.0 due to rounding.

Source: Bureau of Economics, Federal Trade Commission.

Table 8a.--Number and assets of large manufacturing and mining companies acquired, by asset size of acquired company, 1967 and 1968 1/

Asset size of acquired company (Millions)	Number of acquired companies		Percent		Assets of acquired companies ($Millions)		Percent	
	1967	1968	1967	1968	1967	1968	1967	1968
$10 to $25	97	88	57.4	45.8	1,409.7	1,289.4	17.1	10.2
$25 to $50	33	48	19.5	25.0	1,199.8	1,733.0	14.6	13.7
$50 to $100	16	26	9.5	13.5	1,099.5	1,708.8	13.4	13.5
$100 to $250	17	18	10.1	9.4	2,367.9	2,473.5	28.8	19.6
$250 and over	6	12	3.6	6.3	2,144.7	5,411.5	26.1	42.9
Total	169	192	100.0 2/	100.0	8,221.6	12,616.2	100.0	100.0 2/

1/ Figures for 1968 are preliminary.

2/ Percentages do not add to 100.0 due to rounding.

Source: Bureau of Economics, Federal Trade Commission.

Table 9.--Acquired assets 1/ compared with new investment 2/ in manufacturing and mining, 1948 - 1968

Year	New investment	Acquired assets	Acquired assets as percent of new investment
	(Billions of dollars)		
1948	$10.01	$.130	1.3
1949	7.94	.067	0.8
1950	8.20	.173	2.1
1951	11.78	.201	1.7
1952	12.61	.327	2.6
1953	12.90	.679	5.3
1954	12.02	1.425	11.9
1955	12.40	2.129	17.2
1956	16.19	2.037	12.6
1957	17.20	1.472	8.6
1958	12.37	1.107	8.9
1959	13.06	1.960	15.0
1960	15.47	1.710	11.1
1961	14.66	2.129	14.5
1962	15.76	2.194	13.9
1963	16.73	2.917	17.4
1964	19.77	2.798	14.2
1965	23.75	3.900	16.4
1966	28.46	4.100	14.4
1967	28.11	8.222	29.2
1968 3/	28.27	12.616	44.6

1/ Acquisitions of manufacturing and mining firms with assets of $10 million or more.

2/ Total expenditure for new plant and equipment by manufacturing and mining firms.

3/ Figures for 1968 are preliminary.

Source: Economic Report of the President, 1969, p. 271, and Bureau of Economics, Federal Trade Commission.

Percent

Table 10.--Acquisitions of manufacturing and mining firms with assets of $10 million or more, by type of acquisition, 1964 - 1968

Type of acquisition	1964		1965		1966		1967		1964 - 1967		1968 1/	
	Percent		Percent		Percent		Percent		Percent		Percent	
	No.	Assets	No.	Assets	No.	Assets	No.	Assets	No.	Assets	No.	Assets
Horizontal	14	13	14	9	13	8	7	13	11	11	7	4
Vertical	18	22	12	6	13	10	10	6	13	9	9	7
Conglomerate:	68	64	74	85	74	82	83	81	76	80	84	89
Product extension	62	59	47	41	50	36	61	58	56	50	59	39
Market extension	3	2	6	22	2	18	0	0	2	9	1	6
Other	3	3	20	22	23	28	22	24	18	21	24	43
Total	100	*100	*100	100	*100	100	100	*100	100	100	100	*100

* Detail does not add to total due to rounding.

1/ Figures for 1968 are preliminary.

Source: Bureau of Economics, Federal Trade Commission.

Numbers and Assets

Table 11.--Acquisitions of manufacturing and mining firms with assets of $10 million or more, by type of acquisition, 1964 - 1968

Type of acquisition	1964		1965		1966		1967		1964 - 1967		1968 1/	
	No.	Assets (Millions)	No.	Assets (Millions)	No.	Assets (Millions)	No.	Assets (Millions)	No.	Assets (Millions)	No.	Assets (Millions)
Horizontal	13	$377	13	$362	13	$325	12	$1,056	51	$2,120	14	$522
Vertical	16	622	11	224	13	399	17	496	57	1,741	17	911
Conglomerate:	62	1,799	69	3,314	75	3,376	140	6,670	346	15,159	161	11,183
Product extension	56	1,659	44	1,612	50	1,492	103	4,736	253	9,499	113	4,951
Market extension	3	43	6	850	2	755	0	0	11	1,648	1	749
Other	3	97	19	852	23	1,129	37	1,934	82	4,012	47	5,483
Total	91	$2,798	93	$3,900	101	$4,100	169	$8,222	454	$19,020	192	$12,616

1/ Figures for 1968 are preliminary.

Source: Bureau of Economics, Federal Trade Commission.

Table 12.--Number and assets of large manufacturing and mining companies acquired, by industry of acquired company, 1968 1/

Industry of acquired company	Number of acquisitions	Percent	Assets ($Millions)	Percent
Food and kindred products	17	8.9	$1,475.0	11.7
Tobacco manufactures	3	1.6	514.2	4.1
Textile mill products	9	4.7	324.9	2.6
Apparel	4	2.1	383.3	3.0
Lumber and wood products	3	1.6	35.5	0.3
Furniture and fixtures	4	2.1	160.5	1.3
Paper and allied products	8	4.2	1,061.2	8.4
Printing and publishing	10	5.2	249.2	2.0
Chemicals and allied products	8	4.2	620.9	4.9
Petroleum and oil products	2	1.0	761.4	6.0
Rubber and plastics products, n.e.c.	2	1.0	27.9	0.2
Leather and leather products	2	1.0	34 2	0.3
Stone, clay, and glass products	4	2.1	66.8	0.5
Primary metal industries	15	7.8	2,227.6	17.7
Fabricated metal products	19	9.9	488.7	3.9
Machinery, except electrical	37	19.3	1,546.4	12.3
Electrical machinery	14	7.3	944.5	7.5
Transportation equipment	9	4.7	696.2	5.5
Instruments and related products	4	2.1	130.4	1.0
Miscellaneous manufacturing	8	4.2	211.6	1.7
Mining	10	5.2	655.8	5.2
Total	192	100.0 2/	$12,616.2	100.0 2/

1/ Figures for 1968 are preliminary.

2/ Percentages do not add to 100.0 due to rounding.

Source: Bureau of Economics, Federal Trade Commission.

Table 13.--Distribution of the number of new joint ventures by industry, 1966 1967 and 1968 1/

Major industry group of joint venture	1966	1967	1968 1/
Total	218	171	169
Manufacturing	157	111	105
Food and kindred products	10	5	4
Tobacco manufactures	1	1	--
Textile mill products	1	3	--
Apparel	--	3	2
Lumber products, except furniture	--	--	1
Furniture and fixtures	--	--	1
Paper and allied products	5	5	7
Printing and publishing	2	1	2
Chemicals	46	32	27
Petroleum	10	4	3
Rubber and plastics	6	3	1
Leather products	--	--	--
Stone, clay and glass	8	3	2
Primary metals	13	8	7
Fabricated metal products	16	2	8
Nonelectrical machinery	15	18	16
Electrical machinery	15	11	16
Transportation equipment	2	2	3
Professional and scientific	6	8	5
Miscellaneous	1	2	--
Mining	24	25	22
Other and nonclassifiable	37	35	42

1/ Figures for 1968 are preliminary.

Source: Bureau of Economics, Federal Trade Commission.

F. ARTICLE BY RICHARD J. BARBER, "BIG, BIGGER, BIGGEST—AMERICAN BUSINESS GOES GLOBAL"

[From the New Republic, April 30, 1966]

BIG, BIGGER, BIGGEST—AMERICAN BUSINESS GOES GLOBAL

(By Richard J. Barber*)

Just as regulation of business corporations by the states became outmoded about 50 years ago, today the global scope of commercial activity by major US and foreign companies is rendering national regulation obsolete. Right now it is inaccurate to think of most of our large corporations as "American." The oil companies, the auto, drug, and chemical producers, and the makers of computers and electrical equipment, among a host of others, are so heavily committeed to foreign markets that they have in fact lost their US identity and assumed a multinational character.

With firms like Standard Oil of New Jersey, Socony Mobil, National Cash Register, Singer, Burroughs, and Colgate-Palmolive deriving more than half their income or earnings from foreign sales, and with a long list of others, including such familiar giants as Eastman Kodak, Pfizer, Caterpillar Tractor, International Harvester, Corn Products, and Minnesota Mining and Manufacturing making from 30 to 50 percent of their sales abroad, even these once-American companies are beginning to acknowledge forthrightly—indeed with a bit of pride—their new supranational status. Recently US Rubber explained why it had changed its trademark to "Uniroyal": "We have 28 research and manufacturing centers in 23 countries—we do business in 150 countries . . . Uniroyal stands for a company that is new meeting the research and manufacturing needs of the whole polyglot world . . ."

The expanding geographic scope of business operations, accentuated in the last several years by billions of dollars in overseas commitments by American firms, poses grave political and economic questions that have yet to be confronted. The problems posed are by no means simple, but what must be grasped is that they are fundamentally *international* in character and cannot be understood or resolved if looked at in outmoded nationalistic terms.

American businesses have, of course, been engaged in foreign markets for many years (Henry Ford began producing cars at a wholly-owned plant in Manchester, England in 1911), but in the last two decades there has been an unprecedented outward rush as US firms—literally by the thousands—have made long-term commitments to foreign markets. Where our producers once served foreign customers primarily through exports, now they do so from plants and facilities located abroad. So powerful has been this impetus to invest in other countries that it actually differs in kind from earlier overseas business activity.

In less than ten years US direct investment abroad has skyrocketed from $25 billion to nearly $50 billion, even without allowing for another $20 billion in stock and other portfolio holdings. Between 1960 and 1965, nearly 2,200 US companies engaged in almost 6,000 separate foreign activities—mostly involving the construction of new plants or the expansion of existing operations. The familiar names of domestic corporations—usually the big and long-established, but often the small and new as well—can be seen today on factories, distribution centers, and sales offices in dozens of countries, particularly in Western Europe.

At the rate recorded in 1965, the value of our direct investment abroad increases by an average of more than $10 million each *day*. And the surge continues. In 1966 manufacturing outlays for plant and equipment in Europe are expected to rise by what the Commerce Department labels a "striking 40 percent." While the President's "voluntary" program to curtail the outflow of private capital has been moderately successful, it has obviously not retarded overseas investment; it has only caused companies to obtain their money through foreign intermediaries.

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*The author was employed as special counsel by the Senate Judiciary Subcommittee on Antitrust and Monopoly when this article and the following article were published. He has taught at Yale and Southern Methodist University Law Schools, has published a book, *The Politics of Research*, and is to publish *The American Corporation* in 1969. He is currently serving as Deputy Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation.

Just as our companies have greatly hiked their investment abroad, so too have foreigners sharply increased their holdings in this country. But there is a basic difference. While considerable direct foreign investment here is made by octopi like Shell and Unilever, about two-thirds of all foreign capital in the US is in corporate stocks—owned principally by Swiss English (still true even though the British Government sold over $400 million in American corporate securities last year), and, increasingly, by mysterious Bermudian and Panamanian interests of which very little is known.

Of the $50 billion represented by US direct investment abroad, the largest percentage is found in Canada and in Europe. Together these two regions account for about 60 percent of the total. In this area—what might be termed the Atlantic Community—most of the investment is in manufacturing industries. By contrast, investment in the rest of the world consists largely of petroleum and mining assets.

One major result of soaring US direct foreign investment is that our companies now typically supply customers abroad from factories situated overseas rather than via export from domestic facilities. In 1950 foreign sales by US firms totaled approximately $37 billion. Of this, a third was supplied by exports from these shores. In 1964, by marked contrast, only about a fifth of our $110 billion in foreign sales was supplied through exports, with the rest coming from plants located in other countries. This has significantly contributed to our balance of payments difficulties by reducing our net trade surplus and has offset the $4-billion a year in income generated by our direct investments (most of which is not repatriated).

Giants and Midgets

In shifting production abroad and implementing a policy of supplying foreign markets from overseas plants, US companies have been shrewdly using their surplus resources to gain dominant positions overseas roughly equivalent to those they occupy in this country. Autos provide a good example. Long in firm control of the domestic scene (a fact which meant that auto makers earned a nearly-unbelievable 27 percent after-tax return on their net investment in 1965), the Big Three, until recently, did not so clearly command foreign markets where the rate of growth in sales has been even greater than at home. However, by investing hundreds of millions of dollars in expanding their European capacity and by acquiring control of foreign auto companies, they have now succeeded in improving their position substantially, without incurring the wrath of the antitrust agencies. In all of the European auto markets the American firms currently hold sizable shares. In England, Ford and GM challenge British Motors, and are not far ahead of Chrysler, which bought its way in by acquiring control of Rootes Motors, once a major independent factor in Britain (and, indeed, in America). In the large German auto market GM's Opel and Ford's Taunus have successfully challenged what some people thought was the impregnable position of Volkswagen. A $100 million plant being built by GM at Antwerp and a vast new Ford plant located in the Saarland will make these companies, along with Chrysler (which bought control of Simca, the French producer, in 1963), even bigger factors in European car sales. One consequence of all these moves is that Ford at present makes 40 percent of its cars outside of the US, Chrysler over 30 percent, GM 20 percent.

The arrival on the European scene of the giant US companies, bolstered by vast sums of capital and armed with advanced technological know-how that they have often acquired with the air of federal government research and development contracts, has created severe strains within the Atlantic Alliance.

Relative to their American rivals, even the biggest European comapnies generally look like midgets. Among the world's companies US businesses are on the average five times larger than the leading British or German corporations, and ten times larger than the French companies. Belgium's largest concern would rank only 64th among US industrial companies in terms of sales; France's number 56; Germany's number 29; and Italy's number 32. When grouped by industries the comparison is even more striking. US Steel's profits were eight times greater than those of August Thyssen-Hutte, Germany's biggest steel producer. Du Pont's profits are nearly three times those of Imperial Chemical Industries and seven times greater than those of Farbenfabriken Beyer. Similarly, General Electric towers above Philips, Siemens, and Hitachi, the three biggest foreign producers of electrical equipment. Goodyear's profits are nearly three times larger than those of the European Big Three—Dunlop, Pirelli, and

Michelin—*combined.* General Motors' sales are almost nine times those of Volkswagen and are bigger than the Gross National Product of The Netherlands and well over a hundred other countries. Indeed, the aggregate sales of VW, Fiat, Daimler-Benz, British Motors, and Renault are equal to only two-thirds of Ford Motor's sales, which in turn are only a little over half those of GM.

While the full measure of American corporate strength may never be brought to bear on the European market (General Motors obviously must tend to many other areas), the mere existence of such awesome power is itself worrisome. For if General Electric can operate its foreign divisions at a loss, as it did in 1965, the threat to smaller companies is not merely hypothetical. As many Europeans see it, American entry calls for the merger of their firms to form bigger business units that can meet the Goliaths and exploit the advantages of the Common Market. "Europe will be colonized by the United States," declared Gaston Defferre in what has become a characteristic warning, "unless we decide to pool our resources in order to create industrial concerns comparable in size to the American ones and able to compete with them on an equal footing." Governments on the Continent, particularly France, have taken this advice and initiated steps to inspire mergers, and across the Channel the Labour Government has created an official agency to encourage consolidation of British companies.

Slow to start, the merger process in Europe is now moving into high gear. In many ways it is as significant as that which swept the United States in the early 1900's. In recent months dozens of major mergers have been announced and more are being discussed. In Italy, the marriage of Montecatini and Edison will unite the two companies that account for 80 percent of its chemical and petrochemical output. In Germany, Volkswagen, Auto-Union (maker of the DKW), and Daimler-Benz (maker of the Mercedes) are joining; together they will offer cars in all price ranges, just like GM, Ford, and Chrysler.

The steel industry has been distinguished by more mergers than any other. With the consolidation of Hoesch, Dortmund-Hoerder, and Holland's Hoogovens, a steel-maker with capacity of about 9 million tons will be formed, putting it on a plane with Germany's Thyssen-Hutte (itself created in 1964 and now beginning to work in close cooperation with Krupp). Meanwhile France's first- and fifth-largest steel producers, Usinor and Lorrain-Escaut, and its second- and third-largest, De Wendel and Sidelor, have combined.

These and other mergers end most national competition in the steel industry in Germany, France, and the Benelux, but when measured by a European yardstick they assume relatively smaller proportions. Big though they are, Hoesch-Dortmund and Krupp-Thyssen each account for less than 10 percent of steel output in the EEC. By American standards, where US Steel alone holds more than 25 percent of ingot capacity and the top three firms account for more than half, the European consolidations do not seem particularly foreboding. Yet this is misleading for it underestimates the extent to which some of the bigger European mergers needlessly curtail competition by coalescing firms already big enough to realize optional economies of scale. It is certainly anomalous that America, which professes more loudly than any other country its firm dedication to competition and which broke up the German steel giants during the postwar occupation, is now used as an example by the Europeans for the oligopolization of their major industries.

While the European protest against American investment may simply be, as the Atlanticist Pierre Uri has said, "the new rebirth of old-time protectionism," the French, in particular, look upon the US business invasion as economic imperialism. It is this fear which helps explain de Gaulle's concern for preservation of sovereignty and which underscores what to some appears to be little more than French obstinacy in the North Atlantic Treaty Organization and at the Kennedy Round of tariff negotiations.

In aggregate terms our investment in Europe is not especially large, but since most of it is in a few basic, growth-oriented industries it has posed a distinct threat to local independence. American industry in France, for instance, accounts for only about seven percent of value, added in the private sector of the economy. However, in specific industries the US share is huge. Nearly all of the computers, office machinery, photographic equipment, and synthetic rubber, and the bulk of agricultural equipment and oil and a large percentage of the prepared food, textiles, and cosmetics sold in France is American-made. The situation is much the same in Germany, where more than three-fourths of American investment is concentrated in autos (and other transportation equipment), oil, chemicals, and electrical (largely computers). As the French and Germans see it,

then, some of their most important industries are increasingly dominated from across the Atlantic, putting them at the mercy of companies beyond their effective control.

As viewed by the Europeans, the most serious consequences of American investment stem from our control of those industries widely regarded as shapers of the future. In electronics, notably computers, we are far ahead of the rest of the world, a fact which can mean that other countries will fall steadily farther behind in economic and technological development. By striking up affiliations with major American electronics companies, the biggest French, German and Italian companies—Machines-Bull, Siemens, and Olivetti—have gained limited access to US know-how. Nonetheless, a great gap persists between American and European technical competence in electronics, one that is not likely to be closed as long as the federal government continues to pour billions of dollars into research carried out by private industry. In 1966, of the $21 billion which will be spent on Research and Development in the US, about 70 percent will come from government funds and two-thirds of the work itself will be carried out by the titans of industry. By contrast, France spends less than a tenth as much on R&D.

In terms of our relationships with what are politely termed the "lesser developed countries" (or LDC in current State Department jargon), American business investment presents problems no less serious. In Africa, Latin America, and Asia the complaint is much the same: the Americans (and, for that matter, the leading European companies) invest in such a way as to frustrate economic development and to deny the host countries the benefits of competition.

Most US investment in these areas is in the extractive industries—oil, copper, iron ore, cobalt, rubber, bauxite, uranium, and other minerals—and is made by consortia composed of big Western companies, most of them American. Very little capital is invested in manufacturing facilities, with the result that the underdeveloped countries fail to acquire the skills necessary to development. As things now stand, the emerging nations are caught in a serious bind: they sell their oil and minerals under conditions distinctly favorable to the buyers and purchase finished goods on terms favorable to the sellers, with their predicament aggravated by the ocean shipping conferences which are prone to rig transport rates in a fashion that still further disadvantages the new nations. Not without some justification the poor countries see themselves victimized by billion-dollar corporations whose home countries claim—for themselves—the advantages of competition.

The sheer scale of investment in oil and mining properties in the lesser developed part of the world means that American and Western business interests play a major and virtually unavoidable role in shaping both US and local government policy. As a practical matter it is often impossible to disentangle government from corporate objectives. Currently, for instance, the Agency for International Development is aggressively supporting a plan that calls for major US oil companies to build and operate fertilizer plants in India under conditions that will enable them to maintain the high price they now charge for fertilizer. The Indians are extremely annoyed about this proposal, preferring instead to use cheaper fuels (like natural gas, now being flared in the Middle East) so as to sharply cut fertilizer costs. If, as is now likely, the United States continues to support the oil companies' plan, the Indians may have to go along out of fear of losing American economic assistance.

Unifying Force of Investment

The investment question must, though, be kept in perspective and it would be quite wrong to think that US overseas business involvement does not yield very substantial benefits. The participation of aggressive American companies in the European economy has stimulated competition, forced established firms to modernize, and led to the adoption of more efficient means of distribution. Paralleling remarks made by the *Economist* and by such Continental voices as *Die Welt*, the London *Observer* concluded that "the invasion of American firms is one of the best things that has ever happened to British industry." European corporate managers have understandably not seen the American invasion quite so sympathetically, for it has meant the end of cozy arrangements in which they had seemingly grasped, as the best of all worlds, "the quiet life." By European standards, American business executives, hardly strangers to the ways of cartelization (as the GE price-fixing cases so vividly revealed), are considerably more acclimated to the brisk winds of competition.

US multinational corporations have also been a force for economic integration, particularly in Europe where they have been quicker to seize the opportunities provided by the Common Market than their local competitors. Last year, when it was considering building a new assembly plant, GM, for example, initially explored the possibilities of locating in France. Meeting with a chilly reception it simply decided to build the factory at Antwerp and supply French (and other European) buyers from there.

By contrast, European companies, for various reasons, have been far more reluctant to set up operations outside of their home countries. Even in the case of mergers, very few firms of different nationalities have consolidated. Germany's Agfa and Belgium's Gevaert tried to arrange such a marriage in 1964 but found it impractical because the two countries' laws were essentially incompatible (instead they worked out a close operating partnership). Proposals for a European company law that would facilitate mergers within the Community are now under study, but for the moment it is the American corporation which is the most potent force for integration on the Continent. Looked at in grander terms, the vast international operations of US and foreign corporations might similarly become a unifying force in the free world if their negative attributes are kept in check through cooperative international political action.

The Irrelevance of Present Law

For some time now, without recognizing it fully, we have been living in an era of economic internationalism in which global corporations, most often born in America, are coming to dominate the world economy much as they do the domestic US and other national economies. Giant world businesses like Standard Oil of New Jersey (with 57 foreign affiliates), US Rubber, IBM, General Motors, ITT, Royal Dutch/Shell, and Unilever—empires upon which the sun never sets—have actually lost their national identity. They are literally companies without a country. With their operations, management, and ownership scattered among a number of countries, new institutions and new laws are needed to cope with their peculiar needs and unique challenges.

Nineteenth-Century national approaches to the globe-girdling corporations of the 1960's are ineffective and inappropriate. They encumber the firms themselves with inconsistent and ambivalent controls without providing the public with meaningful protection from abuses of amassed corporate might. For example, during the last 20 years, several countries, mostly in Europe, have passed antitrust laws in an effort to protect their markets from monopolistic encroachment. Differing in their substantive standards and manner of administration, these statutes are neither unambiguous nor harmonious. To companies coming within its jurisdiction, the postwar antitrust legislation presents prospective problems of interpretation that tend to confound their business operations.

Yet these problems, produced by conflicting legislative commands, are largely hypothetical for, by functioning multinationally, American and other business corporations have effectively avoided the reach of the antitrust law of any single country in which they produce or sell their wares. A US firm that acquires a foreign rival with which it competes in the international arena is unlikely to be challenged on antitrust grounds by any country, including our own. Why? To the Department of Justice or the Federal Trade Commission it is a "foreign" matter, best avoided because of diplomatic complications. And to the other countries affected, it is looked upon in much the same way. Result: the transnational companies can escape regulation by walking in the cracks between countries, so to speak. Through international mergers, overseas investment, and assorted practices the big supernational companies have been able to gain control of world markets. Based on recent experience, 300 corporations will by 1975 control more than 75 percent of all industrial assets and will have eliminated such price competition as remains in the sale of manufactured goods.

If our laws and institutions are to be made relevant to existing international business practices and in particular to the requirements and challenges of the global corporations, we must recognize that the problems—some of them old, many entirely new—are basically international in character and can only be resolved through the mutual action of the industrialized countries. To date this

crucial point has not been grasped. Now it is time for the United States, heretofore the jealous guardian of American sovereignty and erstwhile protector of "our" business interests, to take the lead, openly and officially, in working with the other members of the Organization for Economic Cooperation and Development to define a common policy for governing the multinational corporations that are coming increasingly to dominate the world economy. The precise content of such a common policy is one of the subjects under consideration now by Senator Philip A. Hart's Antitrust and Monopoly Subcommittee.

G. ARTICLE BY RICHARD J. BARBER, "THE NEW PARTNERSHIP—BIG GOVERNMENT AND BIG BUSINESS"

[From the New Republic, Aug. 13, 1966]

THE NEW PARTNERSHIP—BIG GOVERNMENT AND BIG BUSINESS

(By Richard J. Barber)

Big business is getting bigger. This year more than a thousand corporations will be consolidated into larger financial enterprises in the greatest merger wave in the country's history. As a result the character of U.S. industry is being radically transformed and the typical corporation of the 1970's is very likely to bear a disturbingly close resemblance to the General Motors Corporation of the mid-1960's. With 735,000 employees, 1.3 million shareholders in more than 80 countries, plants in 24 countries, and a line of products that includes autos, refrigerators, earth-moving equipment, locomotives, jet engines, and missile guidance systems, GM's 1965 net profit (after taxes) of $2.1 billion was greater than the general revenue of 48 states and its sales of $21 billion exceeded the GNP of all except nine foreign nations. Though its proportions are truly massive, GM is by no means exceptional, even now. Many other companies also are sharply increasing their sales (60 U.S. companies reported revenue last year of at least $1 billion), enlarging their profits (82 manufacturers had net earnings of $50 million or more in 1965), and expanding their international commitments (American firms are increasing their overseas investments at a rate of more than $10 million each day). Simply put, the era of the huge, diversified, international company is here.

Just as fundamental changes are taking place in industry, so too are traditional government-business relationships being markedly altered. New economic forces are threatening to outmode the classic American antipathy to bigness. "From this country's beginning," Justice Hugo Black said a few weeks ago in a Supreme Court opinion, "there has been an abiding and widespread fear of the evils which flow from monopoly—that is, the concentration of economic power in the hands of a few." But that attitude, however meritorious, conflicts squarely with what is going on in the economy and with present government policy. In consonance with the prevailing Administration consensus philosophy, the federal government—relinquishing its customary role as a foe of corporate size—is in fact now forging a New Partnership with big business. Naturally this has many troublesome implications, but certainly it means that one no longer can be confident that government will keep the exercise of private economic power within reasonable bounds.

At the moment 200 corporations (out of a total of approximately 200,000) control nearly 60 percent of the country's manufacturing wealth and occupy commanding positions in virtually all principal markets. Just 10 companies, with General Motors at the head of the list, reported profits in 1965 equal to the total profits of the next 490 largest firms. Already far larger than modern technology requires, these industrial titans, through internal growth and merger, are certain to increase their relative position even more in the immediate future. Internationally their power will be no less than it is domestically. In the past seven years U.S. firms have more than doubled their overseas investment—it now totals more than $50 billion—with the result that the foreign sales of Standard Oil of New Jersey, Burroughs, Colgate-Palmolive, Mobil, and National Cash Register, among many others, often exceed half their total income. Within a decade a group of 200 American companies plus another 50 to

100 large foreign enterprises will possess most of the world's manufacturing assets and make the great preponderance of sales and profits, having as tight a grip on global industry as our big companies now have at home.

Last year a thousand companies disappeared through merger in the US, and in 1966 they will be joined in the graveyard by an estimated 1,300. Not only is the absolute number of mergers high by any standard of comparison (fewer than 200 firms a year vanished a decade ago), but a great many large firms are involved. In 1965 Pure Oil (with assets of $750 million), Richfield Oil (assets: $500 million), Consolidation Coal (assets: $465 million), and ABC-Paramount were acquired by, respectively, Union Oil, Atlantic Refining, Continental Oil, and ITT. Between 1948 and 1965 more than 800 companies with assets of at least $10 million each were assimilated into larger empires, mostly those ruled by the 200 biggest manufacturing corporations. At this rate Art Buchwald may well be right in thinking that "the whole country will soon be merged into one large company."

The sheer volume of mergers, important though it is, must not obscure the most striking fact of all: their changing character. At one time most mergers involved direct competitors, or suppliers and their customers. This is no longer true. Today more than 70 percent of all mergers are of the conglomerate variety, bringing together entirely unrelated firms. Horizontal—diect competitor—consolidations currently make up only 12 percent of all mergers, down from more than 30 percent in the early 1950's.

A New Kind of Company

Conglomerate acquisitions have carried many firms into widely diversified product or geographic markets. Borden, usually thought of as a dairy company, is heavity engaged in chemicals. Lipton Tea (a subsidiary of Unilever, the English-Dutch colossus) controls Good Humor. Hershey Chocolate has just entered the macaroni business. R. J. Reynolds, commonly associated with cigarettes, sells poultry, canned soups, catsup, and soft drinks. These and hundreds of other well-established firms have been broadening their product base through the acquisition of going concerns.

An excellent example of the conglomerate is International Telephone & Telegraph. For years engaged in the communications business outside the US (it still is, with 150,000 employees in its foreign manufacturing plants alone), ITT has acquired an odd assortment of enterprises, well described by some of their names: Hayes Furnace Co., Aetna Finance, Great International Life Insurance, Hamilton Management Co. (a $400 million mutual fund), Avis Rent-a-Car, ABC-Paramount (itself diversified, with broadcasting, theatre, phonograph record, and publishing assets), and Airport Parking (with parking facilities at air terminals in 59 of the nation's largest cities).

ITT is only one of an expanding breed of conglomerates. Gulf & Western Industries (from auto parts manufacture it has broadly expanded into mining and chemicals and soon will acquire Paramount Pictures), Litton Industries (which sells more than a hundred different products, ranging from adding machines to nuclear submarines), Textron, the FMC Corporation, and Olin have similar attributes. A few months ago the US Rubber Company changed its name to Uniroyal, explaining that fewer than half the things it now makes have anything to do with rubber.

Under the pressure of conglomerate mergers many industries are losing their distinctive characteristics. Electronics firms are aggressively moving into the publishing and educational product fields, as signified by RCA's acquisition of Random House (which previously had swallowed Knopf), the sale of D. C. Heath to Raytheon, Xerox's purchase of Wesleyan University Press (rumors now suggest possible merger with Harcourt-Brace), and IBM's absorption of Science Research Associates. From their strong base the computer companies will no doubt continue to diversify, subsuming publishing and educational hardware, and perhaps entertainment and broadcasting (CBS's purchase of the New York Yankees and its interests in Broadway musicals, notably *My Fair Lady*, is suggestive of future trends), in a single amorphous industry—one that does not yield well to traditional tools of economic aalysis.

Many factors have helped bring about the conglomerate merger explosion, but one key explanation has been a rising stock market which has permitted mergers to be made on highly advantageous terms. Since most acquisitions take the

form of an exchange of stock (usually tax-free), companies whose securities trade in the market at high price-earning ratios have found it particularly easy to purchase lower price-earning companies at relatively small cost. If, for instance, two companies, X and Y, have earning of $1.00 per share but the X shares sell for $20 and the Y shares for only $10, a merger can easily be arranged that is mutually attractive. Y shareholders might, as one possibility, exchange each of their shares for X shares having a market value of, say, $11 (this gain in value is usually free of tax). With Y's earnings added to their previous profits, X shareholders could also reasonably expect their own holdings to rise in price in view of the market's tendency to capitalize their corporation's earnings at a higher rate. Exactly this kind of swap is involved in Consolidated Food's proposed purchase of United Artists, the nation's most successful film distributor. Under comparable conditions Litton, ITT, and other firms have made many acquisitions on highly advantageous terms in the last few years.

Although the largest corporations have lately been substantially increasing their already tight hold on the country's manufacturing wealth, primarily through conglomerate mergers, the federal government has provided little in the way of an antidote. Antitrust enforcement has served to check mergers between competitors (the merger of Bethlehem and Youngstown Steel was barred, for instance) but no such attention has been given to conglomerate acquisitions. Despite the fact they are now the most common form of merger (nearly 1,000 will be carried out this year) and can seriously lessen competition at the same time they increase concentration, fewer than one percent have been formally protested by the federal antitrust enforcement agencies. The green light is on and the race to diversify by acquisition is well underway. The government's unwillingness to challenge conglomerate merger is matched by its refusal to test the legality of established oligopolistic positions. The word is technical but all it refers to are those industries in which a few big companies account for most of the sales. In autos GM, Ford and Chrysler make 95 percent of the country's new cars; similarly, Alcoa, Reynolds, and Kaiser control about 90 percent of the aluminum market; US Steel, Bethlehem, and Republic produce almost 60 percent of the steel; Anaconda, Kennecott, American Smelting, and Phelps Dodge refine virtually all of the copper. In the same fashion a handful of corporations dominate many other manufacturing industries, with four firms accounting for at least 75 precent of the output of syntheitc fibers, soap, salt, flat glass, metal cans, electric bulbs, and computers, to cite only a few specific cases.

Statistics aside, the basic economic significance is that in oligopolistic markets the big sellers come to recognize that it is more profitable not to compete in price. A classic illustration took place in 1956. That year the Ford Motor Company initially announced an average price increase on its 1957 models of 2.9 percent. Two weeks later, however, when GM increased its 1957 model prices by an average 6.1 percent, Ford promptly revised its prices upward to match the GM prices almost dollar for dollar (and Chrysler soon followed suit). Ten years have brought about no change in the situation. Prices for 1966 cars show the same intimate relationship, with dealers' base prices differing by only pennies on comparable Ford, GM, and Chrysler models. This kind of coordinated pricing occurs regularly in the highly concentrated industries. Official government reports reveal the receipt from supposed competitors of hundreds of sealed bids that are identical to the fourth decimal place in the purchase of steel, aluminum, electrical, and other products. The result is the same as if the producers conspired to fix their prices, but while this does occur from time to time, generally it is not necessary. As Chief Justice Warren put it, "an industry which does not have a competitive structure will not have competitive behavior." Yet no steps have been taken to bring about a less concentrated structure.

Quite understandably smaller businessmen feel they are being discriminated against in favor of the giants when it comes to antitrust enforcement. Last May, for instance, the merger of two foodstore chains that together accounted for about 7.5 percent of sales in Los Angeels was held unlawful. Promptly after the decision was handed down, Donald F. Turner, head of the Antitrust Division, announced that he would challenge any merger between competitors having eight percent or more of any given market. While this may represent sound policy, if it is unaccompanied by action taken against already dominant firms, it means that other companies are forbidden to join forces at the same time that General Motors, US Steel, Goodyear, General Electric, Anaconda, and others of the top 200 are tacitly immunized from antitrust prosecution that would seriously curb or reduce their power.

The government's failure to take steps through antitrust action to block the growth of conglomerate firms and to deconcentrate those industries in which a few companies occupy commanding positions is attributable to a number of factors. First, the myth persists that enterprises become more efficient as they get bigger. To break up General Motors, General Electric, or U.S. Steel thus would run counter to the public interest by destroying their supposed efficiencies of scale. Similarly, while it may not be desirable to let two direct competitors merge, it is thought that there is nothing wrong—quite the contrary—with the formation via merger of a sprawling conglomerate. The entry of Litton or ITT into a new market, so the argument goes, is likely to increase efficiency by bringing in aggressive management, adding capital, and letting in the fresh breezes of modern research. While these arguments are familiar to just about everyone who reads the *Wall Street Journal* or *Fortune*, let alone the *Havard Business Review*, they are not generally backed up by empirical evidence.

Lack of Antitrust Activity

Many studies have shown that small and medium-sized firms, specializing in a single product line, are typically more efficient, more innovative (the great bulk of important inventions still are made, not in corporate laboratories, but by individual inventors or small research organizations), and quicker to offer new products and adopt new marketing techniques than their largest rivals. In the steel industry, for example, the two most important technological advances in recent years—the basic oxygen process (it cuts the time needed to make a ton of steel to less than a quarter of that required in an open hearth) and continuous casting—were first used in the United States, not by the steel giants, but by the industry's smaller firms. Nonetheless, many people continue to believe that massive, conglomerate enterprises somehow contribute to greater efficiency. Clearly this attitude, however inaccurate, seriously inhibits antitrust enforcement.

A second reason for the lack of really meaningful antitrust activity is that existing legislation is less than ideally designed to deal with oligopolistic industries and conglomerate mergers. Neither the Sherman Act (passed in 1890) nor the Clayton Act (last amended in 1950), though broad in their coverage, specifically was tailored to cope either with markets in which a small group of firms controls prices or with diversification mergers. As a result, while existing legislation can be used to reach these situations, it makes antitrust enforcement difficult and cumbersome, offering another excuse for the failure to bring the kind of cases that might have made major economic impact.

There is still a third factor and it is probably the most important of all for it places the issue in its political perspective. What is happening is that within the government there is a growing acceptance of business bigness as positively beneficial. Viewed in this light, the disinclination to use antitrust to deal with established dominant positions or to interfere with conglomerate mergers is only one incident of the New Partnership which is being formed by government and big business. This "new interdependence," as *Fortune* calls it, is the product of several forces, economic and political.

Government as an Ally

For one thing, business has prospered immensely under recent Democratic Administrations and has come to accept government as a useful ally. Stimulated by a consciously expansionary fiscal policy, the economy has grown rapidly since 1961, sending corporate sales and profits to record heights. Corporate after-tax profits for 1965 totaled $45 billion (up from $27 billion in 1960), equal to a return of 13 percent on net worth—the highest profit rate in history. And based on figures for the first quarter of 1966, corporate profits could go even higher this year. A booming economy, lower tax rates, provisions for larger depreciation allowances, and a generous tax credit have helped show that Democratic government can be great for business.

Billion-dollar expenditures for defense, space, and the Great Society provide additional reason for business' growing appreciation of government. This year defense procurement alone will exceed $23 billion. The cost of putting a man on the moon (and certainly we will not stop there) will be near the $30 billion mark, and most of the money will go to private companies like North American Aviation, Boeing, and McDonnell Aircraft. The Atomic Energy Commission

continues to fund large amounts of nuclear research ($1.9 billion in fiscal 1967), much of it done by General Electric and Westinghouse, the world's leading suppliers of nuclear reactors. As well, key AEC installations, such as the Oak Ridge Laboratory, are managed, for a sizable fee, by Union Carbide and other concerns. No one knows for sure how much revenue the government's defense-space-nuclear programs generate for the nation's business, but for many industries, government contracts are essential to survival.

How crucial government's support can be is starkly revealed by the aircraft industry. When World War II ended the sales of the big military plane builders abruptly halted. At this point a benevolent defense establishment, in the fashion of the WPA, created enough work to keep them alive. Thus, in 1946, the Air Force—in a then-secret guideline (it was not declassified until 1960)—directed that "contract [be] parcelled out among the old established manufacturers on an equitable basis on that they may be assured enough business to perpetuate their existence." Given this kind of cordial treatment, firms like Boeing, North American, Douglas, and Lockheed were able to survive until they entered the golden days of the 1950's when highly lucrative contracts for aircraft and missiles became commonplace.

Although the large defense-space contractors currently rank among the largest of all manufacturers, they continue to be so closely tied to the government that they still cannot realistically be viewed as private enterprises. Most of the major aircraft corporations—like Lockheed, North American, and Aerojet-General—are engaged in very little non-government work. For these companies defense-space sales account for close to 100 percent of their total income. Moreover, they often use government-owned plants and machines in carrying out production contracts. In a fairly typical case a defense firm will be supplied with more than 50 percent of its fixed capital and with as much as 90 percent of its working capital. Actual investment, therefore, is relatively small, with the result that profit rates can be unusually high (in 1965 Boeing's profits came to 21 percent of net worth, and Lockheed 19 percent—more than 50 percent higher than the profit rate for the 500 largest manufacturers.) So intimate is their association with the defense establishment that the big aircraft-missile concerns can most sensibly be viewed as government appendages, with roughly the same status as the Post Office Department. Given this relationship nothing could be more natural than for Air Force and Navy officers to put the supersonic experimental bomber, the XB–70, and other aircraft at the disposal of General Electric as part of the company's ill-fated public relations stunt earlier this year. The XB–70 and one other military aircraft collided in mid-air and crashed, with the death of two pilots and the destruction of the $1.2 billion bomber. Answering criticism that the planes should never have been made available to the company, military officials argue that GE—an important defense supplier—is simply a member of the defense family, and in many ways they are right.

Government's essential role in many defense industries is matched by the large part it plays in the nation's research. The federal government today supports nearly 70 percent of all research done in the United States. With annual expenditures of about $16 billion (more than it spent for all purposes during the entire nineteenth century), the government—especially the Defense Department, NASA, AEC, and the National Institutes of Health—subsidizes most of the research done by the universities and the thousands of nonprofit organizations as well as private industry. For all practical purposes American science has been nationalized and government participation is routinely expected. To cite an instance, when the development of a Mach-3 Super-sonic Transport (SST) was proposed, it was considered perfectly normal for the government to offer initially to pay 75 percent of the minimum $1 billion cost—now the government is expected to contribute at least 90 percent.

More is in the government cornucopia, however, than funds for defense and space. The fulfillment of Great Society domestic objectives creates nearly unlimited additional business oppotunities. The renewal of our cities ($10 billion a year is a reasonable price tag), urban mass transit (the new rapid transit system in San Francisco will cost $1 billion), improved intercity rail transportation (estimated cost: $15 billion), the alleviation of air and water pollution (the latter alone could call for expenditures of $75 billion over 15 years), better medical care, greater educational opportunities, job training (ITT's Federal Electric subsidiary manages the Kilmer Job Corps Center, for an $11.5 million fee) : all of this means billions in sales and profits.

Sensing the economic significance of government defense and domestic programs, big business has now swung its support behind the Democratic Party. In 1964 "Democrats became the party of the 'fat cats'," observes Herbert J. Alexander in his extensive study of campaign spending. Sixty-nine percent of individual contributions received by national Democratic campaign committees was in sums of $500 or more; only 28 percent of individual Republican contributions came in such large amounts.

The key element in the support of Democratic candidates—explaining the large percentage of big contributors—is business. Members of the President's Club, almost all of whom were company executives or their advisers, contributed at least $4 million in aid of President Johnson's campaign. Of the 4,000 1964 Club members 532 were in California, home of the biggest defense-space contractors and the state which accounts for about a third of all contract awards. In addition to individual gifts, the Democrats sold 93 full-page advertisements to corporations in their 1964 Official Convention Program, yielding another $1.5 million. Among the takers were several of the biggest defense contractors. If allowance also is made for the sums which came from corporations whose lobbyists bought, with cash, tickets at $25 to $100 per plate luncheons and dinners, business picked up at least three-fourths of the tab for President Johnson's election. And Democratic Senators and Representatives—and their Republican colleagues—have like cause to be grateful.

In return for its support, big business has received appropriate recognition. Within days after his 1965 inauguration the President held a dinner for a group of business leaders, most of whom were members of the Business Council. The Council, which rose to prominence under President Eisenhower and then fell into disfavor in the early days of the Kennedy Administration (ties were reestablished in September 1961), has once more been extended a cordial greeting at the White House. Its roster is a veritable Who's Who of big business (of its four officers, three are presidents of corporations ranged among the largest 100 manufacturers; the fourth is the head of the country's biggest railroad). With 65 executives comprising its active membership, the Council meets regularly with top government officials in and near Washington.

Science of Management

These contacts are strengthened by a steady two-way exchange of personnel. As did its predecessors, the Johnson Administration has drawn heavily on big business and its advisers (the Wall Street and Washington law firms in particular) to fill important policy-making positions at both cabinet and subordinate levels. One example is the Foreign Intelligence Advisory Board, created in 1961 by President Kennedy to monitor the intelligence community. So great is its authority that it is informed in detail about the CIA's plans and methods of operation, precisely the information which will not be given to any Senator or Congressman who does not sit on the existing oversight subcommittees. Yet, with the present composition of the Board, such details are regularly disclosed to executives of AT&T, the Polaroid Corporation, and Corning Glass. Much other valuable information reaches Robert Kintner, a high White House staff aide and former president of NBC.

The flow of personnel between big business and government is not one-way, of course, and many important executives in private industry can point to earlier public service. Retiring State Department diplomats or AID officials find homes in the companies with extensive international operations. Generals and admirals, by the hundreds, are hired by major contractors anxious to maintain good contacts with the services (Admiral William F. Raborn, former CIA director, is expected to return soon to Aerojet-General). These are well-known instances, but industry has also tapped government for experts in other fields, such as education. Francis Keppel, former U.S. Commissioner of Education, now heads General Learning Corporation, a General Electric-Time, Inc. venture.

In the face of these various indicia of the growing intimacy between government and business—as reflected in procurement contacts, political contributions, and exchanges of key personnel—their old hostility is fast coming to an end. A new breed of corporate executive is on the scene, professionally trained and more oriented to the science of management than to the perpetuation of an ideology which looks upon government as intrinsically evil. The modern company officer accepts government (much like he accepts the labor union) and

works actively with it, seeking to take full advantage of the opportunities it offers and striving to influence the policies it adopts. This new attitude toward government comes as a shock to the old conservatives. Barry Goldwater, no doubt reflecting the opinion of many small businessmen, sarcastically views big business leaders as "money manipulators" who are "willing to do almost anything for the dollar."

Checking Corporate Power

No assessment of the New Partnership would be complete, however, without an effort to identify some of its larger implications. One thing should be clear: if not restrained, the giant corporations, which, under prevailing circumstances, are likely to tighten even more the control they exert over large segments of the American economy, can act in a manner distinctly contrary to the public interest. Through the manipulation of prices, free from traditional competitive inhibitions, they can levy a monoply toll on the consumer.

During the last several months big business has been implored on several occasions to exercise restraint in its pricing practices. In each case the White House has met at best only very limited success, demonstrating that the enunciation of guidelines, backed up by no more than jaw-bone diplomacy, is insufficient to insure that the benefits of increasing productivity are passed along to the consumer. With labor productivity in many industries climbing more rapidly than in the economy generally (meaning that fewer manhours are required for a given amount of output), prices should be *reduced*, not just held at the existing level. Yet the best the Administration has been able to do—as in copper, aluminum, and molybdenum—is to block further price *increases*. (And in cigarettes, chemicals, and steel it has not even been able to accomplish that much.) A good example is provided by the auto industry. Last fall the car makers increased prices on the 1966 models even though labor productivity was rising so rapidly in the industry that the companies could have cut prices, with full allowances made for higher labor compensation and for the cost of installation of previously optional equipment. With continuing high prices and declining costs it is no wonder that GM and Ford profits rose steeply in 1965. Much the same situation is true of molybdenum. Under government pressure, American Metal Climax, on July 13, rescinded a proposed five percent price hike; nevertheless, prices remain high enough to give the corporation an estimated 30 percent return on its molybdenum investment (and an overall profit rate of 17 percent).

Recent price behavior in the major manufacturing industries shows that while the executive of powerful companies like to be regarded as part of the Great Society consensus, generally they give first priority to their own corporate well-being when making decisions about prices and other matters. To curtail the undesirable exercise of their power demands much stronger instruments of control than verbal admonition.

The problem of corporate power could be dealt with at its source by initiating a strong antitrust program that would check further economic concentration (the mere filing of a few cases against conglomerate mergers would alone be insufficient) and weaken the hold of the firms which presently dominate most of our major industries. But can an Administration that is wedded to big business undertake this kind of action when it would unquestionably be regarded by industry as a ground for divorce? If it cannot, and there is much evidence to suggest that is the case, the antitrust laws no longer can be regarded as a central instrument of economic policy.

The principal alternative means of checking corporate power is some sort of direct regulation. The possible techniques range from a system that would require big companies in concentrated industries to give formal advance notice of price increases and to provide evidence of justification, but that would leave them free to hike their prices if they wished (bills embodying this approach have been introduced in the 89th Congress by Representatives Cellar and Reuss) to utility-like regulation that would call for detailed government control of prices. These proposals naturally raise many interesting questions, but any detailed examination would only be academic since the very thought of regulation is anathema to an Administration that is anxious to please business. It has steadfastly refused even to acknowledge the possibility that some day it might have to seek explicit statutory authority to back up its wage-price guidelines.

In the process of forming a New Partnership with big business, the harsh fact is that the present Administration has surrendered much of its ability to select the means that will protect the public from concentrated economic power. In effect, through adherence to the consensus philosophy it has become less a partner than a captive of big business. For the foreseeable future, therefore, the American corporate giants will be able to expand their position, at home and abroad, with considerable freedom, and to exert their power much as they wish. Without government protection the best the public can hope for is that big business will be charitable.

We can know very little about the business specifics of 1986 or 1996. But some general statements about the next twenty or thirty years can be made with a high degree of confidence. Among them: (1) the pace of change, which broke through a sort of sound barrier around 1950, will continue to accelerate; (2) change will be made up of millions of innovations; many will be based on scientific discoveries and technological inventions; there will also be significant innovations in merchandising, finance, and corporate structure, and those patterns of coordination and decision making that we sum up in the word "management." In short, what we know of the next twenty years is that corporations will need the utmost flexibility because in each year our economy will be more and more involved with innovation. It is this prospect that urgently requires the U.S. to abandon the anticompetitive side of antitrust.

Traumatic memories

Serious debate of antitrust policy is drowned out by a kind of litany. "What makes the American business system superior to the British and all others?" "Antitrust." "What slakes the public resentment of big business?" "Antitrust." "What preserves us from direct government regulation and maybe even socialism?" "Antitrust."

Beneath this drone of exaggerated and indiscriminate praise, individual businessmen do no more than mutter sullenly—usually when their own oxen are gored. Corporation lawyers, prosperously immersed in the arcane minutiae of antitrust, fail to raise a public alarm about where antitrust is moving. Such protests as come to the surface are directed against the Attorney General of the day ("Bobby" became an expletive), or upon the chief of the Antitrust Division and the members of the Federal Trade Commission, or upon one jurist or another (Chief Justice Warren has earned the post of head whipping boy).

But this thing, as they used to say in Hollywood, is bigger than all of them. The reactionary side of antitrust has a momentum that is built into court decisions, congressional investigations, and the clichés of public discussion. This trend has picked up speed during the terms of such dissimilar Presidents as Truman, Eisenhower, Kennedy, and Johnson. A White House "friendly to business" cannot reverse the way antitrust has been going. The place to clarify a fundamental national policy is Congress.

In order to lift discussion out of the ruck of legalistic bickering, economistic thumb-sucking, and political personalities, FORTUNE offers the proposition printed on one preceding page. No doubt, lawyers learned in these matters can improve its wording—if they can spare the time from their clients' antitrust cases. As it stands, however, the purport of the proposition is clear enough: to present the two sides of antitrust as a choice.

Much more is at stake than the level of corporate profits, or the efficiency of the aggregate economy, or its rate of growth. The *quality* of the American future depends on the flexibility of the market framework. If our business system continues to be haunted by hallucinations lingering from American capitalism's traumatic childhood, we will deal clumsily—and perhaps disastrously—with an era of radical change.

Bryan, Brandeis, bigness and badness

A glance back at the origins of antitrust may help clarify the choice that now confronts the U.S. In both its good and bad aspects, antitrust was a response to the great change that began in the last third of the nineteenth century. The good side—the confidence in competition and the resolve to foster it—was a brave leap in the dark by a nation that could not be sure of the direction in which modern capitalism would evolve. The bad side—the fear of large business units, new methods, new patterns of trade—was a timid, if understandable, clinging to the circumstantial patterns of an older America. Both elements, side by side, can be clearly seen in the discussion of "the trusts" that rolled through the U.S. between 1880 and 1917.

Many words conspicuous in that discussion—including "trust," "monopoly," and "competition"—had split meanings; antitrust history is an exercise in unscrambling unintentional puns. "Trust," for example, meant originally a quite specific device by which stockholders in competing companies ended competition by pooling their voting stock in the hands of a board of trustees. But "trust" was also widely used to mean *any* large business corporation. "Trusts" in the first meaning—along with price-fixing agreements and other anticompetitive practices—were regarded by many lawyers and businessmen of the day as "conspiracies in restraint of trade," which had been illegal under common law. A practical difficulty was that the courts of the states, which normally enforced such common-law principles, could not readily get their hands on these huge new combines; they leapt across state lines and operated a nationwide business system. Without an act of Congress, federal courts had no solid authority to enforce the common-law prohibition against agreements in restraint of trade. Many who supported the Sherman Act of 1890 saw it as plugging a loophole in the federal-state structure. They reasoned that in the new business world, as in the old, competition would protect the public and stimulate progress. The good side of present antitrust policy is descended from this position.

But their interpretation of antitrust fell a long way short of satisfying that part of the public clamor which used the word "trust" to mean everything that was large, new, and different in business. Theodore Roosevelt understood—perhaps sooner and better than anyone else—the political dilemma involved in the two usages of the word "trust." In

1900, as governor, he told the New York Legislature: "Much that is complained about is not really the abuse so much as the inevitable development of our modern industrial life. We have moved far from the old simple days when each community transacted almost all its work for itself and relied upon outsiders for but a fraction of the necessaries, and for not a very large portion even of the luxuries of life. Very many of the antitrust laws which have made their appearance on the statute books of recent years have been almost or absolutely ineffective because they have blinked the all-important fact that much of what they thought to do away with was incidental to modern industrial conditions, and could not be eliminated unless we were willing to turn back the wheels of modern progress by also eliminating the forces which had brought about these industrial conditions." As a politician, T. R. was responsive to that element in popular antitrust feeling which was simply resentment of change. But when it came to practical antitrust policy he moved very cautiously because he believed that at bottom the people wanted progress even more than they wanted "the old simple days."

The hidden nail keg

The young Walter Lippmann, writing in 1914 and using the word "trnsts" in the broad sense of modern business organizations, brilliantly described popular reaction to the change. The trusts, he said, had come "into the life of the simple American community as a tremendous revolutionary force, upsetting custom, changing men's status, demanding a readjustment for which people were unready. Of course, there was antitrust feeling; of course, there was blind desire to smash them. Men had been ruined and they were too angry to think, too hard pressed to care much about the larger life which the trusts suggested." Lippmann understood that William Jennings Bryan represented resistance to change. "Bryan . . . thought he was fighting the plutocracy; as a matter of fact he was fighting something much deeper than that; he was fighting the larger scale of human life . . . What he and his people hated from the bottom of their souls were the economic conditions which had upset the old life of the prairies, made new demands upon democracy, introduced specialization and science, had destroyed village loyalties, frustrated private ambitions, and created the impersonal relationships of the modern world."

This "antitrust" state of mind, which Lippmann called "conservative," had little knowledge of or faith in market competition. In the old, simple life only a small proportion of goods and services had ever passed through a competitive market. The village blacksmith was a small businessman who had a local monopoly. The village general store was a retail conglomerate, and in the absence of competition it could indulge in all kinds of administrative inefficiencies—e.g., the new clerk's ignorance that the proprietor kept the nail keg behind the pickle barrel. Louis Brandeis, one of the most influential voices in developing the reactionary side of antitrust, never really believed that, under the stimulation of increasing competition, corporate management was reducing administrative inefficiencies; instead, he seemed to feel that a thousand nail kegs would be hidden behind a thousand pickle barrels. Brandeis believed that in very big corporations inefficiencies would be multiplied; therefore, if big corporationa made profits this fact could be explained only by assuming that the size of those companies gave them illegitimate "market power" which insulated them from their small competitors.

They ran harder

This sort of thinking widened the split that had opened between two meanings of the word "monopoly." Originally, it had meant an exclusive right, granted or protected by the Crown, to do business in a certain commodity in a defined area. (All enduring European cartels were to have this element of government protection.) In the U.S. of 1880-1917, however, monopoly began to take on a very different meaning, which is at the root of many of our present antitrust difficulties. Section 2 of the Sherman Act is directed against "every person who shall monopolize, or attempt to monopolize or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states . . ." Does "monopolize" refer to a set of practices intended to erect artificial walls against competition? Or does the statute forbid a company to attain in the course of the competitive race a large share of a line of trade? Under the influence of the Bryan-Brandeis type of "conservatism," the word "monopolize" has tended to move more and more toward the latter meaning. FORTUNE's proposition is intended to move it back toward the first meaning.

The greatest source of confusion, however, lay in the different applications of the word "competition." When in the late nineteenth century the U.S. entered a genuine market economy, businessmen were not immune to the general feeling of insecurity. The late nineteenth century's notorious conspiracies in restraint of trade were efforts to flee the rising uncertainties of intensified competition. These conspiracies all broke down, whether because they had been outlawed by Section 1 of the Sherman Act or because of technological developments.

But the main line of U.S. development in the twentieth century found very different answers to "the problem of competition." The corporation, with the principle of limited liability, compensated for the mounting risks that had become too great for individual proprietors and unlimited partnerships. If accelerating change undermined the security of a company, the company's response was to run faster —not to try to stop the change. If the new tech-

nology required huge investment, the corporation's response was to grow by plowing back profits, attracting new capital, and by mergers with other companies. If huge technological plants required specialization, the response was to develop professional managers to coordinate the specialists. In short, twentieth-century business evolved in exactly the opposite direction from the repressive spirit of the old conspiracies. Instead of limiting production and suppressing innovation in order to raise prices, modern corporations place a tremendous emphasis on increasing sales volume by vigorous merchandising, by the search for new markets, by cutting costs; they spend billions on research and development to create new products and services; they rely on the diversification of product lines, rather than on the suppression of innovation, to defend the company against the increasing vulnerability of *any* product to competition.

The rise of consumer power

The economy of 1900 was dominated by trade in the necessities of life. A family needed food, clothing, fuel, in quantities that could not be produced and distributed at a cost far below the family's income. There was not much consumer choice—or "power"—in that situation. The family could not resist a rise in the price of bread by shifting its purchasing to overcoats, even if the price of overcoats was falling. Demand in all three markets was "inelastic." A monopoly position in any one of them could by raising prices siphon off what little difference there might have been between family income and the cost of subsistence.

The twentieth century's enormous increase in productivity—and therefore in real wages—changed all that. In the U.S. today the basic subsistence requirements of 1900 can be purchased for less than 20 percent of an average family's income. We have raised our standard of "necessary" purchases to include home furnishings, non-utility clothing, etc. In this area of "secondary needs" today's consumer can at least postpone purchase if he finds the current price of one "need" less attractive than another. Above this, now, lies a third level, the vast domain of "discretionary" goods and services. Competition in this area jumps over the old market boundaries; as the economists say, these discretionary markets are subject to a high degree of "cross elasticity of demand." The beer competes with the candy; the trip to Miami competes with the violin lessons for Junior. This increase in demand elasticity—and therefore in the buyer's power to resist monopoly—has far outstripped any increase in "market power" that may have accrued to large corporations.

Back in 1902 an economist, Simon N. Patten, foresaw that the power of the great corporations would be limited by "the consumers' power of substitution." The chemists, among others, vindicated him. Synthetics hover menacingly over just about every raw material except gold, which is protected—at a low level—by some rather odd governmental arrangements. Progress has done most of antitrust's work by sharply reducing the chance that "market power" can arbitrarily raise prices.

By ignoring the whole range of fundamental changes that have come over the U.S. economy and by looking only at the percentage shares of large companies in narrowly defined markets, the Brandeis tradition insists that competition has been decreasing. In order to make it appear that a given company has an inordinately large share of a market, the government's usual tendency is to define "market" as narrowly as possible. If you assume that aluminum wire doesn't compete with copper wire (the Alcoa-Rome Cable case, 1964), that a commercial bank doesn't compete with another commercial bank twenty miles away (Philadelphia Bank, 1963), that a retail shoe market could be arbitrarily defined as any city of 10,000 with its "immediately surrounding areas" where both the merging companies had stores (Brown Shoe, 1962), then of course, you can prove quite a lot of "concentration." By setting up the rules of proof as if the U.S. market today were as tightly compartmentalized as in 1890, you can give some color of truth to the charge that U.S. business has become oligopolistic. Antitrust policy is still riding on a quest to rescue the maiden, Economic Freedom; but the girl has long since been liberated by other hands and now has fourteen daughters livelier than their mother.

The great scouring-pad case

Don Quixote wasn't exactly crazy; he had just arranged his mental life so that he could see what he wanted to see. Sometimes events in the actual world of business intrude abruptly upon antitrust's La Mancha. The government had no sooner won the Paramount Pictures case, after years of complicated market analysis, than television came on the scene to prove that the movie industry as a whole was not exactly immune from competition. Within a few years television not only changed the structure of the entertainment industries but also caused an upheaval throughout the world of advertising. Television is the biggest and best-known postwar example of the effect of innovation on the U.S. economy. But every year there are tens of thousands of smaller examples of how innovation can transform a relatively stagnant business situation into one marked by agitated competition. Frequently, the increased liveliness is triggered by a merger.

Consider the great scouring-pad case pending, as this was written, before the Federal Trade Commission. For many years two medium-sized companies, S.O.S. and Brillo, doing a nearly equal business, accounted for more than 95 percent of the steel-wool pads sold to housewives for cleaning pots and pans. During this period the competition between Brillo and S.O.S. does not appear to have been intense;

there were few important changes in product design or in production or merchandising methods. At the end of 1957, General Foods, which had not previously been in the household cleanser business, bought S.O.S. No challenge to the purchase came from Washington. During the next two years sales of S.O.S., relative to Brillo, slumped.

General Foods then took several steps to revive its ailing property, steps that did not depend upon General Foods' vast size or market power but simply on its managerial brains. It turned the S.O.S. account over to a different advertising agency; then it followed the agency's recommendations for some changes in the product and the advertising pitch. Because investigators found that housewives associated the red soap in S.O.S. pads with rust, the soap was changed to blue; to call attention to the sizable amount of soap in S.O.S., a TV commercial showed a soap pad being whipped into a sort of meringue in an electric mixer. Brillo fought back with a plastic pad called "Dobie" and a disposable pad called "Paddy." General Foods, after a fumble with something called "Handigrips," countered "Paddy" with "S.O.ettes." General Foods' tactics worked. S.O.S. overtook Brillo and spurted ahead, even making big gains in the New York market, where Brillo's share had run as high as 84 percent.

Clearly, competition was heating up in acouring pads. But the FTC was not pleased. In 1963 it issued a complaint charging that the six-year-old merger of General Foods and S.O.S. violated the Clayton Act because it "tended to create a monopoly." In its complaint the FTC had little to say about what was actually going on in scouring pads. Instead, it stressed the size of General Foods and carried on about such matters as the company's possession of more than 50 percent of the markets in coconut and "edible gelatins (excluding ready-to-mix desserts)." The FTC displayed its solicitude for the status quo ante by asserting that the merger had "upset and realigned adversely, and threatens to upset and realign further, the competitive structure of the household steel wool industry." This fell deed, said the complaint, had been achieved through General Foods' "economic power, merchandising prowess and extensive advertising and promotion." S.O.S.'s share of the steel-wool scouring-pad market had risen from 51 percent at the time of the merger to 57 percent at the time of the complaint. The FTC asserted that monopoly was on the march.

But was it? At the initial hearing before the FTC's examiner, evidence showed that innovation had been breeding in another part of the teeming forest of American business. Scouring pads made with materials *other than steel wool* were attracting a rising share of the housewife's money. General Cable had a copper pad called "Chore Girl"; Kurly Kate Corp. had a plastic pad called "Flip" and two copper pads called "Kurly Kate" and "Kopper Kate"; Du Pont was in there with "Combo," made of nylon; Colgate-Palmolive had test-marketed a nylon pad called "Colgate-Ajax"; General Mills had a plastic pad called "Ocelo"; Minnesota Mining & Manufacturing was marketing "Scotch-Brite" and building a plant to make "Rescue" (both of nylon). Lever Brothers, Procter & Gamble, American Home Products, and a host of small firms were reported considering getting into the cleaning-pad free-for-all. Some monopoly!

The FTC's examiner was not impressed. He defined the market in which S.O.S. was sold as that for "steel wool scouring pads." He cited the indubitable fact that the physical properties of steel-wool pads are different from those of non-steel pads. But do their *uses* differ? The FTC's lawyers say "we must conclude" that non-steel pads are used only for cleaning china and glassware, but the lawyers did not produce evidence to back this up. General Foods denies that it is the case. Store managers, who probably know more about housewives than do FTC lawyers, mingle steel-wool pads and non-steel pads on their shelves, indicating that they think it's all one market. Advertising for the non-steel pads directly attacks steel pads as out of date. Prices of several non-steel pads are obviously set up to compete (on a per-time-used basis) with steel pads. In short, against a mountain of evidence that all scouring pads compete with all other scouring pads in an exceedingly lively market, the FTC's lawyers and the examiner, intent on showing monopolistic concentration, decided that steel wool stands impregnably alone in its ability to clean pots and pans. If so sweeping a claim were publicly made on behalf of S.O.S. or Brillo, the FTC would probably crack down on it for deceptive advertising.

On the point of a needle

Many government briefs and judicial opinions contain ingenious economic analysis and show an impressive ability to relate old legal precedents to new sets of facts. Yet these admirable exercises are suffused with unreality. Everybody now laughs at the medieval schoolmen who engaged in complicated speculation on how many angels could dance on a needle's point. The schoolmen did this as mental calisthenics; they were not attempting to regulate a seraphic oligopoly. The FTC, the Antitrust Division, and the federal judges, however, aren't kidding.

The trouble is that the sophisticated analytical techniques they employ, though impressive in a purely academic sense, are being hopelessly outstripped by the increasing fluidity and complexity of the U.S. economy. The scouring-pad situation is about as simple as modern business can get; the mind reels at the prospect of antitrust lawyers and economists arguing over whether X's lasers really compete with Y's masers.

It is significant that market-structure analysis as used in antitrust cases always distorts the facts in one direction—toward a simpler, more primitive, more stagnant economic picture than the situation

that actually exists. In the present state of the science, economic analysis cannot handle more than a small fraction of all the variables and contingencies needed for a sound *legal* judgment on changing market structure in any particular "monopoly" case. And the analysis tends to ignore the element around which competition in fact increasingly centers—managerial brains.

The creative gale

The economist who best appreciated the central role of management in the modern economy was Harvard's great Joseph Schumpeter. Writing in the 1930's and 1940's, he foresaw that the future U.S. economy would live in a self-generated "gale of creative destruction." He believed that the excellence of an economy would and should be measured by its innovative capacity rather than its size. As Schumpeter used the term, innovation did not mean the ability of science to discover new truths or of technology to invent new things. His "innovation" is an *economic* act by which a new product or a new service or a new production or merchandising method is introduced to actual use. One of management's most important functions is calculating the relative risks and rewards of possible innovations. At any point in time there are millions of potential innovations, many of them arising from advances in science and technology. These compete with one another for birth. A decision to attempt a certain innovation is based on calculations about how it will fare in competition with other offerings, old and new. Before and after the decision, management assembles and coordinates the work of scientists and technicians from many specialized fields, along with the judgments of merchandisers and of men who deal with the markets for capital. Rivalry between corporations centers on management teams that compete with one another to find new ways of cutting costs, increasing volume, modifying old products, and introducing new ones. The general market "allocates resources" by awarding different levels of profits to the winners and losers of this race.

Given Schumpeter's views about the decisive role of management, it is not surprising that he expressly foresaw the importance of mergers for American business. He understood, of course, that some operations require heavy capital investment under a unified management; but his thought on mergers went much further than a justification of bigness. Schumpeter's view of the innovating society puts the accent on flexibility. The merger technique is one that a management can use to develop the abilities it has, or to acquire abilities it needs to take advantage of new opportunities, or to protect itself by product diversification when the "gale of creative destruction" blows hard upon its business. In the innovating society, no company can expect to maintain indefinitely a given product line or a given market position or a given technology or a given set of marketing methods or a given set of financing arrangements.

Here is an example of a merger where present antitrust policy would play down the socially valuable motives while imputing "monopolizing" motives:

Company A has a group of scientists and engineers who have developed a narrow line of products in a specialized field of electronics. Starting from scratch six years ago, company A has achieved a profitable volume of $20 million a year. Its product line looks safe over the next three or four years—but beyond that, who knows? Its research and development people, still fecund with ideas, may come up with another series of inventions; but this second series, unlike the first, may not find an avidly waiting market. The second series may require vigorous selling, a skill that company A has not needed to develop. The second series may require financing on a scale unknown to the brief history of company A. It may require a great increase in numbers of employees, bringing problems of union negotiations of which company A is innocent.

Company B is also in electronics. It is older and bigger—say, $250 million a year. Some of its products compete directly with the present products of company A. Company B has a vigorous merchandising arm and a good reputation in the markets for capital. Its present product line looks fairly safe over five or six years. But its R. and D. seems tired, sterile. It decides that acquisition of company A will stimulate its research, while it can supply the broader managerial deficiencies of company A.

Antitrust policy, as now practiced, would tend to ignore all these considerations of managerial balance and efficiency and concentrate upon one fact: A and B are competitors in certain markets; therefore a merger between A and B is a horizontal merger that would "reduce competition"—meaning only that it would reduce the number of competitors in a narrowly defined market. Antitrust policy would say that if company A needs merchandising and financing expertise, let it go into the executive market and hire the men *individually;* if B needs scientists, let it do the same. This answer displays an ignorance of how work is organized in this society. A first-rate R. and D. department is far more valuable than the sum of the individual skills that make it up. So is a first-rate sales department or a treasurer's office. Company A's inventiveness might be aborted long before it could build, man by man, its merchandising and financial skills. And company B's capacity for introducing innovations might be wasted for lack of technological inventiveness.

A merger of companies A and B can be defended as socially desirable on grounds of efficiency. In a static economy this desideratum might be overbalanced by the danger of monopoly. But on the actual line of this economy's movement the danger that a merged A and B could garner the fruits of monopoly approaches zero.

To point out the social value that may inhere in mergers is not to argue that all mergers make good business sense. Of the 2,100 mergers consummated in 1965 quite a few may turn out to be mistakes. There are days when the financial pages of the newspapers are so full of corporate acquisitions—rumored, achieved, or frustrated—that it seems as if the urge to merge was reaching orgiastic levels. Some top executives, apparently afflicted with corporate satyriasis, charge up and down the country, pawing the ground and snorting as they search for another sleek little company with which to mate. Questions inevitably arise as to whether these executives' attention is adequately fixed on the business they already have.

Forbidden fruit is not always sweet

But preventing businessmen from making mistakes is not the proper function of the antitrust laws. If certain executives become so eager to show growth by acquisition that they bite off more than their management capacity can handle, if they pay more than an acquisition is worth, the market will punish them—as it has already punished some incautious corporate giants. Indeed, if the hand of antitrust were lifted from the merger field, some executives might place merger decisions more on the basis of sound business judgment and less on the basis of what their antitrust lawyers think they can get away with. The appetite for forbidden fruit is ever careless of the fruit's quality.

Another artificial stimulus to merger arises out of the tax structure. High rates of individual income taxes inhibit holders of common stock from making vigorous demands on corporations for higher dividend payout ratios. Because capital-gains rates are lower than ordinary income rates, stockholder interest tends to concentrate on corporate "growth," which may increase the market value of stock faster than it increases dividends. Some eager corporate managers view acquisition as a shortcut to "growth." If this situation distorts the total market unduly, its remedy lies in reform of tax legislation rather than in a tougher antitrust policy designed to reduce the number of mergers.

There is no reason to suppose that the wrong motives for corporate acquisitions account for more than a minor fraction of the present wave of mergers. Essentially, the merger movement is a rational and constructive response by the business community to the increasing liveliness and fluidity of the economy. This rational effort by business to prepare itself for tomorrow's conditions is colliding head-on with a more and more restrictive antimerger policy that does not adequately appreciate the pressure of change on business.

Antitrust enforcers are fond of pointing out that of the 2,100 mergers in 1965 less than thirty have been challenged (so far) by the Antitrust Division or the FTC. This comparison is supposed to show critics that the business system couldn't possibly be damaged by antimerger policy. That cat won't jump. Recent Supreme Court decisions go so far in prohibiting specific mergers that *any* potential merger of two substantial, healthy companies is logically subject to challenge under the new precedents. Uncertainty about whether a given company—or its competitors—will be permitted to merge pervades all councils of business strategy.

The "social and moral" argument

The trustbuster has in his arsenal one reserve weapon that transcends economics. When he fails by economic analysis to show that some company, escaping the competitive discipline, has damaged the public, he can always shift his ground to the "social and moral" argument against bigness—an argument that goes all the way back to the William Jennings Bryan era. This argument rests upon one interpretation of "equality" as a social goal. It prefers a society of many small producers because it fears "the concentration of political or social power in the hands of a few men."

In antitrust law the classic expression of this fear of bigness is a passage in Judge Learned Hand's opinion in the Alcoa case. He brushed aside as irrelevant Alcoa's attempt to show that it had not *acted* as if it were a monopoly, that it had not engaged in "predatory practices" or gouged the public. Moving to the "higher" ground, Judge Hand said: "Congress . . . did not condone 'good trusts' and condemn 'bad' ones; it forbade all. Moreover, in doing so it was not necessarily actuated by economic motives alone. It is possible, because of its indirect social or moral effect, to prefer a system of small producers, each dependent for his success upon his own skill and character, to one in which the great mass of those engaged must accept the direction of a few."

This quotation encapsulates fundamental mistakes about the nature of the modern corporation. It assumes that today's business unit is simply a magnification of the village general store where the proprietor "directed" his obedient clerk; this way of looking at modern business inevitably results in a picture of concentrated power.

But the regimentation and loss of freedom that Hand feared is not a characteristic of large-scale business. The actual development of the modern corporation disperses power to many individuals within a unified decision-making structure. The head of a modern corporation is hedged about with new limitations upon his power. He is rarely, for instance, in any significant sense the owner of the business. The rise of professional management, distinct from the shareholders but answerable to them, has created a fundamental check-and-balance situation unknown to early capitalism and to the old law of private property. A more recent and equally important trend has been the dispersal of power *within* management. In a complex modern organization a subordinate is

not the "agent" of his boss. Managers far below the top level of a large contemporary corporation have power that inheres in their skills, rather than in the delegation of a superior. They are not so much "directed" as given responsibility and opportunity to initiate, to decide, and to coordinate activities that a chief executive officer would be quite helpless in handling. More and more work that is entirely "directed" from above is performed by machines and computers. Millions of little managers within large modern corporations have more actual scope for individual choice and decision than the "independent" small farmers, artisans, and small tradesmen of the nineteenth century had.

The U.S. public, which may be more in touch with reality than antitrust lawyers, seems to sense that business power is not being concentrated "in the hands of a few men." Once upon a time every banker and bootblack knew the names of Vanderbilt, Rockefeller, Morgan, Harriman, Carnegie. He knew what business each was in and what kind of man each was. These men were giants in the land and their tremendous concentration of economic power carried with it a threat of inordinate political and social influence. But the man in the street today is not likely to know the names of Frederic G. Donner, Michael L. Haider, Fred J. Borch, Albert L. Nickerson, and Donald J. Russell, who are the chief executive officers of companies doing an annual business in excess of $40 billion—a sum that makes the sales of the old Standard Oil Trust look like a hot-dog stand. If your barber can identify the companies headed by the names above, he should stop cutting hair and come write a gossip column for FORTUNE.

What the proposition means

Because opportunity is expanding and power is more and more widely distributed in this economy, FORTUNE's proposition for a new antitrust policy would end the effort to crawl back into the past. It would not allow courts to infer an offense against competition from size or market share or to assume, even in horizontal mergers, that a "restraint of trade" had occurred because the number of competitors had decreased and their average size increased.

The proposition would also mean that in vertical mergers—i.e., those that involve a supplier and a customer—the government could no longer void the acquisition on the ground used, for instance, in the case of Consolidated Foods' merger with Gentry Inc., a processor of dehydrated garlic, onions, and capsicum. The Supreme Court dissolved the merger because it was concerned that Consolidated might discriminate in favor of a supplier that bought its garlic, onions, and capsicum from Gentry. If evidence showed such a danger to be real, a court, instead of dissolving the merger, should issue an injunction forbidding the merged companies from unfair discrimination. The court's action should be aimed at illegal acts, not at a corporate structure.

As for conglomerate mergers, public policy ought to welcome them. The trend to conglomerates allows corporate capital or managerial skill to be applied in new markets that might otherwise languish for lack of these ingredients.

On similar grounds, joint ventures, where two or more companies form a third, should be welcomed. In the Penn-Olin joint-venture case the Supreme Court, intent on increasing the number of competitors, speculated that *each* of the parent companies might have entered the market (chemical salt in the southeastern U.S.) if they had not combined. The two companies might have had sound managerial reasons for preferring joint venture—reasons that the Justices of the Supreme Court are not qualified to assess and which they should not be made responsible for assessing.

We cannot know that the future requires big corporations, any more than we can know it will be best served by small ones. We can know that the future requires innovation and flexibility and that the market, including the merger market, provides a better framework for them than central government planning would. We have three choices: we can substitute planning for the competitive market; we can keep the market, while distorting its action by government intervention on the false premise that the vigor of competition is determined by the number and size of competitors; or we can recognize that we are moving, year by year, into a more truly competitive and more innovative society in which we will not need and cannot afford the restrictive side of antitrust.

How to get rid of hypocrisy

The real "social and moral" danger to this society is that we will continue to pursue our present line of economic development while keeping alive in antitrust policy a set of ideals, derived from the Bryan-Brandeis form of conservativism, which denigrate the business system we have. If these ideals were valid, if we could have independence and freedom *only* with small business units, then we ought to scrap our present system and intentionally sacrifice some part of our material prosperity for social, political, and moral ideals. When we do not do so, millions of Americans—conspicuously including college students and their professors—accuse the society of hypocrisy.

There is indeed a gap between what we do and what we say—through antitrust—that we believe. But this is because the ideals are too firmly anchored in the particular experience of a past society. Every year the business system cries out more loudly for men of independence and character to take on the massive new burdens of decision making in an innovating society. As we enter a period of accelerating change we will have social and moral problems grave enough without carrying on our backs the trauma of 1880–1917. END

H. Article by Max Ways, "Antitrust in an Era of Radical Change" [From Fortune, March 1966; republished as a special supplement to Fortune, March 1967]

A FORTUNE PROPOSITION:

Congress should amend the antitrust statutes to make it clear that the national policy is to foster competition by punishing restraints of trade, including conspiracies to fix prices, limit production, allocate markets, and suppress innovation; but that it is not the national policy to prefer any particular size, shape, or number of firms to any other size, shape, or number; and that mergers—horizontal, vertical, or conglomerate—are entirely legal unless they spring from a manifest attempt to restrain trade.

ANTITRUST IN AN ERA OF RADICAL CHANGE *by Max Ways*

Among businessmen, uncertainty and anxiety about antitrust enforcement have been increasing in recent years. This article, however, is not a report on their complaints, which are sometimes superficial and often in conflict with one another. Nor is this another paean to antitrust law, the great American sacred cow, ritually and uncritically praised by almost all parties and factions. Instead, this is an effort to look at antitrust afresh, to measure it against tomorrow's needs.

Our sacred cow was born two-headed. Any serious examination of antitrust must start by recognizing that two distinct—indeed, contrary—policies have existed side by side. One policy has protected competition against such practices as conspiracies between firms to fix prices or limit production; this side of antitrust, exemplified by the Addyston Pipe case of 1899 and the very similar electrical conspiracy cases of 1961, has played and should continue to play a helpful part in the ever increasing liveliness and flexibility of the American market. The other antitrust policy has been fearful of change; it has frowned upon the growth of firms, especially by merger; it has sought to preserve the specific structure of markets on the assumption—long since demonstrated to be groundless—that the degree of competition is directly proportionate to the number of competitors and inversely proportionate to their average size: it has impaired the legitimate scope of freedom of contract and introduced arbitrary rigidities into the market through which we allocate our resources.

During the last fifteen years the second policy has become more and more dominant in antitrust enforcement. Essentially, this other head of antitrust is anticompetitive and reactionary. Instead of relying upon the market to protect consumers and encourage progress, it substitutes the preferences of public administrators and judges as to how production and distribution should be organized. By trying to shield specific competitors against the effects of competitive innovation, it tends to reverse—or at least to inhibit—that long line of social evolution which has been described as the movement "from status to contract."

Because our economy is so resilient, the measureable practical damage done by this second kind of antitrust policy has not been great—yet. But what of tomorrow?

I. ARTICLE BY ARTHUR BARBER, "EMERGING NEW POWER: THE WORLD CORPORATION"

[From War/Peace Report, October 1968]

EMERGING NEW POWER—THE WORLD CORPORATION

(Increasingly, power is shifting away from the nation state to international institutions, both public and private, argues this observer. Most remarkable is the growth of the world corporation)

(By Arthur Barber*)

In January, 1966, President Charles de Gaulle announced that foreign military forces stationed in France would either have to come under French authority or move from French soil. The statement led to headlines, consultations at the highest level of NATO member governments, and the removal of all foreign troops within 18 months.

During the same period, the French government was carrying out negotiations with a number of large international corporations. While these business negotiations received little attention, they may have been even more important than the issue of foreign troops.

In the opening round of the talks, Ford Motor Company sought to build a new plant in France but French conditions were unacceptable to Ford, which terminated the negotiations and made plans to build the plant in Belgium. This shift led to widespread domestic pressures on the French government, coming all the way from the right wing to the Communist-dominated labor unions. The French government shifted its conditions and dispatched the French ambassador to Detroit. All to no avail. And Ford was not the only firm to move proposed plants out of France. General Motors put a new 5,000-man auto assembly plant in Antwerp instead of Alsace. Phillips Petroleum changed plans for a polyethelene factory from Bordeaux to Belgium.

In bargaining with large corporations over investment in new plants, national governments in the Common Market are in a relatively weak position—comparable to that of a state government in the United States. As Monsieur Debre, then French minister of trade and economics, explained:

> If we would oppose American investments, they would be made elsewhere in Europe, a few kilometers from our borders and, because of the lowering of the customs' tariffs, we would have—indeed, we already have—on our markets products made that we did not benefit by producing.

The flexibility and economic power of large international corporations now challenge the power of many nations. General Motors last year grossed over $20 billion. This is more than the gross national product of all but 14 of the 124 nations in the United Nations. In an ever increasing degree, the decisions affecting economic growth are not only international decisions but corporate decisions. A decision concerning the location or removal of a plant, a transportation terminal or a research and development laboratory is made more often in the office of corporate executive than in the government. The government is more often a pleader than a negotiator or administrator.

This situation is rapidly limiting the sovereignty of many nations. As Monsieur Debre said: "A country whose main industries . . . would be but branches of the main office, commanded by a great foreign country, would not be an independent country any more." Britain's Prime Minister Harold Wilson put it more bluntly when he warned Europe not to become "an industrial harlot . . . to the sophisticated apparatus of American business."

United States corporations are not the only ones gaining control of major sectors of foreign economies. In the past two years the Norwegian fishing industry was consolidated into one firm, FRIONOR, only to have a majority interest in the firm bought by the Nestlé Company of Switzerland. At the same time, control of the Norwegian aluminum industry was purchased by ALCAN, Aluminum Company of Canada.

It would be a mistake, however, to believe that international corporations are instruments of the government. Two years ago the United States government

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learned that a French subsidiary of the Fruehauf trucking company had received an order for trucks from the People's Republic of China. The United States government ordered Fruehauf not to deliver. The French government seized the French firm and the trucks were delivered. The international corporation is the instrument of no government; it is responsive only to the laws of the lands where it operates and its own board of directors.

THERE'S EVEN A LANGUAGE

What is this new international institution that challenges governments? While corporations have long operated across international borders, the post-war period has seen the emergence of the truly international corporation. These corporations play an increasingly dominant role in the world economy. They have international staffs, international funding, international communication networks, and—in the computer—even an international language.

About a thousand major corporations are now engaged in foreign operations in a significant way. Of these, some 750 are American, nearly 200 are European, and the remainder represent the rest of the world, with the Japanese leading the group. Total U.S. investment abroad amount to $57.6 billion. Foreign subsidiaries of U.S. corporations last year produced goods and services worth over $100 billion. United States firms provide one-half the foreign capital invested in France, one-third of that in Germany, and almost three-quarters of the foreign investment in Britain. And they continue to expand. In 1967, U.S.-based corporations spent $1.1 billion in Britain, $840 million in West Germany, 0436 million in France. These firms are earning a better return on their investment than other European firms. At the same time, European firms are being licensed to use American technology. It is likely that within a decade the payments for U.S. exports of information will surpass payments for goods. Last year Europeans paid $360 million in royalties and license fees to U.S. firms.

Perhaps even more important than the amount of investment have been the qualitative changes occurring in these corporations. They have become, to a significant degree, international entities rather than U.S., French, or British firms operating in foreign lands. They are increasingly more completely integrated into the economies in which their foreign operations take place, and they increasingly link these economies to the American economy by their growth in size and importance. The Department of Commerce has estimated that 25 percent of all U.S. merchandise shipped abroad goes to U.S. subsidiaries.

Studies of the Organization for Economic Cooperation and Development show that although U.S. investment represents only 4 per cent of total investment in Western Europe, it has been concentrated in certain key areas. Forty per cent of foreign investment in West Germany, Britain and France was provided by Standard Oil, General Motors and Ford Motor Company. Another 25 per cent originated with only 20 additional American corporations. American corporations now control 30 per cent of Europe's automobile industry, 50 per cent of the German oil industry, and 90 per cent of the French computer industry.

The influx of American corporations into Europe has led to national industrial consolidation as one means of meeting the new competition. France is now consilidating Nord Aviation and Sud Aviation into a single firm, France Aviation. A second firm, France Engin, will combine the engine divisions of these corporations.

The impact is not limited to the large countries or the large corporations. In order to compete, Swedish industry is currently undergoing a tide of mergers. While there were only 27 mergers in 1958, and the same number in 1959, there were 184 in 1965 and 220 in 1966. Sweden's biggest office machine company, Facit, has taken over its competitor Addo and will clearly become the dominant office machine manufacturer in Sweden. Similarly, Stora-Koppaberg, a pulp paper and steel producer, is acquiring smaller corporations which can no longer compete. In February, 1967, Swedish Finance Minister Gunnar Strang announced the creation of a State Credit Bank with capital of $200 million and the loan capacity to save failing industries and promote mergers to eliminate "unnecessary competition." These drastic measures were the direct result of estimates that 1,000 Swedish firms would be forced by competition to cut back production sharply or go bankrupt.

While American corporations have been investing great amounts abroad, foreign corporations have also been active in the U.S. Japanese investors have built rug factories in Appalachia and purchased the Flamingo Hotel in Las Vegas.

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The Japanese are investing more in Alaska than U.S. corporations or Alaskan citizens. Alaska Petroleum Development Company of Japan has established a multimillion dollar subsidiary to develop oil and gas resources. Japanese own a $70 million paper plant at Sitka, and Toiyo Fisheries has invested in fishing plants in the Bristol Bay area and in a crab processing and freezing plant at Kodiak. A French corporation, Pechiney, has joined American Metal Climax in building an aluminum plant in the state of Washington. As in the case of American investment, company managers from abroad come to the U.S. to assure the success of their investments.

American influence has not only had a large impact on European industrial corporations; it has also transformed the European financial community. Following the U.S. voluntary guidelines limiting overseas investment, American firms have turned to the European capital market, where last year they raised an estimated $500 million. When James Ling, chairman of Ling-Temco-Vought wanted funds to buy control of Wilson Meat Packing Company of Chicago, he raised $40 million in Europe. U.S. corporate demand has raised European interest rates on medium term bonds as high as 7 per cent, but it has, at the same time, nearly tripled the size of the bond market in the past four years, drawing in capital from private investors in the Middle East, Latin American and Asia.

THE WORLD BANKERS

The rapid movement of international funds emphasizes the crucial role that the international banking community plays, namely, maintaining world financial equilibrium. Ten times a year the central bankers of the major world powers meet in Switzerland to adjust changes in gold holdings without the necessity of actual shifts in bullion. Between their sessions they confer regularly by telephone to insure that the world's currencies remain stable. It was only a matter of a telephone call from New York to London on the day President Kennedy was assassinated to arrange for standby reserves of pounds sterling to back U.S. currency in the event that the murder produced a drop in international confidence in the dollar. Note that the call was placed in New York, not in Washington. The backup was not necessary in this case, but on three occasions in the past few years the "Basle Club" has bailed out the pound sterling—not altruistically, but because the international bankers could not afford a significant change in the market price of one of the world's latchpin currencies.

In Europe, the corporate invasion has produced a major debate over the "technological gap." In the late '50s and early '60s, when the gap in technological achievement between Europe and the United States was at least as great as it is at present, there was little mention of the subject. At that time, Europe was enjoying a much higher rate of growth than the United States and it was fashionable to ascribe the lagging American economy to the diversion of U.S. resources into defense activities, including specialized military research and development. Now that U.S. growth has speeded up beyond that of most European countries, an opposite misconception is becoming popular: U.S. economic power and technological leadership is the *result of* large expenditures on defense research and development. Both of these notions, however popular, are gross oversimplifications, or irrelevant.

The rapid growth of Western European economies in the recent past has probably hidden a number of problems which are only now becoming apparent.

A comparison of productivity of U.S. and European workers as a percentage of U.S. productivity shows: Belgium, 57 per cent; France, 54 per cent; Netherlands, 54 per cent; West Germany, 53 per cent; United Kingdom, 50 per cent, and Italy, 34 per cent. These differences in productivity can be attributed to many causes, but certainly not solely to advanced technology. The principal factor is probably the amount of investment per worker, both in agriculture and manufacturing. But the concept of investment must include not only goods and material but also general and specialized education of workers and managers, as well as improvements in transportation facilities and communications, all of which are usually considered to be government functions.

In the area of education, which is more and more widely being considered—properly—as an important form of investment in worker productivity, European nations invest approximately 50 per cent less per student than does the United States. Nearly 40 per cent of all American young people go on to higher education. By comparison Britain sends only 9 per cent of its youth to universities and France 10 per cent. Germany has established only two new universities since 1935.

While a lower level of education is probably the major factor contributing to lower productivity of labor, it is not the only factor.

Because of low productivity, wages are low. Because wages are low, there is far less motivation to automate. Thus, U.S. coal operators, paying very high wages to workers operating automated equipment, can deliver coal in the Rhine at less cost than it can be mined locally.

There is another important short-coming in European investment. Europeans must invest more not only in education and new equipment, but also in industrial research and development. Last year, more money was spent in California for research and development than in all of Western Europe.

There are other unfortunate results of the past sins of nationalism. In Europe, widely divergent administrative and legal barriers, vastly different codes of corporation law, corporate taxation and patent law, as well as totally different accounting procedures and engineering standards, create daily almost insurmountable obstacles to international cooperation. According to Belgian law, for example, a Belgian company wishing to merge with a foreign company must first close its doors and then pay a capital tax on the difference between the true value of its properties and their book value.

A PROBLEM OF DIVERSITY

The problem is not that the laws or procedures of one nation or another are wrong, but rather that they are different. Almost any common standards would be better than a variety of standards. One of the most difficult matters in negotiating a U.S.-West German agreement for joint development and production of tanks was the question of the type of screws to be used. Were the tanks to be built according to German or American industrial standards? This subject was discussed for a considerable length of time at the highest levels of government.

The leaders of the Common Market recognize that many of their problems flow from the diversity of past national patterns of development. One of these problems is the legal and administrative barriers to movement of capital in the Common Market—barriers to cooperation between stock markets and barriers to establishment of a European Securities and Exchange Commission. As the French Revolution swept away internal tariffs to create the economic base for Napoleon's empire, as Prussia persuaded the German state to join her in a customs union laying the basis for Bismarck's power, so the dropping of economic barriers now may provide the basis for a new, economically unified, more powerful Europe.

Indeed, the time for decision by the United States with respect to forming a free trade area with Europe, perhaps even including the Soviet Union, may be nearer than we imagine. During his trips to London and Paris in 1967, Soviet Premier Kosygin urged President de Gaulle and Prime Minister Wilson to enter into long-term economic planning arrangements with the Soviet Union. The U.S.S.R. and Eastern Europe today represent an economy 87 per cent the size of that of Western Europe. Western Europe will at some point in the 1970s reach the size of the United States today. If these two huge trading regions were to form one free trade area, the U.S. would be well advised to join in the enterprise.

While the technological gap is overemphasized, the central problem goes largely unrecognized. It is the "managerial gap." The existence of this gap remains the most important unperceived truth of the 1960s. Managing a great enterprise, whether industrial, educational, ecclesiastical or governmental, whether in a socialist or Western society, requires special talents that are in short supply on both sides of the Atlantic. Yet the techniques of large-scale organization and management are not secrets, nor are they the property of any ideological group.

Like the United States, the Soviet Union is rapidly becoming a corporate society. The problem of managing a vast industrial complex has bedeviled the Soviet state since its inception, but it was not until the closing days of the Khrushchev regime that he started a second economic revolution—a revolution in which indirect fiscal and monetary controls began to supplant direct political controls. Khrushchev's first attempt to revolutionize Soviet management was launched in 1957 when he replaced the 30-odd Gosplan ministries in Moscow with over a hundred regional economic councils. That failed because there was a proliferation of bureaucratic incompetence rather than an increase in efficiency.

In 1962, Khrushchev endorsed the new approach when he approved a *Pravda* article by Professor Evsei Liberman of the Kharkov Engineering-Economics Institute. A leader in the management revolution, Liberman argued that plant

managers should be allowed to decide for themselves the size of the payrolls, productivity goals, costs, capital investment, and innovation policies, and that bonuses should be based primarily on profitability. Application of the concepts has proceeded rapidly in the Soviet Union, despite the change in top managment.

Premier Kosygin announced in 1966 that the profitability criterion would be applied to selected plants, including some heavy industries such as the Volvograd steel mill, and declared that by early 1967 10 million workers—a third of the labor force—would be working under the new criteria. In the fall of 1966 he presented a plan to the Communist Party's Central Committee which included many of Liberman's recommendations, including the use of volume of sales and profits as performance criteria. There are also indications that the Soviet Union is willing to participate in joint investment with Western firms in countries outside the communist world if the plan has local support and is economically sound, i.e., profitable.

The results of the new policy were not long in coming. By January, 1967, profits had increased 24 percent for the businesses placed under the Soviet Union's reformed economic system in 1966.

It would be a mistake to consider these changes a reversion to capitalism. The enterprises are owned and their goals are set by the government. This is a management reformation, for two pragmatic reasons: first, profits are an effective means to judge the performance of an enterprise, and second, by using profit criteria as a measurement of effectiveness, the Soviet hierarchy can set its goals and exercise budget control from Moscow while reaping the benefits of decentralized management. While the differences between U.S. and Soviet management have been dramatically reduced, the Soviet Union is certainly in no danger of adopting capitalism.

As they adopt Western management techniques, the Russians are not at all reluctant to take advantage of Western merchandising methods as well. Soviet television sets now have trademarks so that the consumer can select the sets from plants that have reputations for greater reliability. The first Russian department store in the West has opened its doors in Brussels. The wares are Russian, to be sure—produced, we may expect, using American management practices. But the manager is Greek, the salesgirls, Belgian, and the customers are encouraged in English to pay in U.S. travelers checks. Amtorg, the Soviet trade organization, took a two-page ad in the *New York Times* to suggest that Madison Avenue consider advertising on the Soviet radio and television network.

The Central Committee's decision last year to establish a nationwide computer network has led some Kremlinologists to believe the Soviet Union is moving rapidly toward a computerized society. But the growing prestige of iconoclasts such as Abel Abanbegian, the arch priest of effective management, and strong-willed managers such as Nikolai Baibakov, chairman of the Gosplan, indicate that men rather than machines will shape the Soviet future, and that the new managers will be judged by the profits of their enterprises. The large Soviet investment in education also indicates that the Soviet labor force, both managers and workers, will have the skills needed in a corporate society. At the same time, the introduction of effective management may also create major unemployment problems. A Soviet plant manager recently told a Western Colleague, "If we remove unnecessary personnel, we will fire 40 per cent of our employes."

The new Soviet management, now judged by profits rather than by ideology, has been anxious to expand sales to and purchases from the Western world.

The Russians' most dramatic agreements have been in the automobile industry, with a contract with Fiat to build a plant in the U.S.S.R. to make 600,000 cars a year and with a $100 million deal with Renault to increase production at the Moskovitch plant from 90,000 to 300,000 units a year. And they have made an agreement with some Western European countries to sell the Volga automobile, which consists of a Russian chassis and body and a British-made Perkins engine.

But agreements have not been limited to automobiles. Imperial Chemicals of Britain has made an arrangement with the Soviet Union involving plastics, petrochemicals and synthetic fibers. The Russians have signed contracts with the Italian firms of Olivetti on office machinery and Montecatini on chemicals, with West Germany's Grundig on radios and tape recorders, and with a French consortium on colov TV. The Soviet Union has also recognized the value of marketing its own patents to gain foreign exchange. LICENSINTORG, a specialized profit-making firm in Moscow, has been formed for the express purpose of trading in licenses, patents and technical information with the West.

The management revolution has had other major effects within the communist world. In Eastern Europe the new technocrats have begun to complain about the high prices of Soviet raw materials and industrial goods and the low prices paid for Eastern European industrial goods. These trends have caused Eastern European managers to look westward for markets and investment resources. Many firms, including Volkswagen, are subcontracting the manufacture of components to firms in Eastern Europe. A Dutch company, Raymold, is establishing a factory in Hungary to produce auto brakes. The payment for royalties and equipment will be made with brake plates manufactured in Hungary and delivered to the Netherlands. In another cooperative industrial venture, a West German manufacturer is producing electronics parts for a piece of steel industry equipment jointly made with a Hungarian firm. The ultimate example may well be the French cosmetics firm L'Oréal, which now has a factory in Bulgaria producing hair dyes and lipsticks for sale throughout the world.

PRAGMATISM WILL WIN

The introduction and expansion of pragmatism in the communist world is a crucial factor in the revolution of world politics. The conflict between pragmatism and ideology underlies both the Sino-Soviet split and the current upheaval within China. Mao Tse-tung, however skillful and brilliant, is nonetheless the true ideologue. While his writings may consolidate his power with the 500 million peasants of China, they cannot solve the agricultural and industrial problems of China. It is significant that the cultural revolution began when Mao removed the Peking Central Committee and then, nearly a year later, he attacked the Shanghai Central Committee for "crimes worse than the Peking Committee." The opposition elements—the technocrats in the cities—are more in touch with the needs of the 20th century. While they may lose the battle this year or the next, the corporate managers will surely win the ultimate victory in China.

The economic miracle that has caught the eye of the developing world lies not in the United States, Europe or the Soviet Union, but in Japan, the first non-white corporate society. Unfortunately, there has been little study of this Japanese experience in the Western world, perhaps because the Japanese success, with an economic growth rate of 10 per cent between 1956–63, refutes and embarrasses many of the most cherished beliefs of the West.

The American Chamber of Commerce reports: "While much corporate and personal rivalry does exist, business, banking and the government are all on the same team and broadly function as a partnership to implement the policies and plans of the government."

The Japanese corporate executive is far less interested in profits than his Western colleagues. He takes pride in the expansion of production and exports or the development of a new product. He values the loyalty of his workers and executives, most of whom remain with the company throughout their lifetime, at largely preordained wages.

Paradoxically, the government appears to be more "profit" conscious than industry. It develops detailed economic development plans based on trends in the productivity of capital and labor and in domestic and export markets. These plans are published with detailed figures as government "guidance" on the allocation of future investment—guidance which is usually accepted. There are other noticeable differences from the Western pattern: the government does not make large investments in research and development, and the brightest young graduates from the universities go into government service.

The major factors in Japanese growth are a high rate of capital investment and education. During 1956–63, Japan reinvested 34 per cent of its gross national product. This was possible primarily because of Japan's low defense budget—1 to 2 per cent compared with 9 to 10 per cent in the United States—and its low consumer consumption. The Japanese success also depends on the large and increasing Japanese investment in education. Today, 70 per cent of Japanese children stay in school until age 18, and 16 per cent go to colleges and universities. Both figures are rising rapidly. Within five years, it is expected that 30 per cent of the young people will be going to college. These figures are higher than for any nation but the United States and Soviet Union.

Japanese investors have also become international, investing throughout the world, and particularly in Taiwan, Korea and other developing Asian nations. In many cases, Taiwanese and Korean firms are subcontractors to large corporations in Japan.

The international corporation is acting and planning in terms that are far in advance of the political concepts of the nation state. As the Renaissance of the 15th century brought an end to feudalism, aristocracy and the dominant role of the church, the 20th century renaissance is bringing an end to middle class society and the dominance of the nation state. The heart of the new power structure is the international organization and the technocrats who guide it.

Power is shifting away from the nation state to international institutions, both public and private. The technocrats of the Common Market in Brussels continue to develop the plans and programs for the economic growth of Western Europe. The technicians of the International Monetary Fund will now play a major role in determining the amount of paper gold available to the international economy, which in turn will be a crucial factor in determining worldwide interest rates and economic growth rates. The outstanding example of the decline of national power is found in Britain, which is compelled to maintain a wages and prices freeze to satisfy the bankers of Zurich.

As the technocrats take over, political issues tend to divide society on economic and professional rather than national lines. When technocrats meet their friends in Geneva, New York, London or Moscow, they have a broad basis of common experience whether it be in steel, diplomacy, education or television. Military men meeting in Brussels, bankers meeting in Frankfurt, physicists meeting in Moscow or economists meeting in Washington have more in common with each other than they have with their fellow countrymen. The idea that Korea and Japan, Albania and Yugoslavia, Italy and Greece should form an alliance or community because of geographical proximity is an obsolete idea. Matters of international public policy now divide not so much on national but professional lines—the economists on one side, the scientists on another, the military supporting yet a third position. When technocrats meet at cocktail parties and on transoceanic flights, they are far more likely to identify themselves with their organization than with their country—"I'm Robert Jones—World Bank" or "I'm James Hughes—Imperial Chemicals."

Within a generation about 400 to 500 international corporations will own about two-thirds of the fixed assets of the world. We are now determining how this international corporate structure will evolve. The fact that few people recognize this evolution, including most of the participants, has not slowed the process in any way.

A FUNDAMENTAL CONFLICT

The Nuclear Non-proliferation Treaty is an example of the kind of international agreement demanded by a corporate society. To the traditionalist of the nation state, the Non-proliferation Treaty is a mistake because it would deny nations such as Germany and Japan the possession of atom bombs, the modern symbol of national power. If we consider the treaty from the point of view of the corporate society, it represents the strengthening of an international agency, the International Atomic Energy Agency, so that the peaceful uses of atomic energy can expand more rapidly while the diffusion of atomic weapons will be stopped. Like other measures advocated by the international technocrats, it expands the opportunities for international economic growth while limiting traditional concepts of sovereignty.

There is a fundamental conflict between the ideologists of the nation state and the technocrats. The victory of the echnocrats may be postponed but in the absence of a nuclear war, it is assured. Throughout the Western world, the impact of the technocrats can be seen in a clear shift inward—toward a greater emphasis on domestic problems and economic growth rather than fear of and preparation for war. The remainder of the world is shifting toward policies like those of Japan and Italy. This trend is not a new form of isolationism. It calls for more shared international responsibilities and negotiations rather than the unilateral use of military power. At bottom, this turning inward seems to reflect a desire on the part of the public to turn away from a quarter of a century of international crises.

J. ARTICLE BY GEORGE W. BALL, "MAKING WORLD CORPORATIONS INTO WORLD CITIZENS"

[From War/Peace Report, October 1968]

Making World Corporations Into World Citizens

(A diplomat-lawyer-investment banker proposes an International Companies Law which would allow world corporations to mobilize capital, raw materials, labor and plant facilities so as to achieve maximum efficiency.)

(By Ambassador George W. Ball)*

During the several millenia of our history there have been long periods when time seemed to stand still. Men occupied themselves with deep theological speculation as to where the world was going and mankind's ultimate fate. Now in this last third of the 20th century all that is reversed. Caught in a whirlwind of pervasive and accelerating change, we concentrate so intensely on learning to cope with the altered demands of a shifting environment that we have little time to inquire as to the larger implications of change, and where they may lead us a decade hence.

This is one of the costs of being practical, but it is a cost we can no longer afford. We now live in a world with a finite stock of resources and an exploding population and we must use these resources with a maximum of efficiency and a minimum of waste if mankind is to avoid a Darwinian debacle on a global scale.

In the post-war period, industrialists, whose concept of their own functions has broadened and deepened considerably, have come to recognize that the political boundaries of nation states are too narrow and constrictive to define the scope and activities of modern business. This realization has found some reflection in political action—although not enough. Six countries in Europe, for instance, have frontally attacked the stifling restrictions imposed on commerce by the archaic limits of nation states. They have created a thriving Common Market. Goods will now move with full freedom throughout Western Europe to serve the needs of nearly two hundred million people. And in spite of counterwinds of nationalism blowing with gale force from Paris, there is no doubt whatever that within a few months or years, the European Community will be expanded to include Great Britain.

The importance of common markets and free trade areas rests not only on their economic value, but also on the seeds of political unity that they carry with them. Yet they hardly provide the total answer to the imperatives of world efficiency; nor should we look for only one answer.

MOST EFFICIENT PATTERN

International trade is, of course, as old as time, but internationalized production is less familiar. The United Kingdom for a long time has been exporting capital to produce goods abroad. However, except for the extractive industries, most enterprises in the United States have, until recent times, concentrated on producing primarily for the national market and exporting their surpluses to other national markets—and many still do. That old-fashioned concept is no longer good enough since it does not satisfy the urgent need of modern man to use the world's resources in the most efficient manner. That can be achieved only when all the factors necessary for the production and use of goods—capital, labor, raw materials and plant facilities—are freely mobilized and deployed according to the most efficient pattern. In turn, that will be possible only when national boundaries no longer play a critical role in defining economic horizons.

It is a fact of great importance, therefore, that at a time when politicians are moving to create regional rather than national markets, businessmen are making quiet progress on an even larger scale. More and more great industrial enterprises of the world have begun to cast their plans and design their activities on the operating assumption of a total world economy.

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*Ambassador Ball, who was an Under Secretary of State from 1961 to 1966, recently became permanent representative of the United States to the United Nations. This article was adapted from a speech he made before the British National Committee of the International Chamber of Commerce in London prior to assuming his present post. When he assumed his new diplomatic role, Ball went on leave of absence from his position as senior partner of Lehman Brothers, an investment banking firm. [Biographical note from the original (Oct. 1968) source.—Ed.]

In this development—as is so often the case in history—commerce has been in advance of politics. In a thoroughly pragmatic spirit, commerce has improvised the fictions that it needed to shake free from strangling political impediments. To make possible the global activities of modern business, it has extended the fiction of the corporation—that artificial person that lawyers invented so that entrepreneurs could do business with limited liability and thus mobilize capital from diverse financial sources. Originally, the corporation was conceived of as a privilege granted by the state to serve its own political purposes. But over the years the widespread acceptance of the institution has enabled business to roam the world with substantial freedom from political interference, to produce and sell its goods in a multiplicity of national markets, and to create corporate offspring of various nationalities and in unlimited numbers.

Today we are beginning to perceive the great potential of this emancipated corporate person. For at least a half century a handful of great companies have bought, produced and sold goods around the world. Now a large and rapidly expanding number of companies are transforming raw materials produced in one group of countries, by means of labor and plant facilities of another group, into manufactured goods they can sell to a third group. With the benefit of instant communications, quick transport, computers and modern managerial techniques, these companies are able to redeploy resources and alter business patterns on a month to month basis in response to shifting costs, prices and availabilities.

By no means have all industries yet comprehended the full meaning and opportunity of the world economy. But we can find a clue to the extent that this world concept shapes corporate thinking in the attitudes of managements toward liberal trade. By and large, those companies that have achieved a global vision of their operations tend to favor a world in which not only goods but all of the factors of production can move with maximum freedom. On the other hand, industries that have confined their production largely or entirely to a home market, such as the steel and textile industries in the United States, anxiously demand protection whenever a substantial volume of imports begins to cross their national boundaries.

At the moment the American sky is again darkened by protectionist storm clouds. Yet it appears that they will blow by with more wind than hailstones, because, at long last, Americans have become too much engaged in the world ever again to turn their backs on it.

INCREASING CONFLICT

As business continues to expand its horizons, conflict will no doubt increase between the newly evolved world corporations and the nation states. The lack of phasing between the development of our archaic political forms and our business structures is bound to prove abrasive. Even now in the economically advanced countries of Western Europe we sometimes hear the shrilly expressed concern that local enterprises are being menaced by the superior size and resources of the world companies. This phenomenon is a complex one, reflecting, as it does, not only honest business anxiety, but a kind of neo-mercantilism that is beginning to show itself in all too many places.

On the Continent this attitude of envy and frustration arises because the measures taken to liberate the movement of goods have not yet been accompanied by adequate modernization of the structure of business. Europe has not yet produced the industrial concentration, across national boundaries, that is essential if its industry is to stand on its own feet.

In Canada, the problem is perhaps even graver. Canadians are deeply worried about how they can maintain their national integrity while living next door to an economy 14 times bigger than their own, and yet not jeopardize the flow of American investment capital on which their prosperity depends.

We see comparable phenomena in the new countries, the developing countries. Hypersensitive to anything that suggests colonialism, they fear that their economies may fall under foreign domination, and therefore they impose obstacles and restrictions on the entrance of foreign firms, thus discouraging the inflow of capital they so desperately need.

Though the anxieties of local business cannot be ignored, this is not the most serious danger to worldwide corporate enterprise. A greater menace may come from the actions of governments addicted to regimes of planning. These governments see in the world corporation a foreign instrumentality that may frustrate their grand economic designs. This problem is especially understandable in countries where a great world company might be the largest employer of labor or consumer of raw materials.

To local political leaders, the problem is posed like this: how can a national government make an economic plan with any confidence if a board of directors, meeting 5,000 miles away, can alter a purchasing or production pattern, thus having a major impact on that country's economic life? The company's decision may have been completely sound with reference to the world economy, but quite irrelevant to the economy of the country in question.

Most manager of world corporations are thoroughly aware of this problem—frequently they are more sensitive to it than bureaucrats—and have achieved a commendable level of sophistication in dealing with it. It is not uncommon for a major nation in which a world corporation is located to exacerbate this conflict by throwing into too sharp a focus its relative impotence to control that corporation without doing major harm to its own economy.

On more than one occasion the United States has sought to enforce its domestic legislation abroad by trying to extend its writ to the actions of foreign subsidiaries of American companies. The U.S. is beginning to realize that it cannot use world corporations based in America as vehicles to export its own national psyche and prejudices—whether with respect to trading with China or other communist countries, or controlling monopolies or restrictive practices—without diminishing the utility of the corporate institution itself.

It is in the nature of things that the world company should frequently tread on hostile ground. After all, it is a new concept and one that has not yet fully found its own rationale. Implicit in its operations is a troubling question of political philosophy that is not yet fully resolved, namely, the legitimacy of its power. On the one hand, the shareholders of corporations have a right to expect a reasonable rate of return on capital and a chance to earn income in relation to entrepreneurial risks. At the same time, a foreign government is quite validly concerned with the ability of corporate managements to influence the employment and indeed the prosperity of its country. The dilemma arises because neither the people nor the government of the country in question plays a part in selecting the directors or the managements of world corporations. Since it is only through national legislation that managements can be made in any way responsible to them, there is bound to be frustration when the managements of world companies are effectively out of reach of such legislation.

In an almost perfect world the obvious solution would be to modernize our political structures—evolve units larger than nation states and better suited to the present day. But that is going to take a long time. Meanwhile, many company managements have developed corporate diplomacy to a high level of sophistication. Not only do they take great pains to ease the pressures on national governments, but many seek to attach a kind of national coloration to their local subsidiaries.

Such schemes take a variety of forms. For example, world corporations may associate themselves with local partners in each country, sometimes taking only minority interests in their national subsidiaries. In other cases, they may leave the effective control of the national subsidiaries to local managers, with only a minimum of direction from the parent company.

The trouble with these approaches is that local ownership interests in national subsidiaries necessarily impede the fulfillment of the world corporation's full potential as the best means yet devised for using world resources according to the criterion of profit, which is an objective standard of efficiency. The obvious difficulty with local interests is that they necessarily think in national and not world terms, and are likely to impress their narrowly focused views on vital policies. Once the central management of a world company is restricted by the divergent interests of national partners, it loses its ability to pursue the true logic of the world economy.

It might be wise then not to nationalize local subsidiaries but to internationalize the parent company. Only in this way can we preserve the full economic promise of the world corporation as an institutional instrument of the highest order. Such a solution may seem utopian, but I would venture that over the next decade or two we shall have to find a solution along this line if world companies are not to find themselves increasingly hamstrung and emasculated by national restrictions.

CENTRAL PRINCIPLE: EFFICIENCY

The essence of this suggestion is that those artificial persons, the world corporations, should become quite literally citizens of the world. This would mean the establishment, by treaty, of an International Companies Law, administered by a supranational body, including representatives drawn from various countries who would not only exercise normal domiciliary supervision but would also enforce such regulations as an anti-monopoly law and guarantees with regard to uncompensated expropriation. An International Companies Law could well place limitations, for example, on the restrictions that a nation state might be permitted to impose on companies established under its sanction. The operative standard defining those limitations would be that they must not interfere with the freedom needed to preserve and protect the central principle of assuring the most efficient use of world resources.

Obviously an international company must have a central base of operations. The company cannot be like Mohammed's Coffin, suspended in the air, since there must be a single profit center. And the company's operations in its home country would, of course, be subject to local law, to the extent that the treaty did not contain overriding regulations.

Of course, a company will not become a citizen of the world merely by a legal laying on of hands. It requires something more than an International Companies Law to validate its passport; the company must in fact become international. This means, among other things, that share owership in the parent must be widely dispersed so that the company cannot be regarded as the exclusive instrument of a particular nation. Of course, in view of the underdeveloped state of most national capital markets, even in the economically advanced countries, this is not likely to occur very soon. But as savings are effectively mobilized for investment in more and more countries, ownership of companies should assume an increasingly international character, while at the same time we might expect a gradual internationalizing of boards of directors and parent company managements.

These suggestions, offered in tentative and speculative terms, are not the only means through which a solution might be sought. One can envisage, for example, an international treaty directed solely at resolving jurisdictional conflicts or limiting national restrictions on trade and investment. Yet an International Companies Law would have intrinsic merits. It would offer the best means of preserving, for all society, the great potential of the world corporation.

Nor is such a proposal far beyond present-day contemplation. It is only an adaptation to a larger arena of what is likely to be created within the next few years in Europe: a common companies law for the European Economic Community, together with a body of regulations to be administered by the European Economic Commission.

If this proposal seems extravagant, let me be quite clear on one point. I am not proposing a world government or anything resembling it. I have lived far too long on the exposed steppes of diplomacy and practical politics to believe in such an apocalyptic development within the foreseeable future. Nonetheless, what I am suggesting necessarily has its political implications. For freeing commerce from national interference through the creation of new world instrumentalities would inevitably, over time, help to stimulate mankind to close the gap between the archaic political structure of the world and the visions of commerce which vault beyond confining national boundaries to exploit the full promise of the world economy.

K. TABLE, "MONEY POWER" (GROSS NATIONAL PRODUCTS OF COUNTRIES AND NET SALES OF COMPANIES INTERSPERSED: TOP 40, BY RANK—1966)

[From War/Peace Report, October 1968]

MONEY POWER

General Motors, founded just 60 years ago, has already grown to the point where the money it handles annually is greater than the gross national product of any but 17 nations of the world. A combined listing of the leading international corporations and the top producing nations of the world is given below, with the net sales figures for corporations taken from *Fortune* magazine and the G.N.P.'s from the *U.N. Statistical Yearbook* of 1967, except where estimates have been made by *War/Peace Report*. All figures are for 1966. As the box score stood then (corporations are generally growing much faster than nations), eight of the 40 biggest economic entities were corporations. The net sales and G.N.P.'s in billions of dollars:

1. United States	$756.5
2. Soviet Union	227.9
3. West Germany	119.6
4. United Kingdom	105.4
5. France	101.4
6. Japan	97.5
7. China (Mainland)	[1] 80.0
8. Italy	61.4
9. Canada	53.3
10. India	45.7
11. Brazil	27.7
12. Poland	[1] 26.0
13. Australia	25.1
14. East Germany	[1] 22.2
15. Mexico	21.8
16. Sweden	21.3
17. Netherlands	20.8
18. General Motors	20.2
19. Argentina	18.7
20. Belgium	18.1
21. Switzerland	14.7
22. Czechoslovakia	[1] 13.4
23. Ford Motor	12.2
24. Standard Oil (N.J.)	12.2
25. South Africa	11.9
26. Denmark	11.1
27. Turkey	10.3
28. Austria	10.0
29. Philippines	9.3
30. Finland	8.6
31. Venezuela	7.9
32. Royal Dutch/Shell	7.7
33. Norway	7.6
34. General Electric	7.2
35. Greece	6.6
36. Colombia	6.3
37. Chrysler	5.7
38. New Zealand	5.5
39. Unilever	5.3
40. Mobil Oil	5.3

[1] (Est.).

L. EDITORIAL, "THE WORLD CORPORATION"

[From War/Peace Report, October 1968]

THE WORLD CORPORATION

Will the day come when international travelers will carry passports issued not by nations but by world corporations such as General Motors? Might the day even come when someone will say, "What's good for General Motors is good for the world"?

Judging by the startling growth of world corporations to date, as described in articles in this issue by Arthur Barber and Ambassador George W. Ball, these conjectures may not really be so bizarre. Not only have these legal entities acquired immense economic power, but they have also developed individual loyalties that can conflict with—and even transcend—devotion to a nation state.

Little serious attention has been paid to this phenomenon so far, but it is clear that the world corporation explosion is bound to have profound effects on global society. Whether these effects will be good or bad is not yet clear. Ambassador Ball's proposal of dealing with the situation through "the establishment, by treaty, of an International Companies Law, administered by a supranational body," seems like a sensible way to start. However, we can see two important problems with this idea.

The first is that Ball evidently envisions the primary purpose of the treaty to be to make it possible for world corporations to use capital, labor, raw materials and plant facilities to achieve maximum efficiency in production and marketing, with efficiency being measured by that impartial arbiter, profit. Efficiency is certainly an important criterion, but Ball's proposal does not cope with the other great standard, namely, whether the wealth is distributed with justice. Unless the world corporations are somehow required to pass on to the workers the fruits of their production, and unless taxes can be levied on the international companies so that pressing (but unprofitable) needs of the world can be financed, one can imagine that the result of this corporate efficiency would simply be that the rich, white, northern part of the world will get richer, while the rest of it will get relatively poorer.

The second question we raise in connection with Ball's suggestion is whether or not it would be wise to establish a new supranational agency to oversee the International Companies Law. It would probably be better to do that than not have a law at all, and this may well be the actual choice facing the world. The reason for going outside the present United Nations structure is obvious: the General Assembly is unrepresentative of the world and the Security Council is hamstrung by the veto. But if separate organizations are established for all the international functions that are rapidly becoming necessary—to oversee activities of world corporations, to control development of the deep sea bed, to develop peaceful uses of atomic energy, to regulate space communications, etc.—then international machinery will become a hopeless bureaucratic tangle. Suppose, for example, a world corporation wanted to put a peaceful nuclear installation on the deep sea bed—who's in charge? At some point, and the sooner the better, statesmen must confront squarely the necessity of creating a true and workable center of world power to which these new agencies can be directly responsible.

M. ARTICLE BY HOWARD V. PERLMUTTER, "SUPER-GIANT FIRMS IN THE FUTURE"

[From the Wharton Quarterly, Winter 1968]

SUPER-GIANT FIRMS IN THE FUTURE

(Business leaders look ahead to recognize the qualities and the decisions which will enable international firms to survive to become "Super-Giants" by 1985)

(By Howard V. Perlmutter)*

In my discussions with political and business leaders over the past six years, I have found surprising agreement that we are moving towards a world of very large multinational firms and very small entrepreneurial firms of the "one man show" variety. The fate of the middle-size firm seems less secure. The small firm can engage in guerrilla action, gain all the advantages of smallness—speed of decision making, closeness to customer needs. The middle-sized firms find it hard to get the human and financial resources, the geographical and product scope to function as world wide entities. They are targets for take-overs—with the large firm as a suitor promising world wide markets for its products.

I agree with this vision of the future. But since the prediction applies to the class of the institution called international, and not to any specific firm in existence today, it is perhaps more interesting to consider how the large firms will survive until 1985. Or at best, what are the competences or capacities most multinational firms, who are in existence today must develop in order to be one of the Two (or Three) Hundred who survive until 1985? For surviving, growing and remaining profitable is clearly not inevitable. It is more than likely that the list of the few will not contain only those firms which exist today.

To make some progress in this complex field, I propose to consider three interdependent questions:

(1) Why will there be very large international firms?
(2) What kind of firm is most likely to become one of these super-giants?
(3) Should there be 300 super-giants?

These reflections are the outcome of some rather intensive research on some of the large international firms on the world scene today, and of my collaboration with executives who share this preoccupation:

How can I insure that our firm will be one of those which survive and grow?

How can I attract to our firm men who believe in this long-term possibility?

By way of defining the object of our study, I consider that we do have large, internationally oriented firms today. According to *Fortune*, there are already more than 100 U.S. firms, each doing more than $600 million worth of sales, who have overseas interests. There are at least 70 or more non-U.S. firms doing a similar volume of business. But when we consider the firms of the future—of 1985—it is clear we are talking about giants, or perhaps super-giants.

Accounting for unforeseen technological breakthroughs, and managerial attrition I come out with the round number of 300 giant firms. There may be 200 or 400—but I maintain they will be distinctive because their size will place them in a separable class—with unique opportunities and problems.

DOUBLE THREE TIMES

Many executives I know are planning to double sales every seven years. By 1985 their firms will have doubled three times. This means that the firms doing $600 million or more sales, now on *Fortune's* list, will be doing from $5 billion to $160 billion worth of sales, the latter being General Motor's sales of 1985!

Even considering that the number of employees does not grow at the same rate, the million-man firm should not be unusual. Clearly, the 300 of 1985 will be super-giants in size and power.

There are good reasons why such firms will emerge:

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1. Super-giant international firms will find it easier to get capital. They will generate more earnings, and constitute less risk for bankers, financiers, and shareholders. These firms can risk sustaining larger losses and still survive. Even today General Electric is purported to have invested $200 million thus far in its, as yet unprofitable, venture into the computer business with Machine Bull, but the corporation still reports profits as a business totality.

2. Super-giant international firms will be able to diversify, replace obsolescent products rapidly, and still maintain worldwide production and distribution of all their products in both developing and developed countries. They will be seen as reliable and trustworthy on the global scale.

3. Super-giant international firms can maintain a high level of research in such advanced areas as energy, food and space technology, data processing, aircraft, electronics. As an example, IBM is reputed to have invested in the neighborhood of $5 billion over four years to develop the "hardware" for the 360 series of computers.

4. Such firms have the resources to acquire the middle-size national or regional firms and offer them worldwide markets for their products, whereas the middle-size firm simply could not afford to build up a manufacturing and marketing function worldwide.

5. Finally and very importantly, the super-giant firms can afford to hire the best specialists and managers in the world to carry out the worldwide line and staff functions in marketing and manufacturing, in research and development, in personnel, in legal matters, and in finance.

To carry out their worldwide operations, General Motors currently employs 740,000; Ford, 388,000; Siemens, 257,000; Unilever, 300,000; Philips 244,000; ITT, 204,000; General Electric, 350,000; Royal Dutch Shell, 174,000; Fiat, 134,000; Dunlop, 104,000.

COUNTERVAILING FORCES

The second set of reasons for the emergence of the multinational super-giant comes from the absence of effective countervailing forces in the world community.

Consumers are at best unorganized. Those few consumer organizations which have been formed to evaluate products and services really have little grassroot support. Consumers are in an uncohesive group at best, hardly able to stop growth of the multinational firm.

Trade unions, I am assured by union leaders, have enough difficulty at the national level managing and representing their constituents; it is hard to see how trade union organizations at the world level will for a long time constitute a serious obstacle. Despite recent activity in the chemical, automobile and agricultural implement industry, the sum total is not great. Further, it is doubtful that organized labor on the world level can and would want to prevent the growth of the multinational firm. It is much more likely to want to share in the super-giant's prosperity.

The most likely candidate to act as a countervailing force for the super-giants is the sovereign state. The weapons a nation state can muster have seemed formidable: outright nationalization, restriction of the importation of machinery and parts, price controls, limitation of remittances to foreign patent companies, legal guidance for labor policy, demands on the firm to export and to conduct research within its borders.

But I submit that any given nation state, acting alone, has limited bargaining power. When what is called "the investment climate" is considered unattractive by many firms, due to repeated threats from government, it is always possible to suggest subtly and diplomatically that other countries would seem to be better places to invest. This has had a sobering effect on the more extremist national political leaders. Nations are after all, competing with other nations to attract human and material resources that meet world wide standards.

Some firms have and others are developing experience in avoiding collision courses with sovereign states. They do this by spelling out their investment policies, by including in their plans a timetable to begin exporting, to do research, by specifying what training they will give to dealers, suppliers of local raw materials, etc. The super-giant firms which survive in 1985 will be those that will have found a partnership rather than a collision course, with a large number, if not most, host sovereign states. But there will be, as a political leader put it to me recently, "a reshaping of the functions of the nation state and the firm."

The next question is more difficult, and more interesting. For it concerns who will survive until 1985. The question preoccupies chief executives. Will Royal Dutch Shell be around, will General Motors and will Unilever?

I believe that it is impossible to give the names of such firms. It is likely that the very largest of firms—like General Motors, Royal Dutch Shell, Unilever—will be among those who survive. But their names may be different.

I believe it is very likely that all 1985 firms will have North American, Eastern and Western European and Asiatic divisions. The North American division may have grown from U.S. firms which have been merged with other non-U.S. firms to become more multinational. The Western European division may include companies which once were primarily French, Swiss, German, or British historically but which were acquired or taken over. The Asiatic division will no doubt have been built from a Japanese firm. The Eastern European division may have its regional headquarters in Rumania, Yugoslavia, or despite a recent setback, in Prague. The super-giant international firm will, I believe, have been built from different national origins which have been internationalized to the world scale.

Who will be around in 1985 will depend on the effectiveness with which individual firms overcome external and internal obstacles to long-term profitability, market share and survival objectives.

In my research with companies who are candidates for the 300 list, I asked senior executives to diagnose what they felt were the key driving and restraining forces, inside and outside the firms, which would account for their survival, growth and development as a world company. I found that these executives from international companies agreed concerning high priority items.

EXTERNAL OBSTACLES

Senior executives of large international firms said the key external obstacles, outside their firms' direct control, stemmed from two sources: the home country and the host country.

Home-country executives feel the obligation to show loyalty to the interests of the home country—as for instance when U.S.-owned firms are asked that investment overseas be limited for U.S. balance-of-payments reasons. These executives find that home-country political leaders frequently fail to understand the nature and dynamism of the multinational firm. They predict more trouble in this area for U.S.-based firms.

Another key external obstacle stems from host countries who want more than a firm feels it can afford—such as insisting on local manufacture when assembly would be more desirable from the viewpoint of cost. In the worst situation, it is considered that local political leaders' distrust of the international firm is in itself a key obstacle to the firm's survival and growth. International executives who are nationals of the host country may be thought of a having "sold their souls" to the foreigners.

The U.S.-based multinational firm is usually seen by host-country political leaders as responding to U.S. political and economic interests. Europe-based multinational firms are seen as more astute in dealing with these political obstacles. (Swiss and Anglo-Dutch firms are willing to fly the local flag where necessary, or the Swiss, British or Dutch flag where necessary.) This barrier to growth is real.

Other external obstacles are: a. the lack of an effective international monetary system, b. the disparity between rich and poor countries with its explosive political implications. For individual firms, these obstacles are not easy to overcome.

External forces driving towards the growth of international firms which the executives most frequently cited were:

a. technological and managerial knowhow being made available in different countries;

b. demands of both international and local customers for the best product at the most reasonable price;

c. host country desire to improve its balance-of-payments;

d. finally, a general stimulus from the global competition among international firms for the human resources needed for survival and growth.

The firms which will grow to be around in 1985 are those which can influence the restraining forces and build on the driving forces in the external environment.

INTERNAL OBSTACLES

The senior executives whom I interviewed also identified internal obstacles to the long-term objectives of survival, growth, and profitability. Since, there was a general consensus that a firm must have an international character, the obstacies cited are in part those which impede a given firm from becoming more genuinely international.

The following factors were cited most frequently by senior executives from both Europe-based and U.S.-based firms:

a. Mutual distrust between home-country people and foreign executives within the firm.

b. Resistance to letting foreigners into the power structure at headquarters, in key positions and on the parent board.

c. Nationalistic tendencies among staff overseas and at home.

d. Immobility of good executives. Many excellent men prefer to stay where they live—in Basle or Boston, Paris or Brussels—as executives of affiliates.

e. Problems of communication, aggravated when people do not speak the same language and have different cultural backgrounds.

The key forces driving toward long-term survival and growth were identified as follows:

a. Top management's desire to utilize human resources optimally, and not let national biases lead to waste of good ideas, products, and men.

b. Recognition that morale is lower when a company has first-class (home-country) citizens and second-class citizens—the overseas people, or the foreigners.

c. Increasing awareness and respect of good men of other than home nationality.

d. Plan for risk diversification through worldwide production and distribution systems.

e. Aim to recruit good men on a worldwide basis, not just from the home country.

f. building a worldwide information system, manned by high-quality people who know local markets and are international in outlook.

g. Proposing to develop products and services with worldwide appeal.

h. Finally (and the factor mentioned most frequently), top management's commitment to building a truly international firm, measured in deeds, not in words.

If top management seems more comfortable investing at home, or seems to prefer working with home-country nationals only, or if the company's products are designed for home markets only, and resources are not assigned to adapt production to world markets, then there are strong doubts that the firm really seeks a world niche and will be around in 1985.

KEY FACTORS ARE HUMAN

Thus, the key factors determining which firms will be around in 1985 are human. Survival depends on attitudes and skills in working effectively with people of other nations. The executives in my survey identified also attitudes which, if allowed to be translated into action, would make it less likely that their firm survive, grow and reach profitability objectives through 1985. These "negative" attitudes may exist at headquarters as well as in subsidiaries.

The first type of negative attitude I have distinguished as "ethnocentrism." It may be exhibited by executives at the headquarters of multinational organizations who are home-country nationals. It is: "We, of the home-country nationality, are more trustworthy and/or more competent than the foreigners at headquarters or overseas." This attitude is found in U.S.-owned, U.K.-owned, Swiss-owned, German-owned, Dutch-owned—indeed in all home countries of—international firms.

It may assume greater proportions in U.S. firms for the following reasons. Historically, the company has achieved its success in a large market, derived a large proportion of its profits in the home country, where it had a large supply of trained professional managers who knew company policy and were trusted and understood more easily than "foreigners." While the U.S. reputation abroad is high, subsidiary executives often reinforce this ethnocentrism, or "home-country centredness."

There are countless examples to illustrate how only home-country people are trusted by home-country executives to head overseas posts. The standards for evaluating executives and products are "made" in the home country.

Kenneth Simmonds reported in a recent study on multinational firms that in 150 of the largest U.S. companies, only 1% of the senior executives at headquarters are non-Americans, even though the income generated overseas is about 20% of the total. Given the fact that key financial, personnel and product decisions are made at home headquarters, this statistic is important in accounting for the degree of ethnocentrism found in many U.S. corporations.

The executives whom I interviewed tried to estimate the costs, risks and payoffs of ethnocentrism. The risks of ethnocentrism over the long term, they said, are:

1. A subtle resistance to all ideas from headquarters.
2. A suspicion of the motives of headquarters executives of home-country nationality.
3. Inadequate information flowing to the Center, leading to costly mistakes due to poor planning.
4. Loss of good men of local nationalities who leave the firm, feeling they do not have a chance for promotion.
5. Lack of acceptance of the parent firm by political leaders in the different local environments.

The risks of an ethnocentric attitude were cited as less in the developing countries, where faulty local practices can be avoided with a limited amount of ethnocentrism. Knowhow, both managerial and technical, can be more quickly transmitted and thus give better control of the operations achieved. In some countries, customers may not mind ethnocentric attitudes if the reputation of the home-country product is high.

But, all in all, most executives agree that in the long run the costs of ethnocentrism are great and can be measured by the mutual distrust bred between home-country people and field people to the detriment of the overall efficiency of the firm. This, they say, is the main human obstacle to building the international firm of the future.

ETHNOCENTRISM IN AFFILIATES

Ethnocentrism at the headquarters level is typical of U.S. firms new to Europe. But ethnocentrism at the affiliate level is more typical of large European firms with long international experience. Here country managers—particularly those in marketing—claim that "everything is different in our country. Customer tastes, the distribution system, the method of organizing, all are different. We have nothing to learn from others."

There is no doubt a strong legal and cultural base for this reasoning, but there is as well a strong irrational base. "We will not be told by Swiss what to do," says a French executive, "they live in a different world." "The Anglo-Saxons who own this company have learned to leave us Germans alone because they know they will never understand our temperament" is another typical remark. "We will not accept ideas from Italians, or from Swedes," say the Dutch, and so forth.

The headquarters attitude in large European firms is seemingly international. Senior executives at headquarters say: "Let the Romans do it the Roman way, even if it means exaggerating differences which do not exist." Within Europe and the U.S. each country manager is permitted to go his own way, except in the financial area. In those European-owned firms with M.S. subsidiaries this complaint from headquarters is frequent: "They—the Americans in our company—just won't listen to us. They say: 'what can you teach us'?"

In my research, both executives and specialists at headquarters and subsidiary levels recognize that the costs and risks of ethnocentrism in subsidiaries are great. Waste and duplication of research are costly. When a product designed in a German affliate, for the German market, has to be redesigned 40 times for each of the other subsidiaries, the costs are very great. The inefficient use of headquarters experience is costly as well. Many problems which could have been solved by the combined efforts of several subsidiaries are thus not undertaken.

Some executives argue that permitting ethnocentric attitudes in subsidiaries allows country managers more initiative to explore local markets more deeply, and make necessary changes faster; local managers are more likely to feel it is their company, and hence relations with local governments may be better. The costs, however, are considered by many headquarters and subsidiary executives to outweigh the advantages in the long run.

The result of strong ethnocentric attitudes in subsidiaries is local growth at the expense of company growth. A well-organized competitor can usually beat such a firm in the worldwide market place. It is less likely that such a firm will survive until 1985.

But out of these forces, I expect to see emerging a "geocentric" or world-wide orientation. In our nationalistic world, ethnocentrism in subsidiaries may have some merit because it allows country-level management an easier time identifying with local national interests. Thus, some fears about the large international firm are abated. But the more experienced firms find this too costly. A former Chairman of the Board of Unilever put it this geocentric way: "The main problem is to Unileverize our Indian management and Indianize our Unilever management."

The international firm needs at the country level managers who feel they are part of a worldwide team whose good ideas, techniques, and men can be a success anywhere in the world. The distinctive competence of the international firm is thus its capacity to optimize the use of human and non-human resources on a worldwide basis.

The more I consider the problem of growth and survival of the international firm, the more it becomes clear that some systematic approach to assuring one's presence in 1985 is required. Strategic thinking and long-range planning are by now recognized as necessary by most large firms. Many chief executives are going through the exercise of trying to identify their long-term competitive ability, and to envisage what niche in the world market they want to occupy.

CAPACITIES FOR SURVIVAL

Many are planning to survive to 1985 through product innovation, resource allocation of men and money, establishment of pricing levels, and meeting of performance levels and growth rates. This is hard enough in a world of rapid change. But I believe that to be alive in 1985, the international firms need to identify now what distinctive capacities it will require, so that it can improve and develop them as widely as possible in the organization starting now.

This involves a development program with three- to five-year objectives directly related to improving:

1. The capacity to work with host and home political leaders of the right, center, and left, as well as with the more permanent civil servants, with a view to defining how a partnership course can be achieved between the particular international firm and each nation state. The best men are needed for this task.

2. The capacity to acquire and effectively integrate smaller and medium-size companies in countries other than one's home base, and to energize them to function effectively as a productive part of a worldwide enterprise.

A good example of this I observed recently was the acquisition by a worldwide electronics company of a small French instrument firm. This company was a provincial, one-man, patronal, production-oriented, non-innovative and technologically obsolescent company, protected by French tariffs, and with a limited future on world markets. Within a few years after the takeover, the company was very profitable, market-oriented, run by a team of professional managers who knew how to exploit innovation and were determined to make the firm a worldwide export base for some of the most modern electronic instruments. The same employees now had access to the resources of the worldwide firm and were utilizing them to their advantage. They were becoming international, and less narrow.

Too frequently the fusion of national interests has proved unproductive, because of distrust between the acquiring group and the acquired and the resistance to rationalize the two firms. Good people have frequently left and the advantage of the acquisition seemed to be lost.

3. The capacity to develop men for international service means that the firms of 1985 will have designed challenging international careers, both attractive and humanly possible, given the problems of moving men and their families at different stages in life.

The problems of reentry are serious problems for those who accept international assignments. Only too often, they are forgotten at headquarters, with consequent loss of effectiveness of executives overseas. An obligation of the international firm is to design careers so that the president and managing directors of the future are experienced overseas, have deep first-hand knowledge of the different regions of the world.

The strategic decisions international corporations must take before 1985 must be based on experience on-the-spot rather than hearsay or visits. International careers must recruit the best men from everywhere in the world, not just the best men from the home country. Such a policy requires a systematic program at the local and headquarters levels. It cannot be left to chance.

A further feature of an international career will be that professionals in such a function will feel that they are not only country experts but also meet worldwide standards of excellence. This is one guarantee of getting higher-quality recruits and building international attitudes and values in the key executives.

4. The capacity to commit to worldwide objectives personnel at headquarters, at the regional level, and in the subsidiaries, with either product or functional responsibilities. For this, a geocentrization process is required at all levels.

I believe that some kind of organizational and management development institution is needed in the firms which will survive—to develop executives inside the company, from all over the world. The experience of working together, of knowing other persons from different countries, makes a positive contribution not only to effectiveness at work but also to the creation of the international spirit. This will be a strength of the international company of the future, as it already is one of Phillips, Nestle, Unilever, IBM, Royal Dutch Shell, and many others.

The international firm of the future will need to organize for the maintenance of this spirit as it becomes larger and larger, and as more product divisions are formed. Internal organizational and management development institutions are one instrument to achieve these ends.

5. The capacity to stay in direct contact with the users of company products and services everywhere in the world, and thus to know in which way each user's needs are distinctive, or similar, in each market.

This means organizing to build up the necessary market knowledge and skills for the benefit of the user, wherever he is in the world. This includes eastern Europe and the lesser developed economies. The worldwide firm must live up to a promise that each customer, in every country, will receive not just the best in the country for his money, but the fruits of knowledge and experience gathered everywhere in the world. This is the basis for determining the worldwide niche of the firm. This means further the building of a dynamic strategy, a timed sequence of decisions and resource allocations to gain and maintain world wide markets which will number in billions, not millions, of consumers.

I suggest that the firms who improve and develop these five capacities or competences will be among the 300 who survive.

TRUST WITHIN FIRM

The sixth capacity, while more vague, is the most fundamental: it is to build trust and confidence among managers and experts of different nations, inside the firm.

Trust-building among nationals of European nations is not easy. There are old wounds still unhealed. The industrial concentration process underway in Europe is within nations and not across borders. This is no accident. No doubt the harmonization of laws in the European Economic Community will help, but confidence cannot be legislated. It must be built up between men. Many Europeans still say it is difficult for the vast majority of Europeans to work for persons of other European nations.

Jean-Jacques Servan Schreiber in his recent book *Le Defi Americain* (The American Challenge) suggests that U.S. firms have penetrated Europe, naively assuming that Europe is one market and thus making great headway. European executives in contrast with Americans, know too much about each other, he says. I understand Servan Schreiber's exhortation that European companies rise to the U.S. challenge. Facing a common threat, Europeans may feel more unified. But I believe Servan Schreiber holds a short-term view, which Shell, Nestle, Unilever, and others have outgrown.

To survive and grow to 1985, I believe it is necessary to explore and develop the key markets of the world. This includes the United States and Europe. The research directors of European international firms who have research facilities in the U.S. do not complain of the technological gap. "After all," as one European research director puts it, "we have some of our largest labs in the U.S., and we learn a great deal by trying out products in that market."

Chauvinism at the European or the U.S. levels will be too costly for the firms of 1985. In order to be worldwide, and in order to have a significant share of all world markets, it will be necessary to have men and organizations in all the areas of the world. We will need not an ethnocentric but a geocentric, or world oriented, view at headquarters and in the subsidiaries.

It may, however, seem like a useful transition for some of the more home-bound European firms to develop first into large national and real Europe-wide

firms. I feel that time is against a strategy of building a company geared only for the European market, if it means avoiding change and the necessity of meeting worldwide standards, including those prevailing in the United States.

I see no other route than beginning now to build international companies not companies based on U.S. or European domination of key positions.

This means that the multinational firms of the future should include Japanese international companies as such, not as satellites of a U.S. or European firm, nor as independent affiliates, nor as joint ventures with some holding company of a truly international firm, but as one part of an integrated, worldwide partnership.

I believe it is not an oversimplification to say that the key ingredient in building such firms is trust and mutual confidence among men of different nations, and acceptance of the distinctive contributions that they can make to a worldwide firm. This may not be easy for this generation of industrial leaders in Japan, Europe and the United States. But for the next generation it will be indispensable. I believe that executives can learn how to build confidence and trust by profiting from their errors, rather than explaining them away with such stereotypes as "you can't work with Brazilians," or French, or Italians, and so forth.

ORGANIZING EXPERTS

The major strength of the international firm of 1985 will be its capacity to organize management and experts of different nationalities. Both U.S.- and European-owned international firms face similar human problems of creating proper conditions for persons of different nationality to work together towards the overall goals of the firm. But the human problems of U.S. firms with a large domestic market of 200 million people tend to be somewhat different from those of European firms, most of whom had to become international to gain access to raw materials, and sizeable markets relatively early in their history.

Companies like Philips and Nestle do about 90% of their business overseas, while the average of a U.S.-based international firm is about 20–30%. Most large U.S. firms lack managers with international experience, since for them the rush overseas began in the late 1950's. The commitment to worldwide organization is recent among U.S. firms. The understanding of what attitudes are required in a geocentric or worldwide orientation is even more recent.

I feel that the efforts of European firms to build a European-wide company have been very slow. Agfa-Geveart is one of the few European "marriages." By comparison, Chrysler and General Electric have, for better or for worse, taken on such large firms as Simca and Machines Bull respectively. The difficulty of combining organizations of different nationalities is one of the most serious human problems facing Europe. As long as the level of mutual confidence and trust required to make these mergers work seems to be lack, corporate Europenization will continue at a slow pace.

The crucial human problems of both U.S.-owned and Europe-owned multinational firms depend as much on attitudes towards foreigners as any other factor. The final list of super-giants in 1985 will include those firms whose management has overcome the negative attitudes towards foreigners, both at headquarters and in the subsidiaries.

The man, not his passport, should be the basis for promotion.

In summary, the firm that works at building up these six capacities and competences is more likely to be around in 1985.

During the past five years, I have spoken to several thousand business and a small number of political leaders about this vision of the future: Super-giant multinational firms and the small fast fishes. The reaction of both political leaders and businessmen has often been one of fear.

The dangers associated with such great concentration of power in such few hands cause concern to most. With such power, they say, comes the temptation to abuse customers and citizens, to fix prices worldwide, to collude to the detriment of a given nation state, to make it difficult for an executive considered incompetent by one to find work anywhere among the other super-giants.

What guarantees are there that the key executives of the 300 geocentric super-giants will show a social responsibility to the world community of consumers and citizens?

NEED FOR RULES

There are no easy answers here, but I feel there is a need for rules and laws at the world level. By 1985, such laws will become more and more indispensable because the quality of life of the world's citizens, and their survival cannot be made to depend on the policies of international firms.

The nation state will not wither away. There is a positive role for the nation state in the second half of the Twentieth Century. It should be worked out in partnership with national political and business leaders, not bilaterally but multilaterally, in an atmosphere of mutual confidence and trust. There is a key role for the United Nations in their endeavor.

I believe there is agreement among enlightened political and business leaders that the moral basis for the super-giant multinational firms must be considered. There is agreement that if the multinational firm becomes a constructive force for peace in the world community it will be desirable, and indispensable, because it can potentially achieve what no other nation-centered firm could.

It is possible that the international firm can be part of an economic community on the world level, including East and West, North and South, a community in which the bombing of suppliers, costomers and employees of the same firm will not be found desirable, or permitted. Since the super-giant firms will be represented in all countries, war will not be possible. Thus, the genuinely international or geocentric firm would become one of the most extraordinary institutions of the second half of the Twentieth Century.

I do not believe that this eventuality will occur unless the leaders of this kind of firm take seriously the thought that it is part of their mission to work at building a business with men of caliber whose values and aspirations make them positive contributors to the world society that is so slow to evolve.

To a degree, leaders of multinational business will need to be what Gaston Berger called "philosophers in action." To justify the existence of the super-giants, we will need to relate their existence to man's fundamental aspirations and values of peace and prosperity. Etienne Gilson said:

> "The throes of the contemporary world are those of a birth. And what is being born with such great pain is a universal human society . . . what characterizes the events we witness, what distinguishes them from all preceding events back to the origins of history is their global character . . ."

I believe we are beginning to witness a struggle within our old institutions to develop men and resources for this next stage of human evolution. The business firm, along with the Church, the University, and the Nation State, is seeking to find its place in the world to come. The right of each to survive will depend on the degree to which each taps the noble as well as the practical motives of man.

I have tried to state why I believe that the international firm will grow and survive until 1985, and why it is likely that there will be 300 super-giants on the scene at that time.

I have further tried to determine on what criteria of performance firms should be measured today, in order to predict better which firms will be around in 1985. Six competences or capacities were described, each of which can be developed or improved by systematic attention. They add up to accelerating the process of a world centered on geocentric enterprises.

Finally, I have speculated that the existence of 300 super-giants poses a moral problem which will not dissipate itself. It is the responsibility of the leaders of today, both business and political, to insure that the power the firms will possess will not be abused, and that the firms fulfill their potential as constructive institutions for world prosperity.

N. TWO COMMENTARIES BY ED WIMMER, VICE PRESIDENT, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, 116–120 E. SECOND ST., COVINGTON, KY. 41011

1. Article, "Agri-Business Centers—Big New Threat"

[From the Independent Banker, June 1969]

AGRI-BUSINESS CENTERS—BIG NEW THREAT

(By Ed Wimmer)*

(Architect's drawing shows proposed Agri-Business Center which, says a press release for National Farm Stores, Inc., and Litton Industries, will be located in every agricultural state and will "reshape the face of rural America." The small shopping center concept is designed "to provide all the needs of farmers on a single 40-acre tract." When the chain is completed, Agri-Business Centers will be located in rural growth centers approximately 50 miles from one another. Early stages of development call for a minimum of 12 centers per state in wheat and livestock areas, and at least 16 per state in highly diversified farming areas. Basic suppliers will include a "Farmor Store" (sic) providing all farm-related items that are used in the repair and maintenance of farm equipment, a major oil company, a major feed company, an animal health company, a financial institution and a regional livestock marketing and mangement company. A variety of other types of business and services will also occupy the center, such as a service station, warehouse, grocery market, insurance agency, cafe and community center, along with the services of a veterinarian, agronomist and nutritionist. In addition, NFSI President Harry A. Steffen stated that "intense efforts will be made to effect relocation of government agricultural offices in the new installation." These would include Agricultural Stabilization and Conservation, Production Credit Association, county agent and soil conservation offices. Litton Industries will provide financing for the NFSI Agri-Business Center chain.)

Plans are underway to open a chain of huge, agri-business farm centers that could be a far greater threat to rural America than anything the big chains or the federal government have caused in the last 50 years. National Farm Stores, Inc., has announced that it is starting a nationwide chain of one-stop 40-acre, new mall-type-shopping Agri-Business shopping complexes to furnish all the needs of the farmer.

INTERNATIONAL POWER

Financial backing for the building of these 40-acre, agri-business, all-engulfing raids on rural America was announced by Litton Industries, now involved in an antitrust suit. Litton is so vast an operation that its officials informed the White House and our State Department and embassies that interference of the Federal Trade Commission in its acquisition of a German typewriter company "may provoke German government action and revive old animosities against the United States dollar imperialism."

But let us look at Litton Industries before we say anything more about corporations becoming so giant that when a federal agency attempts to cut back on their giantism, they notify U.S. embassies and warn of possible disruption between friendly governments.

Litton is a conglomerate—one of the fastest built in the U.S.—with revenues of over $2 billion in 1968, assets of $1,200,000,000, and profits before taxes of over $100 million. Before swallowing the German typewriter firm, it bought Royal Typewriter Co. (Royal McBee) which, with its German holdings, the FTC says, constitute too much typewriter control. The German company had a string of subsidiaries, of course, which went with the typewriter merger.

14TH LARGEST DEFENSE CONTRACTOR

Litton is the 14th largest defense contractor in the U.S., so how many boys have died to give is acquisition money? It owns or controls Data Register of Sweden, Streator International, Western Geographical and subsidiaries, American Book Co. and subsidiaries, Litton Tool, The Rust Corp., Arrow Service, Cole Steel, Eureka Corp., Pittsburgh Paper, Hewitt-Robbins, Engalis Shipbuild-

*Ed Wimmer is vice president of the National Federation of Independent Business. He has been crusading for free, competitive business enterprise for over 30 years. This article is adapted from a radio broadcast. [Biographical note from original source.—Ed.]

ing, Allen-Hollander, Dennis Supply Co. Stores, Bionetrics Laboratories, Kimball Systems, Leopold Corp., Stouffer's Foods, Wilson Marine Transit, Monroe International Corp., Monroe Calculating of Holland, Profex Ray Co., Litton Precision, Litton Systems, Litton Systems of Canada, McCray Corp., Jefferson Electric, Landis Tool, and frankly, I don't know what else!

Now tell me if you believe that even a fairly large chain store operation could compete against 40-acre, Litton-financed Agri-Business Farm Centers, and what will happen to rural towns all around these centers if they are the success they must be to continue expanding, as they say, "all over the United States"?

A big oil company is mentioned as a supplier of fertilizers, petroleum products, farm chemicals, service station and propane gas needs. It is said to be the same oil company that is opening grocery stores in Detroit. Litton Services Group will arrange all interim construction, and arrange whatever permanent financing is needed.

KILL OPPORTUNITY

So I ask you again, what chance would *your* boy have of ever starting a small business of his own against such an octopus of corporate power? Where will the small town business and bank be five or ten years from now; and because the corporate farms have been advancing in all agricultural centers, and because they buy so much of their needs direct from the biggest suppliers, killing off the independent farm equipment and other suppliers, what happens eventually to Litton's Agri-Business, 40-acre farm centers? What happens to America?

When the Federal Trade Commission stepped in on Litton's typewriter deal, it was knocking off a little fringe benefit of Litton—one it would hardly miss; a mere midget of a corporation with only $51 million in assets. Where FTC has been weak is in our antitrust laws that allowed such combining as Litton has done, and in the failure of Congress to strengthen those laws and provide the money to enforce them.

SOCIALISM THROUGH MONOPOLY

Litton talks about "German government retaliation," but not even our own federal officials mention that before he died, Konrad Adenauer said the biggest threat of a return to Nazism was the return to monopoly capitalism building up in Germany. Kurt Foreburg, prominent Berlin banker, said the German economy was well on the way to "collectivism and monopolicapitalismus," and Dr. Folkert Wilkin wrote:

"The continued flow of tribute to industrial conquerors is no device of progress, but a work of frustration and ultimate destruction."

Serge Dahlin, Soviet economist, put the consolidators in the same light when he said the "free enterprise economies of Western major nations are transforming themselves into socialism through the monopoly process." His rather frightening conclusion was:

"It is collectivization of capitalistic property—a negation of private enterprise within the domains of capitalism itself."

NEED LOTS OF "SOMEBODIES"

Consider, however, the views of Dr. Howard Perlmutter, with MIT for 10 years and now with Wharton College. Dr. Perlmutter sees superinternational giants taking over; General Motors jumping from $20 billion to $160 billion in sales. He sees super-international unions wanting to share in the prosperity of the super-international corporate giants, so he says their leaders will go along. His final conclusion (which we have seen all along):

"The only obstacle: the sovereign state which will ultimately demand outright nationalization."

We either have to believe in a society that makes millions of somebodies out of nobodies, or a society that makes millions of nobodies out of potential somebodies. We can believe in a society that concentrates on the development of the individual, best seen in the family farm and independent enterprise of all kinds. Or we can permit the submergence of the individual in a coterie of huge corporate farms, 40-acre (or more) agribusiness monopolizers like Litton's National Farm Stores, big unions, huge banking combines, and unlimited, omnipotent federal government.

Young people of America should be given every possible opportunity to strike out on their own, run their farms and businesses, and become important in the profession, in government, in community affairs. Jefferson and Madison were

right when they warned future generations always to be against all forms of undue power. The efforts of the Justice Department, Federal Trade Commission, Congress, and trade organizations that are trying to open up a free and fair market deserve our support.

Willis J. Ballinger, a former economic advisor to the Federal Trade Commission, told a Senatorial investigating committee in the 1930's that the multiplication of stores and banks under a single control is "the executioner of man's ambitions, and what is a more perfect crime that to strike down the would-be proprietor on the doorstep of his dreams, and go unpunished."

AFFECTS EVERYONE

Litton Industries, like so many being questioned today, would go on swallowing company after company until it became one of the super giants seen by Dr. Perlmutter. In the case of the 40-acre Agri-Business Farm Centers, what will be the toll of individual enterprises, the drain of capital from the towns, the ruin brought to chambers of commerce, civic clubs, and churches, because too few people do not understand that upon the destiny of goods and services rests the destiny of the nation?

Each and every one of us is tied in one way or another to what the Littons and their kind do to that structure.

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2. *Broadcast, "Federal Help or Self-Help?"*

[Text from Radio Station WPFB, Middletown, Ohio]

FEDERAL HELP OR SELFHELP?—PRESIDENT NIXON, POPE LEO XIII, MITCHELL

(Weekly Radio Commentary by Ed Wimmer, Forward America Broadcast No. 96, Series 69, WPFB, Middletown, Ohio, Weds., Aug. 20, 1969, 6:15 p.m.)

Before we get into tonight's main course, I would like to ask you a few questions which I hope will divert your attention away from whatever you may be doing.

1. Are you one of those people who believes that a country can continue to tax and spend and spend and tax in an expanding effort to support the artificial prosperity of a Welfare-Warfare State, and do you believe that if our present tendency to build bigger chain store systems, bigger unions, bigger farms, bigger banking corporations, and bigger government, also continues, that your children will inherit anything that even resembles free enterprise and constitutional government?

2. Have you half-made up your mind that individualistic capitalism won't work in our modern society? That the kind of middle class democracy we built around respected professional people and independent enterprisers (in all fields), and people willing to put in a day's work for a day's pay—with young people beginning small enterprises up and down the Main Streets of America—is no longer the American dream?

3. What are your convictions with regard to the propaganda that those who work and do business have an obligation to keep every man and his family on some kind of permanent relief, helping to pay his rent or build him a house, or should we have a job-making program, and say "here is your job; it may not be what you want, but it is a job, and whether you better yourself or not, is up to you. Your care is now your own responsibility, not that of your neighbor?"

4. How much basis is there to the charge of top educators, men in public office, commentators, publishers, business leaders, et cetera, who insist that "capitalism will die in the house of its friends from lack of support"? From competitive abuses? From monopolistic practices and political graft?

5. My final question: Are you, whatever your position in life, concerned enough about the monopoly problem, about urban renewal problems, civil rights, inflation, unfair foreign and domestic competition, the crime in our towns and cities, the wholesale murders in our Capital city—a rape a day, where government is made and taxes are passed; the 25 teen-age killings in Philadelphia this year—where the Liberty Bell hangs. . . . Are you, I repeat, are you concerned enough to put up your cash and give some of your time to keep this country from going the way of Rome, of Germany before Hitler, or Britain today?

These are my questions. Now listen to what Pope Leo XIII wrote in one of his Encyclicals before the turn of the century:

> "Let men try as they will. No strength and no artifice will ever succeed in banishing from human life the ills and troubles which beset it. If any there are who pretend—who hold out to hard pressed people freedom from pain and trouble, undisturbed repose and constant enjoyment—they cheat the people and impose upon them, and their lying promises will only grow worse than before. There is nothing so sad as to look at the world as it really is—and then look elsewhere for a remedy to its troubles."

The Pope was not advocating, however, that efforts be lessened in fighting poverty, ignorance, slums, graft, crime, child neglect, or other abuses. What he was driving at and what we have been driving at in all of these broadcasts, is that help that doesn't end in self-help, and create desires for betterment in this life, is not help at all, and it is why I have continued to argue that when people in our society keep hammering away on the theme of helping people without hammering away at the same time on self-help, we are doing an injustice to that person aided, and to society itself.

A young man who is given an OEO training, for example, ought to sign a contract that he will, over whatever length of time is necessary, pay for that training when he begins to capitalize on his learning; so his earnings may be used to train others.

What is more harmful to human character than something which is constantly held up as being free—to which no future obligation is attached?

President Nixon should have kept saying what he did in one of his speeches:

> "The ghettos of our cities will be remade when the people in them have the will, the power, the resources and the skill to remake them. They will not be remade by government billions. . . . The human and social conditions of the spirit are in large part dependent upon our laying the foundation for an economic structure that can support a rebirth of pride, individualism and independence."

The question ought to be, how do you create a foundation for "individualism" and "independence" with all the trends in agriculture, industry, labor, finance and government leading to the destruction of both?

In a recent broadcast I mentioned that the huge Litton Industries is financing a vast chain of National Farm Stores, predicated on the idea of literally swamping the rural towns of America with 40-acre complexes, tied in with Gulf Oil and other huge combines, and so located as to cover what they say in their own words "the entire agricultural economy." An official of National Farm Stores says there will be only 500,000 big farms in a few more years, and he further said:

> "We feel that once the National Farm Stores centers are established, they will take care of all the needs of these farmers."

Litton Industries, a huge conglomerate, has absorbed company after company, and conglomerates like Litton's were called by American FINANCE Magazine: "Wolves of Wall Street"—"Raiders"—"Take-over Titans"—and a leading columnist and commentator called them "Hogs". We have been joined by the National Farmers Organization, National Independent Bankers' Association, the Oregon Independent Retail Grocer's Association, and the National Association of retail Druggists, in an all-out battle to stop the liquidation of the family farm, and the further spread of the conglomerates, combines and huge chains, and if we are successful, independent, individual capitalism in the United States is doomed.

There are those who say:

> "The public is too dumb to be educated. Our kids are a bunch of long-haired bums. The members of Congress a gang of graft-takers. The giants are too big to fight. I have no time. We have spent our budget for this year. I would be willing, but my partner said no. I'm too busy now, you'll have to come back next year. I have a golf game this afternoon. I can't see you now. Et cetera. Et cetera."

But this has not stopped Forward America, Inc. and the National Federation of Independent Business, Inc., or the other organiaztions working with us, because we have learned tht it is the minority who carry all the battles for freedom; that if they can be found in time, they will come through in time. We have auto dealers, druggists, meat packers, dairy plants, brewers, funeral directors, all types of retailers, great national concens, bankers, doctors—people in all

walks of life who have supported Forward America since 1932, winning one battle after another, and the Federation since 1943, with a membership now of over a quarter-million, in NFIB.

For those who would say that one more person added to our membership wouldn't mean too much, maybe I could relate that Dr. Harry Fagedes, a Cincinnati optometrist, came into our Covington office to discuss his concern over mergers taking place in his professional field. We prepared a release on the subject, and mailed it to all members of the Ohio Optometrical Association about to meet in convention.

This lone young man gathered a few friends together, aroused their enthusiasm, and for the first time an assembly of professional people in the field of optometry adopted a resolution calling for an end to mergers and consolidations; for support of the independent wholesale laboratories that faithfully aided in the development of the optometric profession.

A leading wholesaler sent out an open letter following this resolution, in which he said:

> "It would have been a lot easier and more profitable for me to sell our quality service business to a single big company, and stop competing with the undesirables and mass produced, inferior prescription work, but we have decided to stay independent because we believe there is a place for quality minded wholesale houses in our business. All rumors that we are selling out, are untrue. We do care enough to stay and fight. Do you? If not, we'd like to know."

Ladies and gentlemen, the spirit of independent enterprise is not dead when one young man can walk into an organization like our own, and in 90 days help to bring about the foregoing results.

When you hear that old dirge that you can't win, that people don't care, that independents won't fight, keep in mind that society still rests upon the spiritual more than the mechanical basis, and so long as there are men who know this, and who know that the temple of liberty and justice, in all things, rests upon their individual and collective actions, a way will be found to take that action.

Who would have believed during the recent national elections that Mr. Nixon would appoint an Attorney General, William Mitchell, and an Assistant Attorney General, Antitrust Division, Richard McLaren, both of whom are now charged with being anti-bigness because they said (in the words of Mr. Mitchell):

> "We do not want our little sized and smaller cities to be merely branch store communities, nor do we want our average consumers to be second class economic citizens. A community's independent businesmen should have an opportunity to supply community needs, its lawyers should have the opportunity to act as counsel, its unions should have the opportunity of negotiating in their own community for their members, and its consumers should have the opportunity to exercise local economic options in their choice of competing goods and services."

Under no other system but widespread, independent ownership of farm, home and business enterprise, wherever practical and possible, with local control over local affairs in government will such a way of life continue to exist.

This is why the National Federation of Independent Business, Inc. and Forward America, Inc. are fighting to save independent business. "The More the Enterprisers the Freer the Nation," is our slogan, and in the promotion of this idea it is hoped that more people will patronize independent business, helping in this way to build a better tomorrow.

When people patronize independent stores, for example, the profits on their transactions are ploughed back into the community in which they live. The merchant, as a rule, owns his home or is paying for one. He deposits his money in the local bank. Sends his children to the school and church of his choice, and for this reason he is more interested in better playgrounds, better parks and other community developments.

O. ARTICLE BY EDWARD P. MORGAN, "THE AMERICAN DREAM—IS THE GNP THE HOLY GRAIL?

[From the Washington Post, July 5, 1969]

THE AMERICAN DREAM—IS THE GNP THE HOLY GRAIL?

(By Edward P. Morgan)

STANFORD, Calif.—"By being successful, we have failed." That is the paradoxical epitaph the militant young might well carve on the tombstone of an American society which they hope, by further rebellion, to bury.

This may not happen, of course, but it is certainly not a gag. Indeed unless the Establishment shows far more flexibility of mind and commitment to change in the face of growing domestic crisis, the reports of the coming demise of the system, to garble Mark Twain, won't be exaggerated.

These were some of the major points piercing the consciousness of 50-odd working newsmen—editors, reporters, broadcasters—at a remarkable week-long conference on "The Second American Revolution," sopnsored by Stanford University's professional journalism fellowships—a new and promising West Coast version of Harvard's Nieman fellowship program.

THE KEY to the epitaph is the word "success." Most citizens define it in terms of an annual gross national product approaching a trillion dollars, an economy supporting the highest standard of living in the history of civilization, etc. A growing militant minority of students don't see it that way. A provocative young Stanford economics professor, John G. Gurley, translated their views as follows:

Capitalism has sanctified its commitment to raise the GNP as if it were a quest for the Holy Grail but in fact this process dehumanizes people by focusing on *things*, not on the full (including the spiritual) quality of life. It treats man as an "input," a means of production, rather than as an end in himself. It insists on specialization to increase efficiency (in order to raise the GNP). But in fact it thereby fails to distribute the fruits of the system equitably and the result is the unnecessary and degrading contradiction of incredible affluence and continued poverty, including its by-products of hunger, ignorance and helplessness.

The profit motive, Prof. Gurley suggested, may contain the seeds of its own destruction. Planted on the premise of "building on the best," it is often the most efficient in pure production terms, he conceded, but it thereby promotes the most dangerously uneven kind of development.

For example, a banker extends loans to the safest risks—the individuals and industries already sucessful or at least most promising. Education devotes its best efforts to superior students. Business hires the most capable workers. Museums and cultural centers are usually if not invariably located not in the wastelands of the slums desperately needing their nourishment but in the more prosperous parts of town.

But what is the matter with this formula? All our lives we have been taught this was the way to fulfillment of the American Dream. The matter is that we have thus neglected those minority segments—both ethnic and economic minorities—of our society which most urgently require education and opportunity. It is exciting to ponder what would happen if we struck a new balance of values and deliberately sought out the poor, the oppressed, the handicapped, and lent them the sociological aids and training tools by which more of them could dig their way out of frustration and failure.

Admittedly, this would be a risk investment but the payoff would be a healthier stabler society. Embittered, however, by what they see as our unjust and unjustified involvement in the savage conflict in Vietnam, many student rebel leaders refuse to believe that the smugly affluent American society of 1969 is capable or willing to change its habits or reorient its values sufficiently to reach such a goal. A lot of college professors share this disbelief and that's why many support the student revolt.

One of them is a brilliant, soft-voiced, gentle-mannered, warmly human, self-described "anarchist" named William Stanton whom acting President Hayakawa has denied tenure as a professor of economics at tormented San Francisco State College, allegedly for his radical views and encouragement to campus militants.

To the Stanford conference, Stanton expeessed an eloquent mixture of rage and grief over the repression of black extremists, the brutalities in Vietnam and the cruel stupidities implicit in society's average reaction against the rebellion of the (largely white, middle-class) college generation.

"What's America to these kids?" he asked. "It's a place where, if you can't buy it, you club it or gas it."

Such a reaction may be over-emotional, over-simplified and extreme. But it would be a dangerous mistake for the power structure on any level of American society to ignore it. It is a minority view but it is strong and it is spreading. History shows that you don't need to wait for majority consent to press a revolution.

One monstrous irony of all this is that the peak of the Establishment's pyramid is so far removed from the base it cannot accurately measure the crumbling at the base because it does not descend to see it or hear it "like it is." Aides, Prof. Stanton said, make sure that corporation executives (and U.S. Presidents) always experience things second-hand.

The irony's cutting edge extends to the press itself. "What am I supposed to do?" one Stanford conference participant asked. "I'm impressed by what I've heard. My views have been stretched. It's my publisher who needs convincing."

Conference director Herbert Brucker, distinguished former editor of the Hartford (Conn.) *Courant*, said despite his efforts to attract top leaders of the news media, only one publisher (and no broadcast executives) came.

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P. ARTICLE BY NEIL H. JACOBY, "THE CONGLOMERATE CORPORATION"

[From the Center Magazine, July 1969]

THE CONGLOMERATE CORPORATION

By Neil H. Jacoby*

(*Acknowledgments:* In preparing this essay I had the advantage of reading in manuscript the valuable paper of my colleague Professor J. F. Weston of the University of California, Los Angeles, entitled "The Nature and Significance of the Conglomerate." I thank colleagues at the Center for the Study of Democratic Institutions for drawing attention to gaps and flaws in the initial draft. I also thank Professors Armen Alchian and Maurice Goudswaard of U.C.L.A., and Dr. Willard F. Mueller, Director of the Bureau of Economics of the Federal Trade Commission, for helpful comments. Of course, none of these friends necessarily agrees with the analysis or conclusions.—*N.J.*)

This decade has witnessed the third great wave of corporate mergers in the American economy during the present century. Its dominant feature has been the burgeoning of the conglomerate corporation. During 1968 more than forty-four hundred companies disappeared by mergers (including combinations and acquisitions) involving an estimated forty-three billion dollars' worth of securities—an all-time record. In this tidal wave of mergers, which may now have crested and begun to recede, conglomerate firms accounted for a substantial or a preponderant fraction of all firms and assets involved, depending upon the definition of "conglomerate."

Why did a third merger wave peak in the nineteen-sixties and emphasize conglomeration? Is the conglomerate a stable and efficient form of business, the heir apparent to American corporate power? Or is it a financial fad, a source of monopoly, a threat to small business? Does it pose any new problems of public regulation? Is it monster or model of the future?

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*A biographical note on Professor Jacoby appears at page 502, in part 1 of this record, with his testimony before the subcommittee.—Ed.

I

THE CONGLOMERATE DEFINED

"Conglomerate" is used herein to mean a business corporation producing products or services of several industries that are unrelated with respect to raw material sources, product development, production technology, or marketing channels. A "conglomerate merger" brings together two or more such enterprises engaged in unreleated lines of business. It is a particular mode of enterprise growth in which the firm penetrates industries outside its current operations.

Many managers of diversified firms avoid use of the word, believing that it denotes lack of any inner logic and has a pejorative ring. They prefer to describe their companies as "multi-market" or "multi-industry" firms. However, "conglomerate" has gained too wide a currency to be discarded, and it is a special kind of multi-industry firm.

Modes of enterprise expansion may be classified as follows:

(1) Vertical:
  (a) Backward (toward raw material sources)
  (b) Forward (toward consumers of final products).
(2) Horizontal (market extension within the same industry).
(3) Product extension (into additional industries):
  (a) Producing related products (concentric).
  (b) Producing unrelated products (conglomerate).

Merger is a minor method of growth of American business corporations, the predominant source being internally generated funds. Up to recent years most mergers have been of the vertical or horizontal types, in which the surviving firms acquired other firms within the same industries or industrial groups. During the nineteen-sixties however, most large mergers involved firms operating in different industries. Some encompassed firms producing products that were *related* with respect to sources of raw materials, production technology, or marketing channels. These have been aptly termed "concentric" companies. Others involved *unrelated* enterprises—the true conglomerates.

Product relationships are, of course, a matter of degree, and opinions may differ on whether those within a diversified company are significant. Spokesmen for multi-industry firms often offer tenuous theories of centrality to avoid the brand of conglomerate. Are such traditional giants as General Motors (diesel locomotives, refrigerators, and air-conditioners as well as motor vehicles) and General Electric (jet engines and metallurgical chemicals as well as hundreds of electrical products) conglomerates or concentrics? Should Transamerica be classed as a concentric because its avowed field is "services"? Norton Simon, Inc., because it "serves the needs of the individual as a consumer, homemaker, and person"? Bendix because it is committed to "growth through technology"? Or Occidental Petroleum Corporation, which describes itself as a "producer and processor of natural resources"? Occidental, for example, rejects the conglomerate label because common technologies are used in exploring for and producing oil, natural gas, coal, sulphur, and phosphates, and all of these raw materials enter into fuels, fertilizers, industrial chemicals, and plastics, its major products.

On the other hand, there are many huge corporations whose activities are so disparate that their managements do not even attempt to formulate a theory of centrality. Among them are Litton Industries, which makes office equipment, builds ships, operates restaurants, sells packaged foods, and operates national development plans, among many other activities. Ling-Timco-Vought, International Telephone and Telegraph Company, Gulf and Western Industries, and Tenneco, Inc., are other conglomerates whose manifold products clearly lack common raw materials, production technology, or marketing channels. Even the names of some conglomerates imply an all-encompassing generality, such as National Environment, Commonwealth United, or National General.

Although concentric companies are sometimes grouped with conglomerates, it is preferable to adopt a strict definition, which focuses attention upon the managerial and financial economies that distinguish the true conglomerate corporation. The conglomerate has managerial and financial control over products so diverse that negligible economies of scale can be realized in performing the functions of product-development, purchasing, production, or marketing. Thus it differs from multi-plant, multi-product, or multi-industry firms that do achieve these economies. It differs, on the other hand, from the investment company, which does acquire ownership interests in firms producing unrelated products but does *not* have management and financial responsibility for them.

II

LESSONS FROM THE PAST

We may more confidently assess the meaning of the current wave of conglomerations, predict its duration, and forecast the economic effects and public regulations it may produce by examining the course of past merger activity in the United States. Economic historians generally agree that the American economy has experienced three major business merger episodes since the eighteen-nineties.

The first wave, in which activity rose markedly above its long-term trend during the five-year period of 1897 to 1902, peaked in 1899. In the peak year approximately twelve hundred mining and manufacturing corporations with total capitalizations of $2.3 billions (about ten billion in 1968 dollars) were involved. The major thrust of this wave was the joining of local and regional railroads into national systems and of one-plant manufacturing companies into national multi-plant entities. U.S. Steel Corporation, U.S. Rubber Company, and American Can Company were born in this epoch.

The second episode, marked by a high level of activity during 1924–30, reached its peak in 1929. In that year some 1,250 mergers were reported, apparently involving securities of much larger total value than in 1899. Vertical and horizontal combinations of manufacturing, public utilities, and merchandising companies were prominent in this wave.

The third period of hyperactivity began about 1965, when the graph of annual mergers broke sharply upward from its long-term trend line. Mergers continued to rise through 1968 when some twenty-five hundred mining and manufacturing companies were acquired with around twenty billion dollars' worth of securities. The most prominent actors in this wave were the conglomerates.

The long-term curve of merger activity displays much kurtosis. A four- or five-year buildup to a peak year of activity has been followed by a year or two of swift decline. In view of the anti-inflationary policies of the Nixon Administration and consequent leveling of stock prices, this pattern suggests that 1968 may turn out to mark the high point of the current wave, and that merger activity will subside during the next year or two to a "normal" level. If so, thirty-nine years would separate the second and third peaks, while thirty years separated the first and second peaks. Over the past seventy-five years, merger activity has risen at a rate of under four per cent a year. Because this has been little more than the rate of growth of real G.N.P., merger activity does not appear to have become relatively more important over the long term.

Although measures of merger activity are incomplete and one may not generalize upon a basis of two or three waves, the evidence supports a conjecture that the hectic merger activity of 1968 will not be matched again for a number of years. The economy is probably not moving up an accelerating secular trend of business concentration through merger, and conglomeration should not be viewed in apocalyptic terms. The forty-four hundred business corporations that disappeared by merger during 1968 were a small number compared with the twelve thousand that disappeared by failure, or the two hundred and seven thousand new corporations formed. Even the forty-three billion dollars in securities exchanged in mergers that year was less than four per cent of the market value of corporate securities.

III

MERGER EPISODES: AN HYPOTHESIS

Why has American merger activity taken the historical form of a strong wave at long time intervals? We know that merger peaks have not corresponded closely with peaks in production, commodity prices, or over-all business activity. Of all economic indicators, merger activity has been most closely related to movements in industrial stock prices. A blooming stock market has been present at the crest of all merger waves. Yet a high level of mergers has not accompanied all stock market peaks.

In the extensive literature on mergers, three theories have been advanced to explain their motivation and economic effects. Many observers have seen in business combinations only the elimination of competitors, so that surviving firms can reap monopoly profits. Others have stressed the dominance of promoters and bankers, who engineered mergers in order to sell securities to the public at inflated prices. Still others have viewed mergers as a natural response of busi-

nessmen to new opportunities to reduce costs and expand sales and profits in a competitive environment. We may call these the "monopoly," the "stock promotion," and the "efficiency" theories.

None, taken by itself, provides a satisfactory explanation of the long periods of time that have separated peaks of merger activity. There is no reason why the quest of businessmen for monopoly power should mount to a climax every thirty or forty years. Stock market cycles have been much shorter than a decade in their duration. Population growth and technological changes, which father business opportunities, take place more or less continuously.

The conjecture is made that *long-term merger waves in the United States are explained by the infrequent conjuncture of two preconditions:* (1) an accumulation of perceived and unexploited profitmaking opportunities for enlarging the scale of enterprises, arising from basic technological and social changes, and (2) a buoyant capital market with strong demands for new securities.

This Conjuncture Hypothesis, which is put forth as an interesting conjecture and not as a scientific theory, combines elements of the "efficiency" and "stock promotion" theories. It asserts that, before merger hyperactivity can occur, there must be present both an unusually large number of opportunities for enlarging profits by combining independent firms, and strong public demand for the new securities created in the merger process. Because these two preconditions do not often coincide in time, merger hyperactivity is much less frequent than stock market peaks.

The Conjuncture Hypothesis reasons that the predominant motives for mergers are the drive of businessmen to realize larger profits by capitalizing upon newly perceived economies of scale. and the ability of bankers to sell new securities to the public on profitable terms. It rejects the notion that monopoly power has been an important motive for corporate mergers during the past half century. The quest for monopoly power apparently did play a role in the first merger wave that peaked in 1899, because antimonopoly laws were then not vigorously enforced. Since World War II, however, the Sherman Act, the Federal Trade Commission Act, and state anti-monopoly laws have generally forbidden combinations that threatened to create undue market power. The Conjuncture Hypothesis does not, of course, imply that substantial advantages of larger scale are necessarily present in all mergers. History demonstrates that in the hyperenthusiasm of a stock market boom many mergers are launched that later founder on the rocks of reality.

Why does a combination of a large number of perceived opportunities for profits from enlarging firms and buoyant capital markets occur infrequently? The idea that change is the only constant in modern society is by now a cliché. Less well understood is the distinction between tactical (small, superficial) and strategic (salient, structural) changes. Most tactical changes cancel or offset each other through time. A few cumulate into strategic shifts in the structure of technology and society. Not only do strategic changes take many years to accomplish but there is a time-lag between their occurrence and their general perception by people. Many strategic changes create opportunities for profit by enlarging enterprises. In the pervasive optimism of a stock market boom, once-overlooked opportunities, or known opportunities previously not financeable, are acted upon. Given the rapidity of communication in financial markets, such perceptions multiply and build up to a climax. Wall Street goes through a phase of "merger madness."

Later, the pool of profit-making opportunities for business combinations is drained. Concurrently, financial expectations deteriorate. Merger activity falls off as quickly as it previously mounted. Many years pass before structural changes in technology and society create a new pool of perceived chances for gains from enlarging the scale of corporate operations. When a new reservoir of opporunities has been filled, and this knowledge permeates the business and financial communities, the conjuncture of a boom in equity security prices will trigger another merger wave.

Let us consider merger waves of the past. Certain structural changes set the stage for the first peak in 1899. One was the creation of a national railway network during the eighteen-eighties by the connection of hundreds of local and regional lines and the building of tens of thousands of miles of new lines. The same era witnessed the completion of national telegraphic and telephone communications. These facilities enormously reduced the cost and increased the speed of transportation and communication. National markets became a reality. By 1895 opportunities for profit by combining firms into larger units and reap-

ing the benefits of lower costs through economies of scale in production had grown immensely. Meanwhile, the nation had developed a national capital market. By 1895 rising security prices had met the other necessary condition, and the first merger wave rolled on. That stock promotion gains may have played a significant role in this merger wave is suggested by the fact that a large number of the combinations made in that era subsequently failed.

The structural changes that undergirded the second merger peak in the nineteen-twenties also took place in transportation and communication. With the development of reliable mass-produced motor vehicles and the completion of a national network of all-weather roads, the U.S. economy was motorized after World War II. Autos and trucks gave people and goods unparalleled mobility, enlarging markets, destroying local monopolies, and creating new economies of scale. Concurrently the home radio receiver made national advertising cheap and effective, built the value of national brand names, and enhanced the advantages of national marketing. Single-unit distribution was doomed. By the mid-twenties, businessmen generally perceived the astonishing opportunities for larger firms opened up by these changes. The booming stock market of 1921–29 satisfied the other precondition, and the second great merger episode was under way. Its economic rationale focused upon economies of scale in marketing, although it also exploited production economies.

IV

STRUCTURAL FOUNDATIONS OF THE CONGLOMERATE MERGER WAVE OF THE NINETEEN-SIXTIES

The Conjuncture Hypothesis is consistent with the main facts about the great merger wave still under way. Structural changes in the United States since World War II had by the early nineteen-sixties created a pool of perceived opportunities for profits by enlarging the scale and diversifying corporate operations. The buoyant capital market that emerged in the last half of the decade triggered the merger boom that began about 1965 by making it easy to sell new securities to the public. Most fundamental and powerful of the underlying structural changes was a revolution in management science. Other contributory factors were the postwar research-and-development explosion, the rise of the service economy, a quantum increase in taxation, and a doubling of the price of capital.

1. Management science and computers

Radical changes occurred in the science of enterprise management after World War II. These changes had their roots in the wartime efforts of mathematicians to solve complex logistical and military problems by "operations research." Concepts and methods were then developed that were later found to be equally powerful in dealing with the management problems of a civilian economy. Intuitive judgment has been progressively superseded by rational decision-making processes. Such problems as evaluation of investment projects, choice of financing plans, locating facilities, scheduling production and controlling inventories are now solved by mathematical and statistical methods.

The concurrent phenomenal development of electronic computers has promoted and facilitated the expansion of management science. The computer not only does routine accounting with fantastic speed but peforms the great volume of calculations involved in solving management problems. In 1950 only a few computers were operating in businesses; at the end of 1968 there were more than twenty thousand.

This fundamental development has created opportunities for profits through mergers that remove assets from the inefficient control of old-fashioned managers and place them under men schooled in the new management science. Managers are able to control effectively a larger set of activities. Being of general applicability to business operations, management science makes possible reductions in financial and managerial costs and risks through acquisitions of firms in *diverse* industries. These gains differ markedly from the familiar economies of scale in production, purchasing, or marketing that normally accrue from mergers of firms with *related* products. Thus the new management science is the primary force behind conglomeration.

2. Research and development explosion

In the postwar era outlays on scientific research and development have grown nearly fourteen per cent a year, from $1.5 billions in 1946 to nearly twenty-four billion dollars in 1968. This dramatic increase in the national commitment to applied science and technology is a seminal factor in the evolution of the U.S. economy. By the nineteen-sixties it had created whole new industries—lasers, cryogenics, oceanography, electroöptics, xerography, and so on. It had generated thousands of new products in established industries—plastics, synthetic fibers, aircraft electronic equipment, among others. Most important, it had evolved a proven method for deliberately creating commercially needed products through research.

Research and development is now and established function of corporate business. Its economics call for organizations of considerable scale and specialization, which, in turn, require large sales volumes to keep down costs per unit. Also, research produces unexpected finding, and leads enterprises into diverse industries and product-lines. These are powerful motives behind mergers of the conglomerate type.

3. Rise of the service economy

During the past quarter of a century, the United States has been transformed from a "commodity" to a "service" economy. Most working Americans now produce services rather than tangible commodities. White-collar jobs outnumber blue-collar jobs. As real incomes have risen, and leisure time has expanded, a larger part of income is spent on personal and professional services, transportation, education, and recreation; a smaller part on food, clothing, and shelter. Established service industries like insurance, banking, consumer finance, medical care, air transport, television, motion picture, and education have enormously enlarged their dimensions. Whole new service industries have come Data generation and processing aspects of service industries—which by definition serve masses of people—are especially large. Service industries have generally been in the forefront in computerizing their operations and using advanced management controls. It is no accident, therefore, that some of the largest conglomerates have specialized in services, including Transamerica, International Telephone and Telegraph, and National General.

4. Quantum leap in taxation

A fourth factor underlying the current merger wave is the steep rise in the load of corporate-income taxation since World War II. In 1940 the effective federal corporate income-tax rate was twenty-seven percent; in 1968 is was fifty-three percent, including the ten percent surtax. Rates of state and local taxes on business incomes have risen commensurately.

The manifold impacts of heavy income taxation on corporate policies can scarcely be exaggerated. They are a prime mover behind mergers. International oil and minerals companies with unused foreign tax-credits acquire companies whose incomes can be "sheltered" by those credits. American petroleum producers with large drilling expenses acquire high-profit firms for the same reason. Companies with profits merge with those having losses carried over from previous years that can be used to offset the profits. Many railroads found that diversification enabled them to use their past losses to reduce the tax liabilities of the companies they acquired. A central motive behind Container Corporation's union with Montgomery Ward to form Marcor was to defer payment for several years of more than sixty million dollars a year of federal income taxes by taking fuller advantage of Ward's ability to defer taxes on profits arising from installment credit sales.

Equity securities of companies acquired in a merger are often replaced by convertible debentures of the surviving company, resulting in the replacement of taxable income paid out as dividends by tax-deductible interest. Also, debenture holders have been able to defer income taxes on their profits until the debentures are paid off. Tax avoidance is a powerful private motive for merger that puts a premium on conglomeration vis-a-vis vertical or horizontal combinations.

5. Doubled Price of Capital

Since World War II the price of capital—the going rate of return to investors—has more than doubled. Medium-grade industrial bonds that yielded 3.3 per cent in 1945 returned 7.2 per cent in late 1968. Home mortgage loan rates

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went from four per cent to eight per cent in the same span of time. The dominant cause of the doubled price of capital can be expressed as a vast expansion of demand for investment funds in relation to the available supply. Expanding American research and development activities, the reconstruction and moderization of European economies, and the demands of less developed countries have combined to open up unprecedented demands for investment funds. Demand has tended to outrun available supply. Europe felt the sharpest impact of this imbalance and long offered higher returns to investment than did the United States. During the mid-sixties the difference began to shrink by a marked rise in U.S. interest rates. Today, prices of capital are about equal in the world's major money-markets.

The higher price of capital has had many consequences. Corporations have tried to use their capital more efficiently. Cash management programs have proliferated. Investment projects have been screened more rigorously. The finance officer has moved to the top of the corporate hierarchy. Aggressive managements have looked for merger partners laden with cash or liquifiable assets. Banks, insurance, and finance companies have been especially sought after as acquisitions by industrial companies, because of their steady inflows of deposits, premiums, or loan repayments. Yet any company with liquifiable and low-earning assets has been a target. Thus, the pervasive quest for financial resources has been the motive behind many a conglomerate merger.

V

PRIVATE AND SOCIAL GAINS FROM CONGLOMERATION

An exploration of the principal structural changes in the U.S. economy that have fostered conglomerate mergers helps to identify the gains that may accrue from this kind of corporate diversification. A critical distinction should be drawn between social gains and private gains. Public policies should encourage, or at least permit, those mergers that have the potentiality of yielding net gains to society. It should not encourage those that result only in transfers of wealth or income among individuals.

The two principal kinds of private gain from mergers are promotional profits and reductions in tax liability. While these private gains may or may not be accompanied by social benefits, it is probable that both result from most conglomerate mergers.

Consider the extreme case of a merger whose sole purpose and effect is to generate profits for promoters and bankers, who take advantage of the optimism of the public during a stock market boom. The standard gambit is to have a "growth" company, whose stock is selling at a high multiple of its annual earnings, acquire another company whose stock is evaluated at a low multiple of earnings, in the expectation that after a pooling of interests the market will value the equity of the expanded survivor at the higher multiple. In the atmosphere of a boom this expectation is often realized. Earnings per share of the acquiring firm will increase as a result of the merger. The market will apply the high multiplier and bid up the price of the stock. This makes further acquisitions through exchange of stock attractive. They are the basis of a further expansion in reported earnings per share and further inflation of the market price of the stock.

The game can continue until the public recognizes that there is no growth in the operating earnings of the acquired companies. The price of the conglomerate's stock then plummets to a point where the price/earnings ratio is normal. At this much lower price, further acquisitions are unattractive and cease. Meanwhile, promoters will probably have unloaded their shares on less sophisticated investors, and bankers will have pocketed their commissions. By assumption the mergers produce no social benefits, so that all that happens is a transfer of capital values from one to another set of individuals. Such "stock promotion" mergers have tended to take the form of conglomeration in recent years, because court decisions have made other large mergers difficult.

Public policy can do little to prevent such mergers, beyond enforcing Securities and Exchange Commission regulations requiring full disclosure of all material facts. If speculators ignore the rule *caveat emptor*, they suffer the consequences. A good number of the mergers during past waves have subsequently failed, implying a want of real social gains. Of course, their promoters may have sincerely believed that real gains were possible, but their hopes were disappointed. Given

the dynamism and complexity of business life, predictions of social gains are inevitably hazardous, and there is no feasible means of distinguishing promoters with honest intentions from others. The public is best protected by education and full disclosure.

The second type of private gain from mergers is reduction of tax liability. If a company with carried-over losses is merged into a profitable company, reducing the taxes of the survivor, government may be obliged to impose heavier taxes upon other firms in order to restore the preëxisting level of revenues. There is a shift of tax burden from stockholders of the merged companies to those of the other firms. Society will be unaffected, excepting for a possible deterioration in the equity of the tax system.

Public policy can do little to inhibit mergers arranged solely to cut taxes, given the high tax rates. Opportunities for reducing taxes by merger could be curtailed by radical simplification of the structure of federal taxation of corporate income. This structure is now highly differentiated and shot through with special treatment of particular industries.

Several types of gains from mergers are, at least potentially, of value to society.

(a) *Reduction of the risk/reward ratio.* By definition, the conglomerate firm combines operations unrelated in respect to raw materials, technologies, or markets. The annual sales or profits of its different operations will be negatively correlated. In the aggregate they will produce a more stable return through time. For any given rate of return on investment, risk will be less; for any given risk, expected reward will be higher. The standard gain from portfolio diversification will be realized. This benefits society as well as the conglomerate's stockholders, because the reduction in the premium for risk is equivalent to a cut in the company's costs and, via market competition, in the prices of its products.

(b) *Lower capital costs and avoidance of "Gambler's Ruin."* Closely related to the gains of diversification are the advantages reaped by the conglomerate of lower capital costs and avoidance of "Gambler's Ruin." The conglomerate can raise funds on either a debt or equity basis at lower cost than could its constituents.

In addition, having a "long purse," it is in a position to finance temporary operating losses of a subsidiary that would bankrupt the latter if it were an independent firm. The conglomerate is in a position to "out-spend, out-dare, and out-wait" smaller and financially less secure firms in its effort to win a market. This is socially beneficial, provided that the conglomerate continues to face adequate competition in its several markets—a subject to which we shall return. Of course, this same argument can apply to any large corporation—whether conglomerate or not.

(c) *Economics of scale in performing general management functions.* Acquisitions can enable the conglomerate firm to apply over a wider sales base the talents of a skilled general management team. General management functions are involved, and include those of planning, organizing, staffing, budgeting, and controlling—generic functions in all kinds of enterprises. While organizational structures of conglomerates differ, the central corporate management commonly delegates wide authority to each divisional management, and holds the latter accountable for a "target" rate of return on the investment in its division. The central corporate officers enforce a planning and controlling discipline upon all divisional managers. They make the major decisions on capital allocation. Characteristically, they also provide a kind of "inside" management consulting service to the entire organization.

(d) *Acquisition of highly specialized management talent.* Closely related to the third factor is the possibility that the conglomerate, with its larger and more diverse activities, can utilize efficiently specialized experts in operations analysis, computer science, behavioral science, incentive systems, international business, and so on. The scale of operations of the smaller firms it acquires is often too small to justify their cost.

(e) *Transfer of assets to more efficient management.* A real social gain occurs when the assets of an enterprise are transferred via merger into the control of a superior management. Striking advances in management science, combined with great inequalities among firms in its application, have opened up extensive opportunities for gains from such transfers. Through more informed decisions and better information systems, resources can be deployed with greater efficiency, resulting in lower costs and product prices. While this kind of social

gain can flow from any kind of merger, it is most likely in conglomeration. The reason is that market competition generally compresses differences in the quality of management of firms in the same industry to a smaller dimension than is present among firms in different industries. Hence the frequency and size of such gains from conglomerate mergers is probably greater.

In what proportion of conglomerate mergers are social gains realized, and how large are those gains? Regrettably, these questions cannot be answered in the present state of knowledge. Answers would require intensive, elongated case studies of the costs, prices, profits, and managements of conglomerates and their constituents, before and after merger. Most conglomerate corporations have had too recent a life history to permit confident conclusions. Professor J. F. Weston analyzed the financial performance of fifty-eight multi-industry firms over the nine-year period 1958–66. As might be expected, their sales grew at an annual compound rate of 17.8 per cent a year, double that of all U.S. manufacturing firms. Earnings per share grew to ten per cent a year versus 6.7 per cent for all firms in the Standard and Poor's index. Stock prices at each year's high point rose 10.5 per cent a year, against 5.4 per cent for the Dow-Jones industrial average. In 1967 conglomerates earned 12.6 per cent on their net worth compared with 11.9 per cent for all manufacturing firms.

Prima facie, the conglomerates gave a superior performance. Yet, these figures do not prove that they managed assets more effectively than other corporations. Many of the firms in the Weston study were concentrics rather than true conglomerates. His study did not take into account the heavier leveraging of equity capital by conglomerate managements—a stratagem that is profitable during strong business expansion, but which can backfire under adversity. Also, conglomerate managers not infrequently introduced new accounting practices that inflated their earnings. Empirical proof of the frequency and size of gains from conglomeration thus remains to be produced.

VI

CONGLOMERATION, CONCENTRATION, AND COMPLETION

The most important issue of public policy raised by conglomeration is its effect upon the vigor of competition. Traditionally, business mergers have been identified with tendencies to monopoly. This is understandable, because most mergers in past years have been of the horizontal or vertical types. Many have increased industrial concentration—the percentage of the total sales or output of an industry accounted for by its leading four or eight firms. Economists generally agree that there is a positive but loose correlation between the level of concentration of an industry and the probability of noncompetitive or oligopolistic behavior by its leading firms. When the preponderance of all output of an industry is produced by three or four leading corporations, collusion among them is easier, or there may be a tacit mutual recognition that all can profit from higher than competitive prices. As the level of industrial concentration drops, the chances of noncompetitive behavior diminish and become negligible when the number of competing firms is more than twenty. Proposed mergers of important members of the same industry are therefore properly scrutinized by the anti-trust authorities for anti-competitive consequences, and are generally frowned upon. This is not to deny that there is vigorous competition in many highly concentrated industries (i.e. automobiles), and that mergers of several weak firms in such industries may sometimes create a strong enterprise able to offer sharper competition to its rivals than did its components.

A conglomerate merger involves a union of firms in different industries. It necessarily leaves the ratios of concentration of all industries unchanged. Conglomeration does replace two or more smaller firms with one larger enterprise, and thus may increase macro-economic concentration—the percentage of total industrial activity in the economy accounted for by the leading hundred or two hundred non-financial corporations. Indeed, conglomeration by large firms appears to have held industrial concentration in the economy about constant, while increasing macro-economic concentration since World War II.

Manifestly, it is *industrial* concentration that is directly related to the vigor of competition. Macroeconomic concentration need not be of concern as long as the number of giant diversified corporations is large enough to preclude overt or tacit collusion among them. Because it takes more than one hundred corporate

giants to account for even a half of all manufacturing assets in the nation, we are far from the possibility of non-competitive behavior because of inadequate numbers.

In general, conglomerate mergers are likely in invigorate competition. By strengthening the managerial and financial support available to each of its constituents, the conglomerate is able to make each a more energetic competitor in the industry in which it operates. Each entity can draw upon the conglomerate's pool of specialized managerial talent, utilize its management science, obtain financial assistance, and assume a more innovative and risk-taking posture than it could as an independent firm. Conglomeration can thus transform simple competition into multiple competition.

Beyond this, the conglomerate is more likely to possess the financial and other resources needed to enter additional industries, theretofore closed to its smaller constituents. Established firms in those industries will, as a result, tend to behave more competitively than before in pricing their products in the hope of deterring the potential competition of the conglomerate. It has been aptly said that the conglomerate "sits on the edge of any and all markets," ready to enter, and thus keeps the Establishment on its toes. Indeed, a German economist has interpreted the conglomerate merger as a self-correcting force in American capitalism, making it more competitive and denying the Marxian prophecy of increasing monopoly. Certainly, enhanced potential as well as actual competition can be an important social gain.

While conceding the probability that conglomeration energizes competition, many observers contend that large diversified corporations may engage in predatory or other kinds of conduct prejudicial to small firms. Several arguments are advanced.

It is said that the large conglomerate can engage in cut-throat or predatory pricing in one of its lines of business, subsidizing temporary losses from profits earned in other lines until its smaller competitor are driven from the field. In practice, instances of cross-subsidization are rare. Not only does it violate federal and state anti-monopoly laws but it flies in the face of accepted principles of management. In a multi-industry company it is not feasible to force the manager of one division or subsidiary to operate unprofitably when this requires abandonment of established targets and management incentive plans. Also, unless barriers to entry of new firms are very high, the subsidized division cannot reap monopoly profits once its competition has been eliminated, because its efforts to raise prices will attract new competitors and deny it an opportunity to recoup its losses.

Somewhat related to the "cross-subsidization" argument is the idea that the large financial resources of the conglomerate (its "deep pocket") enable it to engage in non-predatory but temporarily losing activities, such as expensive product development or large-scale advertising that smaller competitors are unable to finance, which ultimately give it the competitive edge in the market. While there may be truth to this contention, the advantage of the larger firm arises from superior resources and not from conglomeration. Unless one believes that public policy should protect smaller firms at any cost, one cannot object to product and market development activities which are in the consumers' interest, even though they are open only to enterprises with ample financial means.

Yet another standard objection to large firms, whether or not conglomerate in nature, is that they achieve such important advantages of scale that they raise the barriers to entry into an industry. Here again there is truth in the argument. Conglomeration as well as other modes of business diversification can enable the surviving firm to benefit from reductions in risks or costs through enlargement of operations. By increasing the stakes in the industrial game they make it harder for poor players to survive. If these economies are real, society benefits—provided that competition remains effective and obliges the conglomerate to pass the economies along to the public via lower prices or product improvements. Few will defend the perpetuation of inefficient small-scale firms at heavy cost to the public. What is important is that a sufficient number of firms remains in each industry to discipline each other.

The possibility that the conglomerate firm will cause its constituents to practice commercial reciprocity, to the disadvantage of its small competitors, is usually mentioned in assessing the effects of mergers upon competition. If intradivisional sales are made on competitive terms, there can be no complaint. Is it realistic, however, to expect the manager of one division of a conglomerate to do business

with another division on unfavorable terms, counting upon recouping the loss by selling the other division some of his own product at higher than competitive prices? The answer is negative because, as previously noted, it violates basic principles of management.

Business reciprocity can also be practiced in purchases and sales among different companies in such subtle ways as to escape detection by anti-trust authorities. However, there is not clear evidence that conglomerates are more culpable than other large firms. Corporate systems of incentive and control normally delegate to divisional managers the authority to buy and sell in the cheapest market.

Finally, there is concern that conglomeration may be a new route to dangerous aggregations of economic and political power in American society. A competitive democratic order manifestly requires an adequate dispersion of power. Citizens and lawmakers must remain vigilant to stop undue concentrations of all kinds. It has frequently been noted that over the sixteen-year period of 1947–63 the top two hundred corporations expanded their share of total value added in American manufacturing from thirty to forty-one per cent, and that by 1963 the hundred largest firms had a greater share than was held by the two hundred largest in 1947. There are, nevertheless, reasons for believing that macro-economic concentration is not at a dangerous level. Although reduced, the number of large manufacturing corporations remains so large as to preclude the possibility of oligopolistic behavior. Levels of industrial concentration have not risen, and they are the relevant criteria for judging competition, as the 1964 guidelines published by the Attorney General recognized.

American courts have consistently held that large size is not, per se, an offense against the anti-trust laws. If corporate giantism were anti-social the government should long ago have proceeded to break up the larger non-conglomerate giants. In a ranking of 130 members of the "billion dollar club" in descending order of their 1968 sales revenues, the five largest conglomerates were International Telephone and Telegraph, 14th; Ling-Temco-Vought, 30th; Tenneco, 45th; Litton, 48th; and Textron, 59th. If public policy required a dismantling of these large conglomerates, some fifty-four other giants should first be broken up. Only eight conglomerates ranked among the two hundred largest manufacturing corporations.

Conglomeration helps to keep down industrial concentration in manufacturing and mining, in the face of rising macro-economic concentration. For any assumed level of macro-economic concentration, a population of conglomerate firms will produce lower average industrial concentration than would a population of single-industry or concentric firms. This is shown by a simple hypothetical example: American manufacturing is classified by the Census Bureau upon a basis of product-line into 470 "industries," which are aggregated into twenty-one "major manufacturing groups." Let us arbitrarily—but not entirely unrealistically—assume that "industries" define competitive markets in the sale of products and that each "major manufacturing group" embraces "related" products as the word is used herein. Assume further that macro-economic concentration rises greatly to the point that *all* manufacturing activity is carried on by five hundred giant corporations. What kind of corporate structure will minimize industrial concentration and maximize the probability of effective competition at the industrial level? There are three major alternatives:

(a) *A single-industry structure*, under which there would be on the average about one firm in each of the 470 industries.

(b) *A concentric firm structure*, under which there would be on the average about twenty-four firms in each of the twenty-one major manufacturing groups and 470 industries.

(c) *A conglomerate firm structure*, under which all five hundred firms could conceivably compete in every one of the 470 industries.

Under the assumed high level of macro-economic concentration, a single-industry structure would result in widespread monopoly. Even a concentric firm structure might leave some industries highly concentrated. Only a conglomerate firm structure would provide high assurance of effective competition.

VII

OTHER POTENTIAL FACTS

Corporate conglomeration can have, at least potentially, important effects upon the role of internal financing of business, upon investment policies, upon the relationship of banking to industry, and upon the process of allocating investment among industries.

Conglomeration tends to increase the role of internal financing of business enterprises by reducing the firm's reliance for funds upon external sources. In an industrially diversified firm, some divisions may be expected to have expanding needs for cash, while other less dynamic divisions may be throwing off cash. The aggregate demand for external funds by the conglomerate will fluctuate less through time than will the demand of an equally large but more highly specialized firm. Other thinks being equal, conglomerates will have less recourse upon the commercial banking system for short-term financing.

Another likely, but still largely potential, consequence of conglomeration is a restructuring of investment portfolios. If a rising proportion of publicly owned corporations conglomerate, each incorporating the principle of portfolio diversification, managers of mutual funds, trust officers, and individual investors will find it less necessary to diversify their portfolios. Thus an investor might achieve the same protection against extreme fluctuations in the value of and income from his holdings by buying one million dollars' worth of stock in International Everything, Inc., as by buying fifty thousand dollars' worth of stock of companies in each of twenty industries.

Another potential effect of conglomeration is to bring commercial banks and industrial corporations under common control. Already, several industrial conglomerates have acquired commercial banks. The more popular route, however, is use of the "one-bank holding company" to acquire financial and industrial enterprises. A one-bank holding company is created when a sponsoring commercial bank issues stock of a new holding company to its shareholders in exchange for their present shares. The primary motive is to acquire a corporate vehicle able to diversify into financial services not open to commercial banks, such as computer leasing, credit cards, mortgage banking, or sale of mutual investment shares. Up to the end of 1968 some thirty-four of the nation's largest banks holding over one hundred billion dollars of deposits had formed such holding companies. Unlike chains or groups of banks controlled by bank holding companies, which are prohibited by the Bank Holding Company Act of 1951 from acquiring non-financial enterprises, one-bank holding companies are unregulated and able to enter non-banking activities.

A serious potential consequence of conglomeration could be a worsening of resource allocation in the economy as a result of less accurate knowledge of returns to investment in different industries. Most conglomerates report their sales and net profits in the aggregate; they do not publish for investors the financial results of their operations in each industry or industrial group. The relative profitability of different lines being unknown, investors are unable to allocate their funds among industries with as much knowledge as they would possess in a non-conglomerate world. More and larger errors are likely to be made. Society will lose from a less efficient use of scarce capital.

VIII

PUBLIC POLICY FOR CONGLOMERATES

Should new types of public regulation be introduced to assure that conglomerate mergers, and the diversified corporations they create, serve the public interest? Let us briefly consider, in turn, public regulation of investment, of competition, of the relation between commercial banking and industry, and of financial disclosure.

1. Investment

During the current wave of conglomerate mergers unsound corporate marriages have been proposed, and some have been consummated by creating capital structures that are top-heavy with debt. Many of these mergers will fail to produce net gains. Some will ultimately fail. The question is naturally asked why government should not proscribe them. The answer is simply that there is no feasible way to identify socially functionless mergers in advance. Only time and the test of market competition will tell us ex post facto. A foundational concept of the American economic system is that business enterprises should be free to try out new organizational patterns, management concepts, and financial structures, as well as new products. No governmental official can possibly know in advance which mergers will, and which will not, produce real benefits. To require advance decisions would be to deprive society of possible gains from innovation, and to substitute an autocratic judgment for a democratic decision

by the market. The prevailing theory of regulation of investment properly asserts the right of each individual to deploy his funds as he wishes as long as there is full disclosure of all material facts necessary to an informed decision. While this policy costs society something in misallocated capital, the benefits are certainly worth the price.

Analysis shows that there are valid and important social gains inherent in corporate diversification of the conglomerate type. The generic principle of conglomeration— a plurality of dissimilar activities within a large organization— finds expression in other American institutions. Public policy has not sought to limit or prevent this development. An example from the field of education is the contemporary "multiversity" with its diverse programs and professional schools. Labor unions also have "conglomerated," as when District 50 of the United Mine Workers sought to organize workers in diverse occupations under the aegis of a miners' union.

Conglomeration has thrust into public consciousness knotty problems of the transference of corporate ownership and control. For example, are special restraints needed upon conglomerate acquisitions of such media of communication as radio and television broadcasting stations or publishing companies? Are they required for such instrumentalities of American foreign relations as international airlines? More generally, how can and should society guard against the use of multi-industry corporations by criminal elements to expand their economic influence? There are no easy answers to such questions, which need further study.

2. Competition

Because conglomerate mergers are more likely to increase—less likely to reduce—competition than are other forms of business combinations, they do not call for changes in the anti-trust laws. The conglomerate corporation is neither a "monster" lacking in economic and social justification, nor is it a "model of the future" to which the U.S. economy will increasingly conform. Its present role in the private sector is modest, and is likely to continue so. It is an interesting new type of corporate structure within the vast and infinitely varied mosaic of American private enterprise. Under some circumstances it can yield real values for society. Whether these values are significant, and whether they will be realized in fact, only time will tell.

The guidelines issued by the Anti-trust Division of the Department of Justice in 1966 make industrial concentration ratios the primary criterion for judging the competitive effect of a proposed merger. Conglomerate mergers do not change such ratios. The giudelines also place emphasis upon barriers to entry into an industry as a deterrent to competition. The conglomerate tends to strengthen the ability of its former constituents to surmount theretofore formidable barriers to entry into new industries. While it may also raise these barriers as against other small competitors, the net effect of the congolemrate is likely to be competitive. The Anti-trust Division should continue to study the impact of conglomeration upon competition. There is, however, no evident need for change in statutes or regulations.

3. Separation of commercial banking and industry

The Banking Act of 1935 required American commercial banks to maintain an arm's length relationship with non-financial corporations. One purpose was to prevent banks from underwriting or holding corporate securities, which had contributed to the wave of bank failures after the stock market crash of 1929–32. A more important purpose was to maintain banking impartiality in supplying credit to businesses. A bank controlled by a conglomerate could be influenced to discriminate in favor of its parent's industrial subsidiaries and against outside enterprises in times of tight money and credit rationing. Member banks of the Federal Reserve System are instrumentalities for the execution of national monetary policies. As such, they should be independent of external influences that could create unfair competition. Therefore, federal legislation should be enacted to block the acquisition of commercial banks by conglomerate industrial firms. One-bank holding companies should be brought under the Bank Holding Company Act of 1951, prohibiting them from engaging in non-financial activities.

4. Financial disclosure

The conglomerate merger movement has thrown into bold relief preëxisting faults in the current system of business accounting and financial reporting. It also created new problems. These defects should be cured in order that the business information system, upon which investors rely in allocating resources through the nation's capital markets, shall give accurate guidance.

One serious fault is the lack of standard accounting rules and procedures. This permits opportunistic businessmen to vary reported profits within wide limits. A corporate manager, for example, interested only in playing a numbers game with stock price/earnings ratios for quick profits, will seek to inflate current profits at the expense of future profits. The methods are legion. Shift from accelerated to straightline depreciation, defer or stretch out maintenance expense, deplete inventories held at low cost, sell assets for one-shot income. Excessive flexibility in permissible accounting methods creates opportunities for misleading changes in reported profits.

As custodians of the business information system, the accounting profession should take the lead in correcting this condition. For purposes of efficient capital allocation, it is important to standardize accounting methods so that investors can easily compare the performance of firms within and among industries, and managers cannot as easily create profit illusions. The accounting profession should accord this need a top priority.

The other problem is the information gap created by the pooling of interests of acquired companies in the published financial statements of diversified companies. All publicly held business corporations should be required—by appropriat regulations of the Securities and Exchange Commission, state security commissioners, and the stock exchanges—to report sales and either net income or operating earnings for each industry in which they are operating. Difficulties in assigning taxes, interest charges, or overheads incurred by the corporation as a whole to divisions or subsidiaries in particular industries may justify a report of operating earnings rather than of net profits. Some managers of diversified companies resist such reporting on the ground that it is costly, subject to error, and benefits their competitors. It is a sufficient answer, however, that just as they need this information for efficient management, so do investors need it for efficient investment.

Regulatory authorities should also require publicly owned companies to state their earnings per share on a "fully converted" as well as a conventional basis. The former basis assumes that all convertible securities are converted into common shares and that all warrants and options to purchase common shares are exercised. Only thus may the investor gauge the true contingent earnings of the company. This practice is especially needed by conglomerates, in the formation of which large amounts of warrants, options, and convertible securities were often issued.

IX

PERSPECTIVE

Although historical patterns suggest that the conglomerate merger wave of the ninteen-sixties may now be in a phase of recession, the true role of the multi-industry corporation in the American economy will not be known for another decade. If time and trial prove that its theoretical potential for lowering risk and raising returns on corporate capital are realizable, the conglomerate format will spread further over the corporate landscape. Should these values elude capture or be offset by faults yet unseen, many of these firms will disappear in a further restructuring of corporate power.

Viewed in a broader perspective, the great wave of conglomeration attests to the flexibility and adaptability of the U.S. economy in response to underlying structural changes. It demonstrates that stockholder control of corporations continues to be a vital force. Stockholders are not the faceless and spineless figures depicted by some theorists, and managements ignore them at their peril. No institution of a democratic society should be above challenge. Managements of great corporations need to confront the contingency of take-over bids as a stimulus to unremitting exercise of skill, resourcefulness, and imagination. The conglomerate movement has, at least, shaken the corporate Establishment.

Q. BIBLIOGRAPHY BY JULIUS W. ALLEN, "CONGLOMERATE MERGERS: A SELECTED BIBLIOGRAPHY, 1955–1968"

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R. ARTICLE BY W. H. FERRY, "THE UNANSWERABLE QUESTIONS"

[From the Center Magazine, July 1969]

The Unanswerable Questions

(The problems to which there is no solution are growing in number and complexity. "Something will turn up" offers no real comfort in the nuclear age.)

(By W. H. Ferry, Vice-President and Fellow, Center for the Study of Democratic Institutions)

The number of great issues to which no reasonable solution is possible appears to me to be growing almost daily. I am aware that mankind has gone on for a long time with a considerable backlog of unanswered questions or, in any case, with questions that have been at best half-answered or have been resolved in the muffled tones of compromise. But it seems that today's backlog is different in important ways. Yesterday's questions tended to be local—for example, World War I only in a limited way had global dimensions. Today's questions, on the other hand, are nearly universal in their significance. Unless we have been misled, we shall have to call the next international conflict not World War III but Space War I.

There is the added sense that half-answers to today's questions cannot be satisfactory—or at least not satisfactory for very long. Mr. Micawber has been our proconsul for too many years. I think he must be retired instantly.

Reference to Mr. Micawber brings me to the first, the largest, and the most obvious of my questions: *Will civilization survive?* Man is now providing himself with the instruments of annihilation at a cost of almost two hundred billion dollars a year. Such is the fever pitch that the figure is probably now nearing the quarter-trillion-dollar mark. Most of this lunacy is taking place in the best-educated, best-informed, and most affluent nations in the world. No comparable figures for works of non-annihilation have been assembled, as far as I know. If one puts together expenditures for the United Nations and its satellites, plus the output for such items as aid to developing nations, and adds desultory efforts like disarmament commissions, world constitutions, and the like, a figure of around five to ten billion dollars can perhaps be reached for the works of survival, or about two to five per cent of the wealth expended on armaments. It must be agreed, I think, that there is little market for peace and an apparently insatiable one for the works of war. There arises the unhappy vision of mankind surviving only in nests of missiles and biological warfare installations, chattering across the barricades about peace "on our terms," in perpetual hock to fear. Will civilization survive? I deem the question unanswerable.

The second question is equally obvious: *If civilization survives, will man live in a world worth living in?* Since I am an American, let me localize this second question: I'll make it *Will democracy survive?* I have nothing complicated in mind here—by democracy I mean self-government.

The evidence is now plain that, in the minds of many Americans today, someone else in some other place is making all the decisions. There are many reasons for this increase in sense of political remoteness. All are of surface validity—for example, the sometimes incomprehensible interconnections of the industrial, internationalized state. But understanding these reasons does not change the citizen's feeling that politics is becoming form without substance. The notorious military-industrial complex has become an almost palpable presence in our lives. The citizen is talked *to* unceasingly—by the media, by politicians and self-seekers, but he has no way to talk back. The residents of Santa Barbara, where I live, looking across streaked beaches to a swiftly increasing grove of oil platforms in their channel, are discovering that the amenities of their city depend on such unintelligible factors as the world price of oil, the gaps and holes in the tax laws, and quiet agreements between magnates of industry and magnates of government thousands of miles away. Political scientists are in honest dispute as to the extent of democratic practice—not, mind you, democratic rhetoric—but all seem agreed that democratic practice is dwindling or is so changing in character as to call for a different name. Will democracy survive? Unanswerable again.

All unanswerable questions are not of this cosmic character. There are many homely examples. Consider, for example, whether we can, if we wish to do so, actually control the conditions of our daily lives. Posit a community of fifty thousand people, and suppose it to be in a setting pleasing to the inhabitants. Suppose further that the great majority of these inhabitants feel that their city is quite large enough and that they have no desire for an increase in population. Further suppose that, turning their back on our alleged progress, they do not want any more industry, any more invading freeways. You may think these unlikely suppositions, but there is always a chance that some community will come to its senses and try to have something to say about its own development or non-development.

Let us suppose a few more things: that this community opts for home-owned businesses, for complete public control of the land within its boundaries, for privacy, and for freedom from the high decibels of crashing sound that have become commonplace in urban life, and also for a minimum of automobiles—say, one to a family. Supposing all such goals, could they be achieved? There is another unanswerable question. No one can confidently assert that such a community is impossible because it has never been tried. Nor can anyone say that it is possible if only the requisite determination can be achieved.

Now this is no frivolous set of suppositions. In my judgment there is an intense yearning among Americans for an environment that is manageable and small enough for citizens to lend their weight in the balance of decisions. The country is dotted with towns and small cities desperately seeking to resist a nearby megalopolis. The impulse is most clearly seen in the so-called outer suburbs. Are these communities at the mercy of the urban suction-pump or can they do something about it? Aside from these outer suburbs there are those more distant enclaves which still retain some sylvan charm. Trying to control one's own

destiny took on a modern dimension when the suburbs finally cut themselves off from their parent cities and said, "We want a life different from yours." Of course most suburbanites never really meant this. What they really meant was that they wanted a quiet bedroom, better schools, and nothing but white faces in the neighborhood stores. The near-in suburbs have all but given up the struggle for real distinctiveness, but the effort goes on in the outer rings of megalopolis. And there are many communities, large and small, remote from the great centers, which are now watching their powers of self-government being eroded by distant forces that they cannot comprehend, much less regulate.

All this is only to say that many obstacles lie across the path of a community such as I have supposed. I pass over certain obstacles that will occur to everyone, such as the drive for super-efficient government, the difficulty of getting the citizenry to consider and debate significant issues, the indignation of neighboring communities about actions that injure them, and the subsequent reprisals of these neighbors. The less apparent obstacles are just as numerous. There is, for example, the homogenizing effect of television. Any effort to maintain a distinctive community in this country has the tube to contend with. Television decrees our national styles in attitude, dress, consumption, and who can say what else. Thus, to use a kitchen example, television is mainly responsible for the elimination of local cheese producers, so that we now have a choice only of rubbery samenesses on most of our supermarket cheese counters. Can a community, however determine it might be, prevail against such pressures?

The federal Constitution is, however, the chief obstruction, for it might well decree that our imaginary city could not ration births, halt the immigrant, deny the trespassing freeway-builder, or keep a second car out of the garage. Nonetheless, I do not consider this a conclusive objection, for the Constitution can always be changed. Indeed, it should be changed if it gets in the way of the human development of the nation. I would not care to argue that the Constitution ought to be amended or rewritten merely to meet the desires of my suppositious community. Perhaps a better way of stating the issue, then, is to ask whether the Constitution is facilitating undesirable development, so that under its permissive gaze we stand in danger of losing our souls as well as our water supplies, our clean air, and our arable land. Here, I believe, there is another unanswerable question: *Do we have the political wit or will to rewrite the Constitution to reflect what we have learned about ourselves and technical society in the past generation or two?*

To conclude the instance of the small city I have imagined, it would undertake to control its population. It would limit entry. It would work out a transportation policy based on the reasonable needs of the community. And so on and on. All such matters would require a communal dedication and enterprise in political action far beyond our current imagination. Combinations of persuasion and incentive and restraint, of which there is no modern example, would be called for.

Once again such a program will be dismissed as repugnant and regressive. Yet a good deal of the commotion today may be interpreted as efforts in that very direction. The traffic boss of New York City recently warned that private vehicels may soon have to be barred from the streets of that suffocating city. Los Angeles, a special example of demented mobility, is moving through smog in a similar direction, though no decisive action may be expected there until a few thousand citizens gasp to death. Garrett Hardin, of the University of California at Santa Barbara, proposes a tax in Los Angeles of a dollar a gallon on gasoline. The New York traffic boss and Professor Hardin and anyone like them trying to do what is necessary will, however, find themselves up against a constitutional challenge if they try to put their plans into effect.

As a final instance, consider some recent despairing words of Daniel Moynihan, President Nixon's adviser on the cities. Moynihan, ordinarily one of the the most ebullient of men, said: "For reasons no one understands, government has been impotent in trying to solve urban problems. The inability of government to bring about urban change is a fundamental problem of government today. Our delivery systems are not in fact working."

I am trying to point out that the matters which have to be dealt with by a small city determined to keep its singular character are similar to those faced by every metropolis. But of course for most large cities it is already too late to think of finding human solutions. For these cities the big question is survival itself. Not long ago, *Newsweek* asked: "Can the suburban 'white noose' around the cities

be broken by genuine integration? . . . Is there any real way to end the cycle of welfare dependency? Will better-paid, more mobile police cut the spiraling crime rate? Do decentralization and community control really promise better education? . . . Is big-city life still worth living?" The difference, it is clear, is one of degree. If the questions asked about the small city are unanswerable, all the more unanswerable are the questions being asked about the great cities.

We see in these issues some of what is agitating our young people. They have no care for a civilization held in thrall by questions that are at once awesome and unanswerable. Their plea for participation can be read as an appeal for intelligibility and manageability. A good deal of adult resentment of the young (which as often as not seems to verge on outright hatred) may arise from a subconscious realization that our children are stirring things up in favor of a *human* civilization, not a technical order, and in favor of restoring the kind of relations among people that adults themselves somehow let slip from their grasp. So there may be a heavy dose of envy mixed into the adult demand that the young be repressed and that they conform to a style of existence that their elders, in occasional fits of candor, acknowledge to be aimless and excruciatingly boring. It is a fair guess that adults do not want their children participating in any significant way in determining the conditions of their own lives if they themselves are not capable of doing so. In Kenneth Millar's phrase, the conservatism of despair holds them back.

Race is the next entry. I find some difficulty in phrasing the question correctly. The following will have to do: *Can we resolve the race issue, with freedom and justice for all?* This seems as unanswerable a query as any. On the one side we see millions of people getting to their feet, beginning to stand upright for the first time, experiencing a sense of selfhood and dignity that had been squashed throughout American history. Their talk is loud, angry, confused, and direct. Blacks are economically near-broke but spiritually and politically affluent—and I would like to come down hard on that word "politically." They are saying, we know what is best for ourselves, so please get that white hand off our shoulder.

On the other side there is a vast white majority that is frightened, with no genuine understanding of what the blacks are clamoring for in their campaigns for autonomy and for a culture based on black history. This white majority on the whole wishes its black colonial subjects well, and has even passed laws in evidence of its benign outlook. It hopes that the blacks succeed in improving their lot, but only if the improvement does not cost much and only if the blacks do not threaten white superiority or white peace of mind. The white majority is also heavily armed, officially and unofficially. These arms are intended for use any time the minority goes beyond the demilitarized zone that now by tacit consent separates blacktown and whitetown. Finally, the white majority says to the black minority: "We know better than you do what is best for you, and we'll see that you get it, even if you find it painful." The argument resembles the viewpoint of those who think we can best resolve the Vietnam dilemma by killing off all the Vietnamese.

I deny that there is an answer to the race question; I deny that we—that is, the conscientious members of the white majority—are really working at it and have achieved fair success already. I reject this whole line of argument, for on examination what we see is a series of compromises, or concessions, or half measures usually arrived at as a means of damping down explosive situations. Meanwhile the principal institutions of our racist society remain intact and unchanged, the towers of privilege are unshaken. Bargains and compromises, I am aware, are said to be the essence of American political life. But what, in this situation, has such an explanation to do with freedom and justice, let us say for the urban or rural blacks chained in their respective slums? I am reminded of one recent political bargain in Washington, under the terms of which starving black children are to be allowed—as an experiment—free food stamps for a while.

I conclude that race is a question without an answer in the United States, another problem to which there is no solution. There may well be a resolution of the matter, but it will in no sense be a genuine answer. I refer to the possibility of a civil war, which I regard as likely. But of course this resolution will not be a civil war but a pogrom, incited by those millions of whites to whom blacks today are almost as frightening a presence as Nat Turner and his band were to Southern plantation-owners. Such a resolution will necessarily have only a temporary effect in subduing blacks, will enormously increase the freight of white guilt, and will only compound the unanswerability of the question with which this article opened.

My last question is this: *Can Americans acquire the new consciousness required to give purpose and zest to their common life, and to redeem the nation's proclaimed ideals?* It may be thought that there is a preliminary query; namely, whether such a new consciousness is needed. Based on my view of the state of the nation, the answer has to be roaringly affirmative. A superficial casting-up of accounts establishes the United States as blessed beyond history's wildest intimations of success: a constitutional regime of two hundred years' stability, a plentiful domain moated by great oceans and friendly (or at least nonhostile) neighbors, propelled by an economic engine that year after year breaks records in all departments from G.N.P. to the amounts spent on noneconomic follies like arms and space, and constantly rising achievement in all the conventional indices from childhood mortality to literacy, to books and concert tickets sold, to salaries paid rock singers and football players. Such cataloguings of the American Way go on and on. They are all valid enough.

Yet this is not the central story of the United States today, only a small part of it. Such statistics are merely the backdrop of success against which the ironies stand forth plainly. Something has gone wrong. Erich Fromm says that Americans are "anxious, lonely, and bored." Wealth and accomplishment are not nearly enough. There is a hollowness at the center of the national life. Americans are cynical about politics and politicians and think that government is a matter of logrolling or of buying and selling favors. They are frightened by the prospects of abundance and leisure whether this leisure is for them or for their neighbors. Miracle-a-day science and technology fascinate them and at the same time bring forebodings as they sense their incapacity to deal with the moral issues generated in the laboratories. For example: What to do about the geneticists' alarming promise that we shall soon be able to determine the chief physical and mental characteristics of the population? What to do about our possession of enough poison to kill the people of the world ten times over, and enough deadly bugs and hydrogen bombs to eliminate any life that might manage to survive around the edges? What to do about the advent of a society in which relatively few people will have to work as the machine slaves take over?

We are distressed to discover that we have so misused nature as to put our grandchildren, if not our children, in danger of suffocation through lack of oxygen, or of being buried alive in their own garbage, or being carried off by lead poisoning. There is a halting recognition that as we pave our farmlands we may be doing away with croplands we shall one day need.

In the thoughtless and catastrophic attack on the environment, from the bottom of the sea to the outer envelope of the atmosphere, there may just be a new consciousness forming. Belatedly as always, the mass media are beginning to give a little alarmed attention to the rapid deterioration of our physical world. So at last we may be getting sensible and learning to fear the right things—not the Communists but our own suicidal practices. But I do not think that we will spend the billions needed to redeem our environment, nor, indeed, that we have the political machinery to carry on the great clean-up even if we were willing to tax ourselves for this purpose.

New orders of magnitude appear daily, and human beings become more dwarfed and insignificant. Size has always been a major criterion in the American consciousness—the bigger the better—but we are beginning to understand that size in the end is the death of individuality and distinctiveness. The illicit claims of bigness are apparent in the condtion of our cities. They continue to grow, becoming less and less livable, each itself an increasing cluster of unanswerable questions. Citizens quiver in the drumhead tautness lying across metropolitan centers. The idea of community is itself the most conspicuous fatality of urban civilization. There can never have been a more sour joke than placing the label Fun City on New York. Our greatest metropolis is gritty with hatred and threatened with disintegration.

Like the earlier list, this catalogue of American ills could be extended indefinitely. Problems multiply at an unprecedented rate. I know that I shall be charged with having drawn an overblown picture. But it is the picture I see. There is little ease or serenity and little laughter among us. An uncommon malignity is beginning to mark our disputes. The legacy of America, as matters now stand, is not a life that is nasty, brutish, and short, but one that is apprehensive, surfeited, and long.

So I return to the question, Can Americans acquire a new consciousness? I believe this to be unanswerable. Americans must! cry the young. We will not, say the old. We cannot, intone the political pragmatists. It must be evident that I come down on the side of the young. The old consciousness is worn out. It has

served its purpose and deserves respectful burial. But having cast my vote for the new consciousness, I have not answered the question whether we can achieve it, I have only declared my hope for its election. Nor is it within the scope of this article to discuss the *content* of the new consciousness. It is a separate matter—youth's dream of revolutionizing American morality, in John Updike's words. I do not mind, however, indicating the key to my understanding of this phrase. It takes in the word we hear more and more often from our young friends, the word "radicalization."

Radicalization is the process of looking afresh at the institutions and procedures of the society, beginning at their roots and working onward, taking nothing for granted or as being of continuing value except these indispensable things: community, self-rule, the integrity of the human person, and the necessity of living in harmony with the natural order. In this sense our protesting young people must be deemed not revolutionaries but counter-revolutionaries. They wish to undo or trip up the technical-industrial revolution and get back to pre-revolutionary ideas like political participation and personal responsibility.

I take it that the new consciousness is aimed at doing something about all the conditions that cripple these essential aims. I wish its proponents well, for I cannot imagine how it will all end otherwise. It does not, I suppose, matter much whether a great civilization ends in a horrible bang or an ignoble whimper. The apocalyptic current in me has slowed down. Nor does my morose outlook incline me to suicide—men just don't seem to jump off the bridge often for big reasons, they usually do so for little ones.

Anyway, I have no taste for such long-range forecasts; the focus of this article is on the ambiance of life, the tone of hatred and suspicion and cynicism that we are coming to accept as part of what citizenship in post-industrial society means. Perhaps we shall never know when civilization, in the ordinary and honored sense, actually ends and refined barbarism takes over.

I realize that the mood of this essay has been unrelieved melancholy. This is partly because the topic is not a cheery one. It is mainly because no answers occur to me; and because I sense strongly that we have pushed our luck very near the breaking point. It is hard for me to accept that the human annals contain chapters as bleak and unpromising as the present one. There has surely never been so much morbid speculation amid plenty and apparent progress. Our hardest and most high-minded labors seem inevitably Sisyphean. Those who take comfort in the solidity of our institutions may do so; these institutions no longer feel solid to me. Those who derive confidence from our "tradition" are, I think, falsely led, for our tradition of justice, equality, fraternity, mutual respect is mostly a tissue of affectionate memory, not reality functioning in our lives except here and there along the margins. I do not know what to say to those asserting that God is working in history. That statement only recalls to me the frightening graffito reported from a San Francisco lavatory: "God has cancer." Our heroes are in outer space, on the basketball courts, or in the grave. Martin Luther King, Jr., is a hero, now that he is safely dead. President Eric Walker of the University of Pennsylvania has said that salvation is to be found in a rebirth of "practical know-how," and engineering on a gigantic scale. This strikes me as hair-of-the-dog advice, and about as effective.

There is one bright spot and one only on my screen. I see wisps of hope in the young, in the blacks and browns, in the militants of all colors. They are the partisans of the new consciousness. But I do not want to idealize them. They are disorganized, rude, contemptuous. Sometimes they are even a tenth as violent as those beating on them. But they are thinking of the right things, thinking of how to save our environment from human predators, thinking of how to retain their manhood as the structures of postindustrial society close in, thinking of how to convert accomplishment into human ends, thinking of how to achieve dignity. They are thinking of Malcolm X's wish that he might "save America from a grave, even fatal catastrophe." Their hope and mine rises as we consider that their efforts helped to drive a war-committed President from office, and as we see that genuine gains have been made in the independence of the black spirit.

Yet it must be conceded that these are minuscule breaches in the mighty wall of self-satisfaction and self-righteousness that is the chief defense of an over-endowed society. In my mind the question is whether this small band of young people and blacks and idealists can, by demonstration, exhortation, confrontation, example, or raid, bring this nation to its senses before it undergoes the final great lesson of catastrophe, domestic or international.

And this is the least answerable question of all.

S. ARTICLE BY JOHN R. SEELEY, "THE CORPORATION AND YOUTH"

[From the Center Magazine, July 1969]

THE CORPORATION AND YOUTH

(By John R. Seeley, Dean and Fellow, Center for the Study of Democratic Institutions)

What must the corporation do if it is to appeal to the socially conscious student?

It must do what it should have done from the beginning. As Antony Jay, a businessman of eminence, makes clear in *Management and Machiavelli*, the corporation is a state, and a far more important state, both for the lives of the men who live in it and for the lives of all others, than what we commonly call "the state"—the country or nation. These corporation-states—especially the greater of them—have, therefore, most of the powers and responsibilities of states, internal and external. Since, moreover, they have enormous power over both the national state itself, and—directly in the corporation and indirectly via the mass media—over the citizens of the state proper, their responsibilities, commensurate with their powers, are almost unlimited.

The first requirement, I should think, for these corporation-states—if they are not to find themselves soon totally bereft of the best of the young—is that they must develop and inform their every action with an ecological conscience. (What any one corporation-state could not thus do could be done through such virtual leagues of states as the Chambers of Commerce or the analogue of the National Association of Manufacturers.) By an ecological conscience and action informed thereby, I mean a con-science (a knowledge of the relevant facts and a proper judgment upon the values) and a policy that treats the cosmos as the context for decision and the object of trusteeship. No policy looking to the advantaging of the already advantaged, no policy not mondial in its consideration, no policy not husbanding and enhancing rather tha exploiting, polluting, or raping the biosphere, no policy that did not adequately protect the future as well as the present, no policy that displaced true social costs onto innocent victims (such as the psychological costs of forced mobility or stupid retirement policies), no policy that did not reflect in its cost-benefit analysis the deepest and most precious human needs of all, could possibly pass muster. Shortcomings of performance could always be forgiven—even the computer will only reach so far!—but a foreshortening or narrowing of aim would be already unacceptable to the new and vivid conscience of the now thus, naturally oriented young.

The second requirement, an internal one, now, would doubtless be that the corporation would have to regard as central, and make effective that regard in action, the enlargement, enhancement, growth, and development of men into their full, rich, and complex humanity. (What is now regarded as product would henceforth be regarded as by-product, or so closely related that the distinction disappears.)

The third requirement, perhaps implied in the first and second, would be that not only must the product be non-noxious and non-trivial but must have its due place and no more in an order of goods related to genuine human needs ordered in a scheme of rational priorities. Thus, to be concrete, to create an nth flavored dentifrice while babies needlessly starve in ghettos would be on its face criminal.

The fourth requirement, requisite for and perhaps implied in the third, is that truth would have to prevail over lies, positive disclosure over concealment, secrecy, and fraud; thus, presumably, the entire advertising industry as we understand it would cease to exist. For when it is not engaged in outright misrepresentation and special pleading within the legally permitted limits (and sometimes beyond), it is concerned with the engendering of wants having only accidental or often polar oppositional relations to rational needs.

The fifth requirement would be some sizable disengagement from, and independence of, the monster states, now bidding fair to become the architects-in-chief and monopolists of all major crime, especially crimes against humanity.

The sixth requirement, probably also not independent of the others, would be that the corporation should assume a genuine communitarian aspect (rather than its present semi-military, semi-feudal form). This would, of course, limit scale, and might even in some cases militate to a degree, against efficiency and economy, but then these are not and never were proper canons of measurement for the goodness of states.

The seventh requirement, permitted by the sixth, would be that the corporations be genuinely and deeply self-governing, and thus provide by their very nature the education that only self-government both requires and yields.

I add, at great risk, that there is an eighth requirement: that the new corporations will have to be imbued by what, for want of a better term, I can only call a religious spirit. I say "at great risk" because I do not expect many to agree with me, I cannot specify more exactly what I mean, and my evidence is uncertain. But I sense imminent over and immanent within the emerging society a hunger and demand for a renewal or resurrection of life unified by what is not only shared but sacred, and not only shared and sacred but memorialized somehow in discipline, observance, and rite.

Failing the discovery of a way to turn corporate life to the development of humanity and the preservation and enhancement of the cosmos, I see an end to our civilization so close that my children may well suffer it, if not I.

I do not believe that the students the corporation wishes to reach—nor, shortly, anyone, anywhere at all—will settle for less. I hope not. The stone which rejected the builders, the same will become the head of the corner—or, I believe, there will be no building, no stone left standing upon another.

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