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Introduction

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INTRODUCTION

EDWIN M. ZIMMERMAN*

This volume is a selective addition to the awesome amount of commentary provoked by the conglomerate merger. No other development in industrial organization in modern times has given rise to a like quantity of scholarly and professional attention and dispute.

If the conglomerate merger were clearly the most significant economic regulation problem of the day, the abundance of attention would not itself merit notice. But, surprisingly, many experts in the field would not accord it that primacy. The majority of the members of the Neal Task Force on Antitrust Policy regarded the present existence of a significant number of highly concentrated markets as easily the preeminent industrial organization problem. They recommended new legislative control of conglomerate mergers only as a secondary means of attacking the main problem (for which they propose major new legislation). The members of the Stigler Task Force, appointed by President Nixon, not only downgraded the importance of the conglomerate merger but expressed doubts that most conglomerate mergers had any anti-competitive significance.

The disproportion between the attention the conglomerate merger receives and the relative importance accorded it by a number of prominent students of the field is, therefore, itself a development worth examining.

Some reasons for this phenomenon are obvious. For one, the conglomerate merger poses problems in not one but several fields of law. Hence the debate it provokes is lively and quantitatively substantial among not only antitrust lawyers and economists but also tax policy specialists, accountants, and those concerned with securities regulation. Secondly, the problems posed in the several fields in many cases have an established record of being peculiarly difficult. A reading of the materials assembled in this volume will reveal that to a surprising extent the debate is not about new issues, but about long-controverted issues which arise again in the conglomerate context. Examples are problems of divisional reporting, purchase versus pooling accounting, and the soundness of antitrust theories that assume the probability of competitively significant use of economic power for predatory pricing, reciprocal dealing, and entrenchment of market position.

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But while the issues arise in several fields and are often of proven difficulty, this fully explains neither the abundance of commentary, the remarkable frequency of Congressional hearings, nor the elevation of the conglomerate merger to a preeminent enforcement objective.

A number of other factors are at work, some more important than others. These include: a concern about a trend toward increasing concentration of assets into the control of the largest firms in the economy which is thought to be significantly influenced by large conglomerate mergers; a sense that some conglomerate mergers have been predicated largely on short-range tax and stock market considerations rather than intrinsic economic merit; a popular disquietude over the possibility that undue political power and unhealthy disruption of social patterns are the consequences of conglomerate acquisitions; a period, perhaps transitory, of seemingly irrational stock market behavior in overvaluing the stocks of certain acquisition-minded firms; and the fear and resentment of established managements toward companies that make take-over bids directly to the stockholders.

These factors have combined to provide a broad basis of support for an activist policy in the antitrust, tax and securities fields. Liberal populists and industrial conservatives alike urge strong action. This development makes the conglomerate merger a peculiarly vulnerable target. In addition, ambitious changes in enforcement or regulatory policies are usually achievable with less resistance when directed at preventing prospective action, such as new mergers, rather than at the reform of existing structure or practices. These factors help explain the present unique concentration on conglomerates, and, I believe, suggest some of the opportunities and some of the dangers presented.

On the plus side, some overdue reforms, probably in the tax and securities regulation fields, may be made. Though stimulated by problems in the conglomerate area, they will, inevitably, have a broader applicability.

Also on the plus side, the experience of attempting to deal with an economic regulation problem with a number of different tools—tax revision, disclosure requirements, antitrust, accounting reform—will focus attention, perhaps for the first time, on the problems of achieving some coordination of different governmental policies.

By the same token, the most acute danger in this climate of legal activism also resides in the potential applicability of several different fields of law to the conglomerate problem. The different degrees of readiness with which different fields of law may bear on the conglomerate "problem" may result in the use of one body of law to solve a problem that is essentially the province of another. Such cross-subsidization of law enforcement can result (a) in a distorted use of the activist field of law and (b) continued inadequate development of the pertinent field.

This argument is pushed, in particular, by those who believe that amendments in tax treatment and adequacy of disclosure should be made before evaluating the need for any radical revamping of antitrust enforcement through new legislation or otherwise.

An entirely different drawback in the remarkable concentration on the conglomerate phenomenon is that it may divert attention from and choke off the impetus for reform of the law in other areas which may be of equal or greater significance.

The material that follows illustrates the variety of problems, the disparity of views and the complexity of the issues. Some of the dust has now settled, at least temporarily, as the economy has begun to cool. Hopefully, investigation and debate can continue under less exigent circumstances that will permit the identification with greater precision of which issues require which tools, an awareness of the ultimate costs in second-best solutions, and perhaps a greater awareness of the fact that certain apprehensions are not capable of ready response through any of the presently available regulatory devices. As to this last point, I think in particular of the concern over the political and social changes attributed to conglomerate mergers. It is undoubtedly true that to the extent that antitrust limits the conduct of economic power, it has an incidental social and political impact. But it does not follow that antitrust policy in particular areas can be effectively shaped and directed with social and political goals uppermost in mind. In particular, I suggest it is bizarre to concoct a particular antitrust doctrine in order to contain the emerging political power or social impact of a Northwest Industries but not a General Motors — social and political problems do not segregate themselves nicely into such antitrust categories as that of the conglomerate merger. My own guess is that the causes of effective antitrust enforcement and of effective concern with the social and political problems of large corporate power would both be better served were there wider recognition of the inherent limitations of antitrust in solving such problems.

Finally, the contrariety of views expressed in the papers that follow, in the antitrust field in particular, indicate that because of a paucity of research and of data on some key questions, basic facts are in dispute, and plausible but contrary theories are held by men of skill. One is often left with the impression that the totem of one group is pitched against the taboo of another. A very optimistic hope is that the intensity of attention now focused on each detail of the conglomerate merger problem may reveal, with a starkness that impels some corrective action, the extent to which our enforcement agencies lack true policy-making resources because of a paucity of research, the extent to which our universities are underfinanced in industrial organization research, and the extent to which there is an undesirable segregation of policy making, fact finding, and theoretical analysis in the institutions we rely upon for shaping our national economic

policy. A more realistic basis for a modest optimism is that as the controversy over conglomerate mergers wears on, some of the research and data gathering that has been otherwise so largely absent is finally beginning and, with good luck, may yet be brought to bear on the ultimate resolution of the issues.

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